

SUBCHAPTER B—REGULATIONS AFFECTING OCEAN SHIPPING IN FOREIGN COMMERCE

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

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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.

SOURCE: 64 FR 11171, Mar. 8, 1999, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 515 appear at 67 FR 39860, June 11, 2002, and 70 FR 7669, Feb. 15, 2005.

Subpart A—General

§ 515.1 Scope.

(a) This part sets forth regulations providing for the licensing 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. This part also prescribes the financial responsibility requirements and the duties and responsibilities of ocean transportation intermediaries, and regulations concerning practices of ocean transportation intermediaries with respect to common carriers.

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(b) Information obtained under this part is used to determine the qualifications of ocean transportation intermediaries and their compliance with shipping statutes and regulations. Failure to follow the provisions of this part may result in denial, revocation or suspension of an ocean transportation intermediary license or registration. Persons operating without the proper license or registration may be subject to civil penalties not to exceed \$9,000 for each such violation, unless the violation is willfully and knowingly committed, in which case the amount of the civil penalty may not exceed \$45,000 for each violation; for other violations of the provisions of this part, the civil penalties range from \$9,000 to \$45,000 for each violation (46 U.S.C. 41107–41109). Each day of a continuing violation shall constitute a separate violation.

[64 FR 11171, Mar. 8, 1999, as amended at 74 FR 50719, Oct. 1, 2009; 80 FR 68730, Nov. 5, 2015]

§515.2 Definitions.

The terms used in this part are defined as follows:

(a) *Act* or *Shipping Act* means the Shipping Act of 1984, as amended. 46 U.S.C. 40101–41309.

(b) *Beneficial interest* includes a lien or interest in or right to use, enjoy, profit, benefit, or receive any advantage, either proprietary or financial, from the whole or any part of a shipment of cargo where such interest arises from the financing of the shipment or by operation of law, or by agreement, express or implied. The term “beneficial interest” shall not include any obligation in favor of an ocean transportation intermediary arising solely by reason of the advance of out-of-pocket expenses incurred in dispatching a shipment.

(c) *Branch office* means any office in the United States established by or maintained by or under the control of a licensee for the purpose of rendering intermediary services, which office is located at an address different from that of the licensee’s designated home office.

(d) *Commission* means the Federal Maritime Commission.

(e) *Common carrier* means any person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly-owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities, and

(ii) Only with respect to those commodities.

(f) *Compensation* means payment by a common carrier to a freight forwarder for the performance of services as specified in §515.2(h).

(g) *Freight forwarding fee* means charges billed by an ocean freight forwarder to a shipper, consignee, seller, purchaser, or any agent thereof, for the performance of freight forwarding services.

(h) *Freight forwarding services* refers to the dispatching of shipments on behalf of others, in order to facilitate shipment by a common carrier, which may include, but are not limited to, the following:

- (1) Ordering cargo to port;
- (2) Preparing and/or processing export documents, including the required ‘electronic export information’;
- (3) Booking, arranging for or confirming cargo space;
- (4) Preparing or processing delivery orders or dock receipts;
- (5) Preparing and/or processing common carrier bills of lading or other shipping documents;
- (6) Preparing or processing consular documents or arranging for their certification;

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- (7) Arranging for warehouse storage;
- (8) Arranging for cargo insurance;
- (9) Assisting with clearing shipments in accordance with United States Government export regulations;
- (10) Preparing and/or sending advance notifications of shipments or other documents to banks, shippers, or consignees, as required;
- (11) Handling freight or other monies advanced by shippers, or remitting or advancing freight or other monies or credit in connection with the dispatching of shipments;
- (12) Coordinating the movement of shipments from origin to vessel; and
- (13) Giving expert advice to exporters concerning letters of credit, other documents, licenses or inspections, or on problems germane to the cargoes' dispatch.
 - (i) *From the United States* means oceanborne export commerce from the United States, its territories, or possessions, to foreign countries.
 - (j) *Licensee* is any person licensed by the Federal Maritime Commission as an ocean transportation intermediary.
 - (k) *Non-vessel-operating common carrier services* refers to the provision of transportation by water of cargo between the United States and a foreign country for compensation without operating the vessels by which the transportation is provided, and may include, but are not limited to, the following:
 - (1) Purchasing transportation services from a common carrier and offering such services for resale to other persons;
 - (2) Payment of port-to-port or multimodal transportation charges;
 - (3) Entering into affreightment agreements with underlying shippers;
 - (4) Issuing bills of lading or other shipping documents;
 - (5) Assisting with clearing shipments in accordance with U.S. government regulations;
 - (6) Arranging for inland transportation and paying for inland freight charges on through transportation movements;
 - (7) Paying lawful compensation to ocean freight forwarders;
 - (8) Coordinating the movement of shipments between origin or destination and vessel;
 - (9) Leasing containers;

- (10) Entering into arrangements with origin or destination agents;
- (11) Collecting freight monies from shippers and paying common carriers as a shipper on NVOCC's own behalf.
 - (l) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.
 - (m) *Ocean transportation intermediary (OTI)* means an ocean freight forwarder or a non-vessel-operating common carrier. For the purposes of this part, the term:
 - (1) *Ocean freight forwarder (OFF)* means a person that—
 - (i) In the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and
 - (ii) Processes the documentation or performs related activities incident to those shipments; and
 - (2) *Non-vessel-operating common carrier (NVOCC)* means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.
 - (n) *Person* means individuals, corporations, companies, including limited liability companies, associations, firms, partnerships, societies and joint stock companies existing under or authorized by the laws of the United States or of a foreign country.
 - (o) *Principal* refers to the shipper, consignee, seller, or purchaser of property, and to anyone acting on behalf of such shipper, consignee, seller, or purchaser of property, who employs the services of a licensed freight forwarder to facilitate the ocean transportation of such property.
 - (p) *Qualifying individual (QI)* means an individual who meets the experience and character requirements of section 19 of the Shipping Act (46 U.S.C. 40901-40904) and this part.
 - (q) *Reduced forwarding fees* means charges to a principal for forwarding services that are below the licensed

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ocean freight forwarder's usual charges for such services.

(r) *Registered non-vessel-operating common carrier (registered NVOCC)* means an NVOCC whose primary place of business is located outside the United States and who elects not to become licensed as an NVOCC, but to register with the Commission as provided in §515.19, post a bond or other surety in the required amount, and publish a tariff as required by 46 CFR part 520.

(s) *Shipment* means all of the cargo carried under the terms of a single bill of lading.

(t) *Shipper* means:

- (1) A cargo owner;
- (2) The person for whose account the ocean transportation is provided;
- (3) The person to whom delivery is to be made;
- (4) A shippers' association; or
- (5) A non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(u) *Special contract* is a contract for ocean freight forwarding services which provides for a periodic lump sum fee.

(v) *Transportation-related activities* which are covered by the financial responsibility obtained pursuant to this part include, to the extent involved in the foreign commerce of the United States, any activity performed by an ocean transportation intermediary that is necessary or customary in the provision of transportation services to a customer, but are not limited to the following:

(1) For an ocean transportation intermediary operating as an ocean freight forwarder, the freight forwarding services enumerated in paragraph (h) of this section, and

(2) For an ocean transportation intermediary operating as a non-vessel-operating common carrier, the non-vessel-operating common carrier services enumerated in §515.2(k).

(w) *United States* includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

[80 FR 68730, Nov. 5, 2015]

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§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 to provide NVOCC services in the United States. In the United States, only licensed OTIs may act as agents to provide OTI services for registered NVOCCs.

[80 FR 68731, Nov. 5, 2015]

§515.4 License; when not required.

A license is not required in the following circumstances:

(a) *Shippers*. Any person whose primary business is the sale of merchandise may, without a license, dispatch and perform freight forwarding services on behalf of its own shipments, or on behalf of shipments or consolidated shipments of a parent, subsidiary, affiliate, or associated company. Such person shall not receive compensation from the common carrier for any services rendered in connection with such shipments.

(b) *Agents, employees, or branch offices of a licensed ocean transportation intermediary*. An agent, individual employee, or branch office of a licensed ocean transportation intermediary is not required to be licensed in order to act on behalf of and in the name of such licensee; however, branch offices must be reported to the Commission in Form FMC-18 or pursuant to §515.20(e). A licensed ocean transportation intermediary shall be fully responsible for the acts and omissions of any of its employees and agents that are performed in connection with the conduct of such licensee's business.

(c) *Common carriers*. A common carrier, or agent thereof, may perform ocean freight forwarding services without a license only with respect to cargo carried under such carrier's own bill of lading. Charges for such forwarding

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services shall be assessed in conformance with the carrier's published tariffs.

(d) *Federal military and civilian household goods.* Any person which exclusively transports used household goods and personal effects for the account of the Department of Defense, or for the account of the federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration, or both, is not subject to the requirements of subpart B of this part, but may be subject to other requirements, such as alternative surety bonding, imposed by the Department of Defense, or the General Services Administration.

[80 FR 68731, Nov. 5, 2015]

§ 515.5 Forms and fees.

(a) *Forms.* License Application Form FMC-18 Rev., Application for Renewal of Ocean Transportation Intermediary License Form—, and Foreign-based Unlicensed NVOCC Registration/Renewal Form FMC-65, are found at the Commission's Web site *www.fmc.gov* for completion on-line by applicants, licensees, and registrants. 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 applications and registration forms.* All applications and forms are to be filed electronically unless a waiver is granted to file in paper form. A waiver request must be submitted in writing to the Director, Bureau of Certification and Licensing, 800 North Capitol Street NW., Washington, DC 20573, and must demonstrate that electronic filing imposes an undue burden on the applicant or registrant. The director, or a designee, will render a decision on the request and notify the requestor within two (2) business days of receiving the request. If a waiver request is granted, the approval will provide instructions for submitting a paper application or registration. If the waiver request is denied, a statement

of reasons for the denial will be provided.

(c) *Fees.* (1)(i) All fees shall be paid by:

(A) Money order, certified, cashier's, or personal check payable to the order of the "Federal Maritime Commission;"

(B) *Pay.gov*;

(C) The Automated Clearing House system; or

(D) By other means authorized by the Director of the Commission's Office of Budget and Finance.

(ii) Applications or registrations shall be rejected unless the applicable fee and any bank charges assessed against the Commission are received by the Commission within ten (10) business days after submission of the application or registration. In any instance where an application has been processed in whole or in part, the fee will not be refunded.

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

(i) Application for new OTI license as required by § 515.12(a): Automated filing \$250; paper filing pursuant to waiver \$1,055.

(ii) Application for change to OTI license or license transfer as required by § 515.20(a) and (b): Automated filing \$125; paper filing pursuant to waiver \$735.

[80 FR 68732, Nov. 5, 2015, as amended at 81 FR 59144, Aug. 29, 2016]

Subpart B—Eligibility and Procedure for Licensing and Registration

§ 515.11 Basic requirements for licensing; eligibility.

(a) *Necessary qualifications.* To be eligible for an ocean transportation intermediary license, the applicant must demonstrate to the Commission that:

(1) It possesses the necessary experience, that is, its qualifying individual has a minimum of three (3) years' experience in ocean transportation intermediary activities in the United States, and the necessary character to render ocean transportation intermediary services. A foreign NVOCC seeking to be licensed under this part must demonstrate that its qualifying