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June 2013

### FMC Publishes Proposed OTI Rules, Seeks Public Comment

On May 31, 2013, the Federal Maritime Commission (FMC) published an Advance Notice of Proposed Rule regarding Ocean Transportation Intermediaries (OTI) in the *Federal Register* (78 Fed. Reg. 32,946 (Federal Maritime Commission May 31, 2013), [available here](#).) This publication started a 60-day notice and comment period, during which affected or interested parties, including US and foreign-based non-vessel-operating common carriers (NVOCC) and US-based freight forwarders, can provide feedback, objections, and other commentary on the Proposed Rule.

The proposed rewrite of the OTI rules represents the first substantive revisit of regulatory requirements for forwarders and NVOCCs since the late 1990s, when the FMC implemented the statutory changes ushered in by the Ocean Shipping Reform Act of 1998.

The Proposed Rule includes several new requirements that will increase compliance costs for OTIs. The proposed changes/new requirements, outlined below, affect, in general, OTI licenses, financial responsibility of OTIs, and activities of foreign-based registered NVOCCs.

#### OTI Licenses:

- OTI licenses will now expire every two years and must be renewed. The renewal application will be due 60 days prior to the expiration date of the license. The FMC is seeking comments on the process that should be used to renew the approximately 4,500 existing OTI licenses that have no expiration dates.
- Each qualifying individual must be 21 or older, responsible for general supervision of the licensee's OTI operations, and have gained three years' worth of "diverse and relevant" experience with a licensed, bonded, or registered OTI.
- OTIs will no longer be required to procure and maintain additional financial responsibility to cover an OTI's unincorporated branch offices.
- All license applications and registration forms must be filed electronically unless the FMC grants a waiver to file on paper.
- New circumstances under which an OTI license may be revoked or suspended will be added (*i.e.*, failure to file a Form FMC-1 within 120 days of being notified that a license application has been approved, failure to maintain a Form FMC-1 and a published tariff, or knowingly and willfully accepting cargo from or processing, booking or transporting cargo for an OTI that does not have an OTI license, has not registered or fails to provide proof of financial responsibility).

#### Financial Responsibility of OTIs:

- Financial responsibility levels increased by \$25,000 for freight forwarders and licensed NVOCCs, and \$50,000 for foreign-based registered NVOCCs.
- OTIs must restore their bond, insurance, or surety to the required amount within 60 days after paying a claim from the instrument.
- Sections 515.23(c) and (d) create a new three-tiered payment priority scheme for claims against the financial responsibility instrument, with shipper and consignee claims given priority over common carriers, ports, terminals, and others.

#### Foreign-based NVOCCs:

- A licensed foreign-based NVOCC must establish a U.S. office qualified to do business in the state and operated by a *bona fide* employee.
- Registered NVOCCs must use licensed OTI as agents.
- Registrations must be renewed every two years.

- Limited additional information will be required for registration, including legal name, trade names, principal business address, telephone and fax numbers, contact person with email address, and U.S. resident legal agent contact and address information.

**Other Changes/Requirements:**

- Eliminates full evidentiary hearings to appeal FMC decisions; rather, OTIs will submit written arguments to a hearing officer.
- OTIs must include their names and license or registration information on all shipping documents and communications, including advertisements, and require their agents to include the principal's information on all documents.

The notice and comment period closes on July 31. After reviewing the comments submitted, the FMC will issue a revised Final Rule, as well as an effective date for all changes and new requirements.

If your business is impacted by the new OTI regulations and you are interested in submitting comments by July 31 or understanding how the Proposed Rule will affect your operations, costs, and agency relationships, please contact **Venable's International Trade and Customs Group** for assistance.

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Please contact any of the listed authors for further information.