

Issued: November 12, 2019

FEDERAL MARITIME COMMISSION

46 CFR part 515

Docket No. 18-11

RIN: 3072-AC73

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

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (Commission) amends its rules governing licensing, registration, financial responsibility requirements, and general duties for ocean transportation intermediaries (OTIs). The changes are mainly administrative and procedural.

DATES: The rule is effective December 16, 2019.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. INTRODUCTION

By Notice of Proposed Rulemaking (NPRM) published in the *Federal Register* on December 17, 2018, 83 FR 64502, the Commission proposed changes to 46 CFR part 515, which governs licensing, registration, financial responsibility requirements, and general duties for OTIs. The changes are necessary because while implementing the extensive revisions to Part 515 made

in a November 5, 2015 final rule (80 FR 68722), the Commission has identified a number of regulatory provisions where clarification is warranted.

The Commission invited comments on the NPRM, and later extended the comment period from January 12, 2019 to February 22, 2019, 84 FR 2125 (February 6, 2019). The Commission received three comments. After consideration of the comments and for the reasons stated below, the Commission is adopting all but one of the proposed amendments to Part 515 without change. The exception is the proposed change to § 515.3, which the Commission is deferring while it considers whether this section of its rules will require further revision in light of the recent statutory changes made by the Frank LoBiondo Coast Guard Authorization Act of 2018, Public Law No. 115-282 (LoBiondo Act).

II. SUMMARY OF NPRM

The Commission's proposed changes to its current rules were administrative or procedural in nature or would further reduce the regulatory burden on regulated entities. These proposed changes included: (1) updating the title and scope of Part 515 to include foreign-based non-vessel-operating common carrier (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 the

reference to the availability of the Regulated Person's Index. None of the proposed changes would increase the burden to applicants, licensees, or foreign-based registered NVOCCs.

III. SUMMARY OF COMMENTS

Roanoke Insurance Group Inc. (Roanoke), a provider of surety bonds to OTIs, stated that it endorses and supports the minor administrative modifications the Commission is proposing to Part 515. Specifically, Roanoke stated that it believes "the closer integration between the Tariff and Licensing units during the licensing process, specifically adopting a rule that the [Commission] will not issue the license until the financial responsibility and tariff are in place, is beneficial to the industry." Roanoke also had no objection to the proposed clarifications relating to information provided by financial responsibility providers on claims against OTIs.

Distribution-Publications, Inc. (DPI), a tariff publisher, stated in its comments that it agrees "none of the proposed changes will increase the burden on applicants, licensees or registered foreign-based NVOCCs." DPI supports the requirement for NVOCCs to submit the tariff registration form (Form FMC-1) prior to being issued a license and agrees with the Commission that the rule will not add any additional burden to NVOCCs because "this will merely be a change to the timing of the [tariff publication] requirement."

The National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) is a national trade association representing the interests of freight forwarders, NVOCCs, and customs brokers in the ocean shipping industry. The NCBFAA stated that "the majority of the proposed changes are mainly administrative or procedural and do not raise substantive issues or impose new regulatory obligations on licensees." The NCBFAA, however, raised a concern with the proposed changes to § 515.14, namely "that the duration of an OTI license would be for a period of one to four years, as contrasted with the current three-year initial license period." The

NCBFAA asserted that “[a] change of that nature would be both administratively burdensome to the Commission and unnecessarily burdensome to licensees.” We address this concern below.

IV. CHANGES TO PART 515

Accordingly, the Commission adopts the changes in the proposed rule as follows:

A. Part 515 Title and Scope

The final rule adds “Registration” to the part heading to reflect that foreign-based NVOCCs have the option of registering or becoming licensed. The rule also includes registration in the description of the scope of Part 515 in § 515.1.

B. U.S. Agents for Registered NVOCCs

The NPRM proposed amending § 515.3 to clarify that licensed OTI agents for foreign-based NVOCCs can be either ocean freight forwarders (OFFs) or NVOCCs. In light of the changes made by the LoBiondo Act to the licensing requirements in 46 U.S.C. § 40901, the Commission is deferring making any changes to § 515.3 while it determines whether the LoBiondo Act requires more substantive revisions to the section. *See* NPRM: Regulatory Amendments Implementing the Frank LoBiondo Coast Guard Authorization Act of 2018, 84 FR 54087 (Oct. 9, 2019).

C. Forms and Application Fees

The final rule removes 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 in the initial Form FMC-18.

The final rule also amends § 515.5(b) and § 515.12(a) to 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 final rule replaces 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 current 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 final rule amends § 515.14(a) to 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 final rule requires 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 will result in the NVOCC having to submit a new application to

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

restart the license process. This change will ensure that NVOCCs comply with all requirements for commencing service in the U.S. trades in a timely manner. This change will add no additional burden to NVOCCs seeking licenses as they are already required to provide the Commission with a Form FMC-1; the final rule merely affects the timing of the submission of the form.

Because the Form FMC-1 requirements mirror the existing requirements for submitting proof of financial responsibility, the final rule combines the latter requirement from § 515.25 with the Form FMC-1 requirements being added to § 515.14(a).

F. License Renewal Process

The final rule makes a number of changes to § 515.14 to improve and clarify the license renewal process. In addition to some minor clarifying language changes, the final rule changes the initial license period before renewal from three years to a period of not less than one year and not greater than four years. Allowing for a range in the initial period would provide flexibility and account for the varying time periods between submission of an application and issuance of a license due to issues that may arise during the review process or delayed submission of necessary documentation (e.g., proof of financial responsibility).

As noted above, the NCBFAA has concerns about this change, stating that the group assumes that the Commission did not intend for the proposed rule to mean that some licenses would be issued for a period of less than three years, and, instead, that the Commission was trying to “rationalize the process by which renewal obligations were set.” The NCBFAA argues that issuing licenses for periods of less than three years would be burdensome for the Commission and licensees and requests that the Commission clarify the proposal.

The NCBFAA is correct that the change to § 515.14(c) is intended to govern how renewal obligations are set. Specifically, the purpose is to enable the Bureau of Certification and

Licensing to determine license renewal dates by the license number rather than the initial issuance date of the license in order to evenly distribute license renewals over a 36-month period. An even distribution of license renewals will ensure an effective and efficient renewal process for the increasing OTI licensee population by preventing the potential bunching of license renewals in particular months or years. Such bunching could occur if the initial issuance date of a license was the basis for the renewal, potentially delaying the review and processing of renewals during more populous months or years.

Spreading out the renewal dates, however, necessitates establishing a range of initial license periods for OTIs; otherwise, the initial license period could conflict with the renewal date (e.g., if an OTI had a three-year initial license period but the renewal date was in four years).

Although we understand NCBFAA's concern, the Commission respectfully disagrees with the assertion that this change will be burdensome for the Commission or licensees. As explained above, the purpose of the change is to reduce the burden on the Commission and to provide the industry with efficient and timely renewal processing. Moreover, the change only affects the *initial license period*, which will be one to four years; all subsequent renewal periods will continue to be three years. And although some OTIs will have initial license periods of one to two years, others will have an initial period of three to four years, i.e., longer than the current three-year period. For those OTIs with a shorter initial license period, the Commission expects the renewal burden to be lower than for OTIs with longer initial license periods, given that the shorter duration will decrease the likelihood of any changes needing to be made during the renewal. Overall, the Commission believes that the change will be beneficial to both OTI licensees and the Commission in that it will ensure the timely processing of renewals.

The final 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 final 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 final rule expands the types of applications subject to direct Commission review to include applicants employing the same officers, managers, or members of an OTI whose license was revoked or denied within the previous three years and where 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 an 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 concluded that direct review of applications by such OTIs is warranted.

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

J. Claims Against an OTI

The final rule clarifies that financial responsibility providers must 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 NVOCCs do not have license numbers. This change will ensure that the organization number for registered NVOCCs will 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 change will not result in any additional burdens for financial responsibility providers.

K. Regulated Persons Index

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

V. RULEMAKING ANALYSES AND NOTICES

Congressional Review Act

The rule is not a “major rule” as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) an annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis (FRFA) describing the impact of the 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. 604–605. 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 final rule will 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 changes will have little to no economic impact on OTIs, while some of the 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. Notwithstanding the concerns of the NCBFAA regarding the changes to the initial license period, we conclude that, as discussed above, the change will not meaningfully increase the burden on licensees.

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 information collection requirements for Part 515 are currently authorized under OMB Control Number 3072-0018: *46 CFR 515- Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries and Related Forms*. The final rule will result in very minor changes to information collected by the Commission. Specifically, the final rule makes 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. No changes are being made, however, to any of the forms in Part 515, and none of the changes are expected to affect the burden hours associated with the information collection.

Although the Commission initially concluded in the NPRM that these changes did not warrant revisions to the information collection associated with Part 515, the Commission subsequently determined to submit the changes to OMB for approval. Notice of the revised information collection was published in the *Federal Register*; no comments were received. See 84 FR 25274 (May 31, 2019) (60-day notice); 84 FR 50036 (Sep. 24, 2019) (30-day notice).

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 final 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 in 46 CFR part 515

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

For the reasons stated in the supplementary information, 46 CFR part 515 is amended 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. 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 website 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 website 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.

5. 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.

* * * * *

6. 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. * * *

* * * * *

7. 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. * * *

* * * * *

8. 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.

9. 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.

* * * * *

10. 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

* * * * *

11. 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.

12. 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.

* * * * *

13. 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.

* * * * *

14. 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]

15. Remove § 515.34.

By the Commission.

Rachel E. Dickon
Secretary