

## International Trade Alert

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### FMC Approves Proposed Rewrite of OTI Regulations

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Today, the U.S. Federal Maritime Commission (FMC) voted 3-2 to move forward with reforming the Ocean Transportation Intermediaries (OTI) rules, regulating U.S.- and foreign-based non-vessel-operating common carriers (NVOCC) and freight forwarders. The advanced notice of proposed rulemaking will be published in the *Federal Register*, starting a 60-day notice and comment period preceding the final rule publication.

Under the proposed rule, licensed OTIs will have to renew their licenses every two years. Also, foreign-based NVOCCs must have a U.S. presence that is staffed full-time to be licensed under the new regulations as currently proposed.

Qualifying individuals will have to be at least 21 years of age and have three years of “relevant and diverse” OTI experience, including general supervision responsibilities. Also under the proposed rule, this experience cannot be gained with an unlicensed OTI. In addition, the FMC will be empowered to review a qualifying individual’s character at any time. The proposed rule adds character criteria by which an individual can be disqualified, including violations of shipping laws, operating while unlicensed, or suspension of a Transportation Worker Identification Credential (TWIC).

Proposed reforms to the claim priority regulations by which parties seek payment from an OTI’s bond, insurance, or surety, include a “notice and trigger” mechanism by which carriers and Marine Terminal Operators must submit notices to the FMC of claims that may result in court action and judgments. The FMC will then post these notices on its website, with the disclaimer that not all posted claims have merit.

Commissioners Dye and Khouri voted against moving forward with the OTI reforms as proposed, citing increased compliance costs in the absence of a clearly defined harm. Commissioner Dye advocated harmonizing the OTI rules, rather, with the MAP-21 transportation bill, which regulates motor carriers and brokers of transportation services. MAP-21 requires brokers to renew their registration every five years, and requires \$75,000 proof of financial responsibility.

Commissioner Doyle, who, with Commissioner Lindisky and Chairman Cordero, voted in favor of moving forward with the reforms, stressed that this is simply an advanced notice of proposed rulemaking, and that industry input during the notice and comment period will be critical. After the notice and comment period, the FMC will issue a revised and final rule, as well as an effective date. Most likely, enforcement of the new regulations will be phased in over a transitional period.

If your business is impacted by OTI regulations and you are interested in submitting comments by the July deadline or understanding how the reforms introduced under the proposed rule may affect your freight forwarding or NVOCC operations or relationships, please contact any of the authors listed, or members of [Venable’s International Trade and Customs Group](#) for assistance.