



FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 18-11]

RIN: 3072-AC73

Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission (FMC or Commission) proposes to amend its rules governing licensing, financial responsibility requirements, and general duties for ocean transportation intermediaries (OTIs). The proposed changes are mainly administrative and procedural.

DATES: Submit comments on or before January 18, 2019.

ADDRESSES: You may submit comments, identified by the Docket Number in the heading of this document by the following methods:

- *Email:* secretary@fmc.gov. For comments, include in the subject line: “Docket No. 18-11, Comments on Proposed OTI Regulations.” Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.
- *Mail:* Rachel E. Dickon, Secretary, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573–0001.

Instructions: For detailed instructions on submitting comments, including requesting confidential treatment of comments, and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document.

Note that all comments received will be posted without change to the Commission's website, unless the commenter has requested confidential treatment.

Docket: For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room at: <http://www.fmc.gov/18-11>, or to the Docket Activity Library at 800 North Capitol Street NW, Washington, DC 20573, between 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. Telephone: (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Secretary. *Phone:* (202) 523-5725. *E-mail:* secretary@fmc.gov.

SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

There are two types of OTIs that serve as transportation middlemen for cargo moving in the U.S.-foreign oceanborne trades: non-vessel-operating common carriers (NVOCCs) and ocean freight forwarders (OFFs). An NVOCC is a common carrier that holds itself out to the public to provide ocean transportation and issues its own house bill of lading or equivalent document, but does not operate the vessel by which ocean transportation is provided. An OFF domiciled in the U.S. arranges for the transportation of cargo with a common carrier on behalf of shippers and processes documents related to U.S. export shipments. The Shipping Act of 1984 and 46 CFR part 515 require that all NVOCCs and OFFs located in the U.S. must be licensed by the Commission and must establish financial responsibility.

NVOCCs doing business in the U.S. - foreign trades but located outside the U.S. (foreign NVOCCs) may choose to become FMC-licensed, but are not required to do so. Foreign-based NVOCCs must nonetheless register with the Commission and establish financial responsibility if not licensed under the FMC's program.

On November 3, 2015, the Federal Maritime Commission published a final rule making significant amendments to its regulations governing OTIs. These changes included adding requirements to renew OTI licenses every three years; providing for simple on-line renewals; eliminating the \$10,000 financial responsibility coverage requirement for each unincorporated branch office; and establishing an expedited hearing process for license denials, revocations, and suspensions, while continuing to provide applicants and licensees due process and the ability to appeal adverse decisions to the Commission. Most of the changes were implemented in December 2015, and OTI license renewals were initiated in 2017.

II. PROPOSED CHANGES TO PART 515

Based on its experience implementing the revised regulations, the Commission has identified a number of regulatory provisions where clarification is warranted. Accordingly, the Commission is proposing changes to its current rules that are administrative or procedural in nature or will further reduce the regulatory burden on regulated entities and include: (1) updating the title and scope of Part 515 to include foreign-based NVOCC registrations; (2) clarifying the requirements for U.S. agents of foreign-based registered NVOCCs; (3) removing the optional paper application process and related reference to fee amounts; (4) adding language to clarify who can be the Qualifying Individual (QI) in partnerships between entities other than individuals; (5) updating and improving processes (renewal, bond, and termination); (6) adding clarifying language regarding the Commission's direct review of applications in certain cases; (7) clarifying the information that sureties are to provide regarding claims against OTIs; (8) adding a requirement that NVOCCs submit their Form FMC-1 prior to being issued a license; and (9) deleting reference to availability of the Regulated Person's Index. None of the proposed changes increase the burden to applicants, licensees, or registered foreign-based NVOCCs.

A. Part 515 Title and Scope

The proposed rule would add “Registration” to the part heading to reflect that foreign-based NVOCCs have the option of registering or becoming licensed. The proposed rule would similarly include registration in the description of the scope of part 515 in § 515.1.

B. U.S. Agents for Registered NVOCCs

Section 515.3 currently requires a registered foreign-based NVOCC to use licensed OTIs as agents to provide NVOCC services in the United States. Stakeholders have asked for clarification as to whether such agents can be either OFFs or NVOCCs. The proposed language clarifies that the licensed OTI agents can be either OFFs or NVOCCs.

C. Forms and Application Fees

The proposed rule would remove references in §§ 515.5 and 515.14 to renewal forms for licensed OTIs. These references are not needed because the data collection during the renewal process is the same as the data collection of the initial Form FMC-18.

Proposed changes to § 515.5(b) and § 515.12(a) would eliminate the paper application option for OTI licenses, based on the Commission’s experience since introducing the electronic filing option. The Commission has not received any requests for a waiver to file a paper application since the waiver requirement was implemented in November 2015.

Finally, the Commission is proposing to replace an outdated reference to “Form FMC-18 Rev.” in §§ 515.5, 515.12 with “Form FMC-18.”

D. Qualifying Individuals in Partnerships between Entities

The qualifying individual (QI) requirements in § 515.11(b) regarding partnerships assume that the managing partners are individuals and thus eligible to be the QI for the partnership. In order to address the situation in which the managing partners are entities rather

than individuals, clarifying language has been added indicating that an officer of a general partner entity may be the QI.

E. Submission of Form FMC-1 as Prerequisite for License

The proposed changes to § 515.14(a) would require NVOCCs applying for a license to provide the Commission with a Form FMC-1 prior to the Commission issuing a license, which conforms to the current procedures for foreign-based NVOCCs that register with the Commission.¹ Currently, a license is issued after approval by the Commission and receipt of proof of financial responsibility. Although NVOCCs are required under § 520.3 to submit a Form FMC-1 prior to the commencement of common carrier service pursuant to a published tariff, submission of the form is not currently a prerequisite for receiving a license. Like the current requirement for submitting proof of financial responsibility, the proposed change would require NVOCCs to submit a Form FMC-1 within 120 days of the conditional approval of their license application. Failure to submit the form within that time period would require the NVOCC to submit a new application to restart the license process. This change would ensure that NVOCCs comply with all requirements for commencing service in the U.S. trades in a timely manner. This change would add no additional burden to NVOCCs seeking licenses as they are already required to provide the Commission with a Form FMC-1; the proposed change merely affects the timing of the submission of the form.

Because the proposed Form FMC-1 requirements mirror the existing requirements for submitting proof of financial responsibility, the latter requirement would be removed from § 515.25 and combined with the Form FMC-1 requirements being added to § 515.14(a).

¹ The proposed rule would also make minor clarifying changes to the corresponding requirement in § 515.19 for foreign-based NVOCCs registering with the Commission.

F. License Renewal Process

The proposed rule would make a number of changes to § 515.14 to improve and clarify the license renewal process. In addition to some minor clarifying the language changes, the proposed rule would change the initial period between licensing and renewal from three years to a period of not less than one year to not greater than four years. This change would spread out license renewals across the entire year and thereby facilitate the efficient and prompt processing of such renewals.

The proposed rule would also change the deadline for completing the renewal process. Currently, § 515.14 requires licensed OTIs to complete the renewal process no later than 60 days prior to the renewal date. The proposed rule would change the deadline to the renewal date itself. This change would reduce the burden on licensed OTIs by allowing them additional time to complete the renewal process.

G. Application after Revocation or Denial

The proposed rule would expand the types of applications subject to direct Commission review to include applicants employing any of the same officers, managers, or members as an OTI whose license was revoked or denied within the previous three years because the Commission determined that the OTI was not qualified to provide OTI services. The applications currently subject to direct Commission review are limited to those submitted by the OTI whose license was previously denied or revoked, or those from another OTI that employs the same QI or is controlled by persons whose conduct formed the basis for the previous revocation or denial. The Commission believes that an OTI employing an officer, manager, or member of another OTI that previously had its license denied or revoked raises the same concerns as an OTI employing

the same QI and has tentatively concluded that direct review of applications by such OTIs is warranted.

The proposed rule would also add clarifying language to more clearly reflect that denial of an application under § 515.18 is final and not subject to the hearing procedures in § 515.17.

H. Reporting Changes in Trade Names

The proposed rule would clarify in § 515.20 that a change in a licensee's name includes adding or deleting a trade name relating to its OTI services. OTIs must seek prior approval from the Commission before making such changes.

I. Proof of Financial Responsibility

The proposed rule would clarify in § 515.22 that OTIs may submit proof of financial responsibility via email, and, in § 515.26, that the Commission may transmit notices of termination of financial instruments via email. Allowing transmission of this information by email reduces delays and the burdens on both OTIs and the Commission.

The proposed rule would also clarify that in addition to the principal's name, trade name, and address, the financial responsibility instrument must clearly identify the principal's state of incorporation or formation, and the printed name and title of the signatory.

J. Claims Against an OTI

The proposed rule would require that financial responsibility providers include a registered foreign-based NVOCC's organization number when notifying the Commission of claims against that NVOCC under § 515.23(c). The current rule requires that financial responsibility providers include an OTI's license number, but registered foreign-based NVOCC's do not have license numbers. This change would ensure that the organization number for registered NVOCCs would be included in claim notifications to the Commission.

Notwithstanding the ambiguity in the rule, financial responsibility providers currently provide this information with OTI claim information; thus, this proposed change would not result in any additional burdens for financial responsibility providers.

K. Regulated Persons Index

The proposed rule would delete § 515.34, which references the availability of the Regulated Persons Index (RPI) on the Commission website. The Commission has tentatively determined that because the RPI is available on the website, and the Commission advertises that fact, this section is no longer helpful or necessary.

III. PUBLIC PARTICIPATION

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

You may submit your comments via e-mail to the e-mail address listed above under ADDRESSES. Please include the docket number associated with this notice and the subject matter in the subject line of the e-mail. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

You may also submit comments by mail to the address listed above under ADDRESSES.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by mail to the address listed above under ADDRESSES:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked “Confidential-Restricted,” and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.
- A public version of your comments with the confidential information excluded. The public version must state “Public Version—confidential materials excluded” on the cover page and on each affected page, and must clearly indicate any information withheld. You may submit the public version to the Commission by e-mail or mail.

Will the Commission consider late comments?

The Commission will consider all comments received before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments received after that date. If the Commission receives a comment too late to consider in developing a final rule (assuming that one is issued), the Commission will consider that comment as an informal suggestion for future rulemaking action.

How can I read comments submitted by other people?

You may read the comments received by the Commission at the Commission’s Electronic Reading Room or the Docket Activity Library at the addresses listed above under ADDRESSES.

Please note that even after the comment closing date, we may continue to file relevant information in the docket as it becomes available. Further, some commenters may submit late comments. Accordingly, we recommend that you periodically check the docket for new material.

IV. RULEMAKING ANALYSES AND NOTICES

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency is required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605. Based on the analysis below, the Chairman of the Federal Maritime Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The Commission recognizes that the majority of businesses affected by these rules (OTIs) qualify as small entities under the guidelines of the Small Business Administration. The proposed rule would not, however, result in a significant economic impact on these businesses. No material changes are being proposed; the proposed rule would make minor changes to the licensing, registration, and financial responsibility processes. Most of the proposed changes will have little to no economic impact on OTIs, while some of the proposed changes, e.g., changes to the deadline for renewing licenses, expressly allowing email transmission of documents between OTIs and the Commission, are expected to reduce burdens on OTIs.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information

in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11.

The information collection requirements for Part 515 are currently authorized under OMB Control Numbers 3072-0018: *46 CFR 515- Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries and Related Forms*. Although the proposed rule would result in very minor changes to this collection of information, none of these changes is substantive or material. The proposed rule would result in minor adjustments to information provided to the Commission and the timing of such submissions, as well as expressly allowing the submission of certain information by email. None of these changes are expected to affect the burden hours associated with the information collection.

As these changes are neither substantive nor material, the Commission is not required to submit them to OMB for approval. *See* 44 U.S.C. 3507(h)(3); 5 CFR 1320.5(g) (requiring OMB approval of substantive or material modifications to information collections).

National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. This proposed rule relates to OTI licensing and financial responsibility requirements and therefore falls within the categorical exclusions for matters related to the issuance, modification, denial and revocation of ocean transportation intermediary licenses, and matters related to the receipt of surety bonds from OTIs. § 504.4(a)(1), (3). Therefore, no environmental assessment or environmental impact statement is required.

Executive Order 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in E.O. 12988 titled, “Civil Justice Reform,” to minimize litigation, eliminate ambiguity, and reduce burden.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at <http://www.reginfo.gov/public/do/eAgendaMain>.

List of Subjects

46 CFR part 515

Freight, Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons stated in the supplementary information, the Federal Maritime Commission proposes to amend 46 CFR part 515 as follows:

**PART 515 – LICENSING, REGISTRATION, FINANCIAL RESPONSIBILITY
REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION
INTERMEDIARIES**

1. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 305, 40102, 40104, 40501-40503, 40901-40904, 41101-41109, 41301-41302, 41305-41307; Pub. L. 105-383, 112 Stat. 3411; 21 U.S.C. 862.

2. Revise the part heading to read as set forth above.

3. Amend § 515.1 by revising the first sentence of paragraph (a) to read as follows:

§ 515.1 Scope.

(a) This part sets forth regulations providing for the licensing and registration as ocean transportation intermediaries of persons who wish to carry on the business of providing intermediary services, including the grounds and procedures for revocation and suspension of licenses and registrations. * * *

* * * * *

4. Revise § 515.3 to read as follows:

§ 515.3 License; when required.

Except as otherwise provided in this part, no person in the United States may act as an ocean transportation intermediary unless that person holds a valid license issued by the Commission. For purposes of this part, a person is considered to be “in the United States” if such person is resident in, or incorporated or established under, the laws of the United States. Registered NVOCCs must utilize only licensed ocean transportation intermediaries (Ocean Freight Forwarders or NVOCCs) to provide NVOCC services in the United States. In the United States, only licensed OTIs (Ocean Freight Forwarders or NVOCCs) may act as agents to provide OTI services for registered NVOCCs.

5. Amend § 515.5 by revising paragraphs (a), (b), and (c)(2) to read as follows:

§ 515.5 Forms and fees.

(a) *Forms.* License Application Form FMC-18 is found at the Commission’s Web site www.fmc.gov for completion on-line by applicants and licensees. Foreign-based Unlicensed NVOCC Registration/Renewal Form FMC-65 and financial responsibility Forms FMC-48, FMC-67, FMC-68, FMC-69 may be obtained from the Commission’s Web site at www.fmc.gov,

from the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, or from any of the Commission's Area Representatives.

(b) *Filing of license application forms.* All application forms are to be filed electronically.

(c) * * *

(2) Fees under this part 515 shall be as follows:

(i) Application for new OTI license as required by § 515.12(a): Filing \$250.

(ii) Application for change to OTI license or license transfer as required by § 515.20(a) and (b): Filing \$125.

6. Amend § 515.11 by revising paragraph (b)(2) to read as follows:

§ 515.11 Basic requirements for licensing; eligibility.

* * * * *

(b) * * *

(2) *Partnership.* At least one of the active managing partners, unless the partners are entities, such as corporations, in which case an officer, member, or manager of one of the entities as long as the entity is a general partner.

* * * * *

7. Amend § 515.12 by revising the first sentence of paragraph (a)(1) to read as follows:

§ 515.12 Application for license.

(a) * * * (1) Any person who wishes to obtain a license to operate as an ocean transportation intermediary shall submit electronically a completed application Form FMC-18 (Application for a License as an Ocean Transportation Intermediary) in accordance with the automated FMC-18 filing system and corresponding instructions. * * *

* * * * *

8. Amend § 515.14 by revising paragraphs (a), (c), (d)(1), and the first sentence of paragraph (d)(2) to read as follows:

§ 515.14 Issuance, renewal, and use of license.

(a) *Qualification necessary for issuance.* (1) The Commission will issue a license if it determines, as a result of its investigation, that the applicant possesses the necessary experience and character to render ocean transportation intermediary services; has filed the required bond, insurance or other surety; and has electronically submitted Form FMC-1 pursuant to § 520.3 if approved to offer NVOCC service.

(2) If, within 120 days of notification of conditional approval for licensing by the Commission, proof of financial responsibility and, in the case of an NVOCC, the Form FMC-1 is not received, the conditional approval of the application will be invalid. Applicants whose applications/approvals have become invalid may submit a new Form FMC-18, together with the required filing fee, at any time.

* * * * *

(c) *Duration of license.* Licenses shall be issued for an initial period of not less than one year and not greater than four years as determined by the license number and published on the Commission website. Thereafter, licenses will be renewed for sequential three-year periods upon successful completion of the renewal process in paragraph (d) of this section.

(d) * * * (1) The licensee shall submit the renewal electronically to the Director of the Bureau of Certification and Licensing (BCL) no later than the renewal date as published on the Commission website. The renewal date (month/day) will remain the same for subsequent

renewals irrespective of the date on which the license renewal is submitted or when the renewal is accepted by the Commission, unless another renewal date is assigned by the Commission.

(2) Where information identified in an OTI's license renewal process is changed from that set out in its current Form FMC-18 and requires Commission approval pursuant to § 515.20, the licensee must promptly submit a request for such approval on Form FMC-18 together with the required filing fee. * * *

* * * * *

9. Revise § 515.18 to read as follows:

§ 515.18 Application after revocation or denial.

Whenever a license has been revoked or an application has been denied because the Commission has found the licensee or applicant to be not qualified to render ocean transportation intermediary services, any further application within 3 years of the Commission's notice of revocation or denial, made by such former licensee or applicant or by another applicant employing the same qualifying individual, officer(s), member(s), manager(s) or controlled by persons on whose conduct the Commission based its determination for revocation or denial, shall be reviewed directly by the Commission. If the Commission denies the application, such denial is final and not subject to the hearing procedures described in §§ 515.15 and 515.17.

10. Amend § 515.19 by revising paragraphs (c), (e), and (g)(1)(viii) to read as follows:

§ 515.19 Registration of foreign-based unlicensed NVOCC.

* * * * *

(c) Registrations are complete upon receipt of a registration form which meets the requirements of this section, evidence of financial responsibility pursuant to § 515.21, and Form FMC-1 pursuant to § 520.3.

* * * * *

(e) A tariff shall not be published and NVOCC service shall not commence until the Commission receives valid proof of financial responsibility from the registrant and a Form FMC-1 has been submitted.

* * * * *

(g) * * *

(1) * * *

(viii) Failure to designate and maintain a person in the United States as legal agent for the receipt of judicial and administrative process, including subpoenas, as required by § 515.24.

* * * * *

11. Amend § 515.20 by revising paragraph (a)(4) to read as follows:

§ 515.20 Changes in organization.

(a) * * *

(4) Any change in a licensee's name, including adding or deleting a trade name relating to its OTI services; or

* * * * *

12. Amend § 515.22 by revising paragraph (e) to read as follows:

§ 515.22 Proof of financial responsibility.

* * * * *

(e) All forms and documents for establishing financial responsibility of ocean transportation intermediaries prescribed in this section shall be submitted to the Director, Bureau of Certification and Licensing, via email to bcl@fmc.gov. Such forms and documents must

clearly identify the principal's name; trade name, if any; address; the state of incorporation/formation; and the printed name and title of the signatory.

13. Amend § 515.23 by revising paragraph (c)(3) to read as follows:

§ 515.23 Claims against an ocean transportation intermediary.

* * * * *

(c) * * *

(3) Notices required by this section shall include the name of the claimant, name of the court and case number assigned, and the name and license or organization number of the OTI involved. Such notices may include or attach other information relevant to the claim.

* * * * *

14. Amend § 515.25 by revising paragraph (a)(1) to read as follows:

§ 515.25 Filing of proof of financial responsibility.

(a) * * * (1) *Licenses.* Upon notification by the Commission that an applicant has been conditionally approved for licensing, the applicant shall file with the Director of the Commission's Bureau of Certification and Licensing, proof of financial responsibility in the form and amount prescribed in § 515.21. No license will be issued until the Commission is in receipt of valid proof of financial responsibility.

* * * * *

15. Revise § 515.26 to read as follows:

§ 515.26 Termination of financial responsibility.

No license or registration shall remain in effect unless valid proof of a financial responsibility instrument is maintained on file with the Commission. Upon receipt of notice of termination of such financial responsibility, the Commission shall notify the concerned licensee,

registrant, or registrant's legal agent in the United States, by email, mail, courier, or other method reasonably calculated to provide actual notice, at its last known email address or address, that the Commission shall, without hearing or other proceeding, revoke the license or terminate the registration as of the termination date of the financial responsibility instrument, unless the licensee or registrant shall have submitted valid replacement proof of financial responsibility before such termination date. Replacement financial responsibility must bear an effective date no later than the termination date of the expiring financial responsibility instrument.

§ 515.34 [REMOVED]

16. Remove § 515.34.

By the Commission.

Rachel E. Dickon
Secretary

Billing Code: 6731-AA

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