

## **What is an Ocean Transportation Intermediary (OTI) license and do I need one?**

By: Eric Roper

In the United States, the ocean transportation industry is one of the last transportation-related industries which has not been fully deregulated by the Congress. Beginning in the 1970's, Congress passed a series of laws which gradually removed regulatory oversight of other transportation industries (air, truck and rail). Although the Ocean Shipping Reform Act of 1998 continued the trend of reducing regulatory requirements in the ocean transportation world, several important provisions of law were left intact, especially with respect to Ocean Transportation Intermediaries (OTIs). Three of the important provisions applicable to OTIs are the requirements be licensed, bonded and to publish rates in a tariff.

The Federal Maritime Commission (FMC or "the Commission") is the independent regulatory agency responsible for regulating all ocean transportation in U.S. foreign commerce. An OTI may either be an ocean freight forwarder or a non-vessel operating common carrier (NVOCC). The distinction between a freight forwarder and an NVOCC is not always an easy one to make but both entities are required to have an FMC license before providing ocean transportation services in the United States. Freight forwarders dispatch shipments and book or arrange space for cargo on behalf of shippers while an NVOCC is a common carrier that holds itself out to the public to provide ocean transportation. The NVOCC issues its own house bills of lading but does not actually own or operate the vessels which carry the cargo. An NVOCC that is not based in the U.S. is not required to be licensed but may choose to obtain one since having a license results in lesser bond requirements. An entity can be both a freight forwarder and an NVOCC but is generally prohibited from receiving compensation for serving in both roles on the same transaction.

To obtain a license, a prospective OTI submits an application to the FMC. All applicants must designate a qualifying individual with at least three years of experience. This individual must be an officer, sole proprietor or partner in the applicant's organization. After submission, the application is reviewed and an investigation is completed by the FMC. The applicant is also required to submit proof of financial responsibility, usually in the form a bond. The required bond amount depends on the type of license acquired (\$50,000 for a freight forwarder or \$75,000 for an NVOCC).

Once a license has been issued, NVOCCs are presently required to publish an electronic tariff which shows all of its rates and charges. Tariffs may, however, soon become a thing of the past. If you have ever attempted to locate a particular rate for a particular route and commodity in an electronic tariff, you know firsthand why many in the industry have questioned the continued utility of tariffs in today's market environment. In 2010, the FMC responded to industry concerns by issuing a Notice of Proposed Rulemaking that would relieve licensed NVOCCs from the cost and burden of publishing a tariff so long as the NVOCC met certain conditions. The action comes following the petition of a national trade association and has the support of the U.S.

Department of Justice. The Commission received comments in response to the Notice and a decision is expected sometime later this year.

Operating without a license, bond or tariff can result in significant civil penalties. If proven, each violation or shipment is subject to a maximum civil penalty of \$30,000. In one recent case, a company paid a \$25,000 penalty in a settlement with the Commission for acting as an NVOCC without a license and without proof of financial responsibility. If you have questions about whether any of these requirements apply to your organization, you should consult an experienced Florida maritime lawyer.