

Issued: October 7, 2019

FEDERAL MARITIME COMMISSION

46 CFR Parts 503, 515, and 535

Docket No. 19-06

RIN: 3072-AC77

**Regulatory Amendments Implementing the Frank LoBiondo Coast Guard Authorization
Act of 2018**

AGENCY: Federal Maritime Commission

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission (Commission) proposes to revise its regulations to implement the provisions of the Frank LoBiondo Coast Guard Authorization Act of 2018. The proposed revisions include amendments to the regulations governing Commission meetings, ocean transportation intermediary licensing, financial responsibility, and general duties, and the submission of public comments on ocean common carrier and marine terminal operator agreements.

DATES: Submit comments on or before November 8, 2019.

ADDRESSES: You may submit comments, identified by Docket No. 19-06, by the following methods:

- *Email: secretary@fmc.gov.* For comments, include in the subject line: “Docket No. 19-06, Comments on LoBiondo Act Regulatory Amendments.” Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

• *Mail:* Rachel E. Dickon, Secretary, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573–0001.

Instructions: For detailed instructions on submitting comments, including requesting confidential treatment of comments, and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to the Commission’s website, unless the commenter has requested confidential treatment.

Docket: For access to the docket to read background documents or comments received, go to the Commission’s Electronic Reading Room at: <https://www2.fmc.gov/readingroom/proceeding/19-06/>, or to the Docket Activity Library at 800 North Capitol Street NW, Washington, DC 20573, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Telephone: (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Rachel E. Dickon, Secretary; Phone: (202) 523-5725; Email: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Background
- III. Proposed Changes
 - A. References to Statutory Provisions (Parts 515, 530, 532, 545)
 - B. Commission Meetings (Part 503)
 - C. OTI Licensing, Financial Responsibility, and General Duties (Part 515)
 - 1. Licensing and Financial Responsibility
 - 2. Common Carrier Prohibitions
 - D. Comments on Filed Agreements (Part 535)
- IV. Public Participation
- V. Rulemaking Analyses and Notices

I. INTRODUCTION

On December 4, 2018, the “Frank LoBiondo Coast Guard Authorization Act of 2018” was enacted as Public Law No. 115-282 (LoBiondo Act or Act). The LoBiondo Act made a number of changes affecting the Federal Maritime Commission (Commission) and the Shipping Act of 1984 (Shipping Act). These included the changes made in Title VII of the Act, referred to as the “Federal Maritime Commission Authorization Act of 2017,” as well as a miscellaneous provision in § 834 of the LoBiondo Act. These changes were summarized by Commission staff at the Commission’s May 1, 2019 meeting.¹ In this rulemaking, the Commission is focusing on the statutory changes that warrant corresponding revisions to the Commission’s regulations. The proposed changes include:

- Revising several Commission regulations to update references to statutory provisions;
- Revising the regulations governing Commission meetings to include provisions on “nonpublic collaborative discussions,” a new type of meeting established by the LoBiondo Act that is not open to public observation;
- Revising the regulations governing ocean transportation intermediary (OTI)² licensing and financial responsibility to reflect statutory changes to the types of persons that are required to be licensed and maintain a bond, insurance, or other surety;
- Revising the regulations governing the general duties of non-vessel-operating common carriers (NVOCCs) to reflect amendments to several prohibited acts; and

¹ *Meeting of the Federal Maritime Commission* (May 1, 2019) (video available at <https://www.youtube.com/watch?v=gqpPJ3ATjS4&t=57m40s>).

² OTIs include non-vessel-operating common carriers (NVOCCs) and ocean freight forwarders (OFFs). 46 U.S.C. § 40102(20).

- Revising the regulations related to comments on filed ocean common carrier and marine terminal operator (MTO) agreements to reflect that such comments are now confidential and may not be disclosed by the Commission;

The Commission is seeking comment on these proposed revisions and any others necessary to implement the statutory changes described below.

Although beyond the scope of this current rulemaking, the Commission also invites comments on any regulatory changes necessary to implement other LoBiondo Act provisions not discussed in this NPRM.³ Such comments may be considered by the Commission in determining whether additional regulatory changes should be made in a future rulemaking.

II. PROPOSED CHANGES

A. References to Statutory Provisions (Parts 515, 530, 532, 545)

The LoBiondo Act amended 46 U.S.C. 41104 to revise several prohibited acts and added a new prohibited act. Pub. L. No. 115-282, § 708. As part of those amendments, the Act changed the subsection designations in § 41104. The Commission is therefore proposing to revise its regulations to reflect the new subsection designations.

B. Commission Meetings (Part 503)

The LoBiondo Act amended 46 U.S.C. 303 to exclude certain Commission meetings from the requirements of the Government in the Sunshine Act (5 U.S.C. 552b). Pub. L. No. 115-282, § 711(a). Under the revised statute, a majority of Commissioners may hold a meeting closed to the public to discuss Commission business if: (1) no vote or official Commission action is

³ For example, § 834 of the LoBiondo Act amended 46 U.S.C. 3503 to exempt old passenger vessels that operate within inland waterways from the requirement that they be constructed of fire-retardant materials, provided certain conditions are met. One of those conditions is that the vessel owner acquire and maintain liability insurance in an amount to be prescribed by the Federal Maritime Commission. 46 U.S.C. 3503(b)(1)(C). The Commission is currently considering what actions are necessary to implement this provision and is not including any proposed regulatory changes as part of this rulemaking.

taken at the meeting; (2) only Commissioners and employees are present; (3) at least one Commissioner from each political party is present (assuming there are sitting Commissioners from more than one party); and (4) the Commission's General Counsel is present. 46 U.S.C. 303(c).⁴ The statute refers to these closed meetings as "nonpublic collaborative discussions."

Although the Commission need not publicize such meetings beforehand or record a complete transcript or minutes, the Commission must, following the meeting, make publicly available a list of individuals present at the meeting and a summary of matters discussed, except for those matters the Commission determines may be withheld from the public under one of the applicable exemptions listed in the Sunshine Act § 303(c)(2)–(3). For those matters withheld from the public, the Commission must provide a summary with as much general information as possible. § 303(c)(3). The required disclosures must be made within two business days after the meeting, unless the meeting relates to an ongoing proceeding before the Commission, in which case the disclosures must be made on the date of the final Commission decision. § 303(c)(2), (4); *see* S. Rep. No. 115-89 at 19.

Finally, the Act includes provisions clarifying that: (1) the Sunshine Act continues to apply to all meetings other than nonpublic collaborative discussions as described in § 303(c), as well as to any information related to those discussions that the Commission proposes to withhold from the public; and (2) the provisions governing nonpublic collaborative discussions do not authorize the Commission to withhold records accessible to an individual under the Privacy Act of 1974 (5 U.S.C. 552a). § 303(b)(5)–(6).

⁴ This exclusion was modeled on a similar provision in the Surface Transportation Board Reauthorization Act of 2015. *See* S. Rep. No. 115-89 at 19 (2017) (accompanying S. 1129, an earlier authorization bill that contained many of the provisions later incorporated into the LoBiondo Act); 49 U.S.C. 1303(a)(2).

The Commission is proposing to include a new section, § 503.84, in part 503 of its regulations mirroring the new provisions in 46 U.S.C. 303(c)(1)–(4) and to make necessary conforming revisions to other sections in that part.

C. OTI Licensing, Financial Responsibility, and General Duties (Part 515)

1. Licensing and Financial Responsibility

The LoBiondo Act amendments expanded the class of persons that must be licensed as OTIs and meet the OTI financial responsibility requirements to include persons that advertise or hold themselves out as OTIs. 46 U.S.C. §§ 40901(a); 40902(a); Pub. L. No. 115-282, § 707(a), (c). Previously, only persons that *acted* as OTIs were subject to the licensing and financial responsibility requirements.

The Commission is proposing to amend the general licensing and financial responsibility requirements in § 515.3 and § 515.21 to reflect this change. The Commission expects this change to have minimal, if any, effects on the universe of entities that must meet the licensing and financial responsibility requirements. In general, an entity that advertises or holds itself out as an OTI also acts as an OTI, and the practical effect of the change is to make it easier for the Commission to enforce the licensing and financial responsibility requirements and prosecute noncompliant OTIs. Instead of having to show that a noncompliant entity actually *acted* as an OTI, the mere fact that an unlicensed entity advertised or held itself out as an OTI is now sufficient to show a violation of the statute.

The LoBiondo Act also includes a new provision clarifying that the OTI licensing and financial responsibility requirements do not apply to a person “that performs [OTI] services on behalf of an [OTI] for which it is a disclosed agent.” 46 U.S.C. § 40901(c); Pub. L. No. 115-282, § 707(b). This provision appears to codify the holding in *Landstar Express Am. v. Fed. Mar.*

Comm'n, 569 F.3d 493 (D.C. Cir. 2009), in which the D.C. Circuit held that “[a]gents providing NVOCC services for licensed NVOCC principals are not NVOCCs (or OFFs) solely by virtue of being agents of NVOCCs,” “[t]hey therefore fall outside the coverage of the statute’s licensing requirement,” and “[t]he Commission lacks authority to compel those agents to obtain licenses.” 569 F.3d at 500. The Commission’s regulations at § 515.4(b) already exclude agents of licensed OTIs from the licensing requirements, and the Commission is proposing minor revisions to that section to reflect the language of the new statutory provision.

The language of the new provision, however, is arguably broader than the holding in *Landstar*, which was focused on agents of licensed NVOCCs. The new § 40901(c) excludes agents of any OTI from the licensing and financial responsibility requirements, and does not distinguish between agents of licensed and unlicensed OTIs. The Commission has therefore tentatively determined that this statutory change may conflict with the Commission’s regulations at 46 CFR 515.3 requiring that only licensed OTIs may act as agents to provide OTI services in the United States for foreign-based, registered NVOCCs (which are not licensed). The Commission seeks comment on whether to remove this requirement.

2. Common Carrier Prohibitions

The LoBiondo Act also expands the common carrier prohibition against knowingly and willfully accepting or transporting cargo for OTIs that do not meet certain Shipping Act requirements. *See* 46 U.S.C. 41104(a)(11); Pub. L. No. 115-282, § 708(a)(2)(A). Previously, common carriers were prohibited from knowingly and willfully accepting or transporting cargo for an OTI that did not have a tariff *and* did not meet the OTI financial responsibility requirements. *See* 46 U.S.C. 41104(11) (2017). This wording limited the prohibition to dealing with noncompliant NVOCCs, as OFFs are not required to have a tariff. *See* 46 CFR

515.19(g)(1)(vii); 515.27(a). The LoBiondo Act split the provision into two separate prohibitions in 46 U.S.C. 41104(a)(11). The first prohibits common carriers from knowingly and willfully accepting or transporting cargo from an NVOCC that does not have a tariff. The second prohibits common carriers from knowingly and willfully accepting or transporting cargo from an OTI (i.e., NVOCC or OFF) that does not meet the financial responsibility requirements.

The Commission's regulations at 46 CFR 515.19 and 515.27 reflect the earlier version of the prohibition (accepting or transporting cargo for noncompliant NVOCCs). The Commission is therefore proposing to amend these sections to reflect the new, broader statutory prohibition.

D. Comments on Filed Agreements (Part 535)

The LoBiondo Act made several changes to the provisions governing Commission action on agreements. In particular, the LoBiondo Act expanded on the existing requirement that the Commission transmit a notice of an agreement filing to the Federal Register within seven days, adding a requirement that the Commission request interested persons to submit relevant information and documents. 46 U.S.C. 40304(a)(2); Pub. L. No. 115-282, § 706(a). Although the Commission already includes such requests in its Federal Register notices, *see* 46 CFR 535.603, adding this provision renders such comments confidential under 46 U.S.C. 40306, which exempts “[i]nformation and documents . . . filed with the . . . Commission under [chapter 403]” from disclosure under the Freedom of Information Act. Previously, only information provided by the filing parties was protected from disclosure under § 40306. *See* Final Rule: Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984, 49 FR 45320, 45336 (Nov. 15, 1984) (interpreting the provision (as originally enacted in the Shipping Act of 1984) as only protecting information provided by the filing parties).

In addition, the Act includes a saving clause stating that nothing in § 706 of the Act or the amendments made to 46 U.S.C. 40304 may be construed to prescribe a specific deadline for the submission of relevant information and documents from interested persons in response to a request for comment on an agreement filing. Pub. L. No. 115-282, § 706(c).

The Commission is proposing to revise its regulations in part 535 to address these changes. In particular, the Commission proposes to revise the procedures for submitting comments on filed agreements in § 535.603 to reflect that such comments are exempt from disclosure under FOIA and to make conforming changes to the list of confidentially submitted material in § 535.608. The Commission also proposes to revise the *Federal Register* notice requirements in § 535.602 to reflect the saving clause, namely that the Shipping Act may not be construed as prescribing a deadline for the submission of comments on filed agreements. Specifically, under revised § 535.602, *Federal Register* notices would no longer include a “final date” or rigid deadline for filing comments; rather, notices would include a date by which comments are most useful for the Commission’s analysis of an agreement within the statutory 45-day review period. Comments received before that date would be considered by the Commission and staff in making determinations within the 45-day review period, while comments received after that date may be considered, to the extent practicable, within the 45-day review period or as part of the Commission’s continuing review of the agreement after the 45-day period.

III. PUBLIC PARTICIPATION

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your

comments.

You may submit your comments via email to the email address listed above under ADDRESSES. Please include the docket number associated with this notice and the subject matter in the subject line of the email. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

You may also submit comments by mail to the address listed above under ADDRESSES.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by mail to the address listed above under ADDRESSES:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked “Confidential-Restricted,” and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.
- A public version of your comments with the confidential information excluded. The public version must state “Public Version—confidential materials excluded” on the cover page and on each affected page, and must clearly indicate any information withheld. You may submit the public version to the Commission by e-mail or mail.

Will the Commission consider late comments?

The Commission will consider all comments received before the close of business on the

comment closing date indicated above under DATES. To the extent possible, we will also consider comments received after that date.

How can I read comments submitted by other people?

You may read the comments received by the Commission at the Commission's Electronic Reading Room or the Docket Activity Library at the addresses listed above under ADDRESSES.

IV. RULEMAKING ANALYSES AND NOTICES

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency is required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed 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. 603, 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.

Most of the proposed changes will clearly have no economic impact on any regulated entities, i.e., updating references to statutory provisions, the amendments relating to nonpublic collaborative discussions by the Commission, and the amendments relating to comments on filed agreements.

With respect to the proposed amendments to the regulations governing OTI licensing, financial responsibility, and general duties, the Commission recognizes that the majority of businesses affected by these proposed changes (OTIs) qualify as small entities under the

guidelines of the Small Business Administration. The proposed rule would not, however, result in a significant economic impact on these entities. The proposed regulatory changes include: (1) expanding the class of entities that must obtain a license to include those holding themselves out or advertising as OTIs; and (2) expanding the prohibition on common carriers transporting cargo for noncompliant OTIs to include OFFs that have not met the financial responsibility requirements. The Commission is also seeking comment regarding whether to eliminate the requirement that foreign-based, registered NVOCCs employ only licensed OTIs as their agents in the United States.

These changes are expected to have minimal, if any, economic impact. As explained above, the Commission expects that requiring entities that hold themselves out or advertise as OTIs to obtain a license and bond, insurance, or other surety will have minimal, if any, effects on the universe of entities that must meet the licensing and financial responsibility requirements. In general, an entity that advertises or holds itself out as an OTI also acts as an OTI, and the practical effect of the change is to make it easier for the Commission to enforce the licensing and financial responsibility requirements and prosecute noncompliant OTIs. Further, if the Commission determines to eliminate the requirement that agents of foreign-based, registered NVOCCs obtain licenses in a final rule, the change would, at most, reduce the regulatory burden on those agents.⁵ Finally, the changes to the prohibition on transporting cargo for noncompliant OTIs would have little, if any, economic impact on common carriers, including NVOCCs. NVOCCs would continue to be able to rely on the Commission's website, which contains an

⁵ When originally proposing this requirement in 1998, the Commission stated that it expected that most U.S. agents would already be licensed and the impact of the requirement would be *de minimis*. 1998 NPRM, 63 FR at 70714. If the Commission determines to remove the requirement in a final rule, the Commission would expect this change to have a similar, minimal economic impact.

easily searchable database of OTIs, to ascertain both NVOCC and OFF compliance with the relevant requirements.

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. In addition to correcting references to statutory provisions, the proposed rule would make changes to the regulations governing Commission meetings in part 503, the regulations governing OTI licensing, financial responsibility, and general duties in Part 515, and the regulations governing the submission of comments on filed agreements in part 535. This rulemaking thus falls within the categorical exclusion for actions regarding access to public information under part 503 (§ 504.4(a)(24)), actions related to the issuance, modification, denial and revocation of ocean transportation intermediary licenses (§ 504.4(a)(1)), and actions related to the consideration of agreements (§ 504.4(a)(9)–(13), (30)–(35)). Therefore, no environmental assessment or environmental impact statement is required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) 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 agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This proposed rule does not contain any collections of information as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Executive Order 12988 (Civil Justice Reform)

This rule meets the 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

46 CFR part 503

Freedom of Information, Privacy, Sunshine Act.

46 CFR part 515

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

46 CFR part 530

Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR part 532

Common carriers, Exports, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR part 535

Administrative practice and procedure, Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR part 545

Antitrust, Maritime carriers.

For the reasons set forth above, the Federal Maritime Commission proposes to amend 46 CFR parts 503, 515, 530, 532, 535, and 545 as follows:

PART 503—PUBLIC INFORMATION

1. The authority citation for part 503 is revised to read as follows:

Authority: 5 U.S.C. 331, 552, 552a, 552b, 553; 31 U.S.C. 9701; 46 U.S.C. 303; E.O. 13526 of January 5, 2010 75 FR 707, 3 CFR, 2010 Comp., p. 298, sections 5.1(a) and (b).

2. Amend § 503.72 by revising paragraph (a) to read as follows:

§ 503.72 General rule—meetings.

(a) Except as otherwise provided in §§ 503.73, 503.74, 503.75, 503.76, and 503.84, every portion of every meeting and every portion of a series of meetings of the agency shall be open to public observation.

* * * * *

3. Amend § 503.78 by revising paragraph (a) to read as follows:

§ 503.78 General rule—information pertaining to meeting.

(a) As defined in § 503.71, all information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings of the agency shall be disclosed to the public unless excepted from such disclosure under §§ 503.79 through 503.81 or § 503.84.

* * * * *

4. Add § 503.84 to subpart I to read as follows:

§ 503.84 Nonpublic Collaborative Discussions.

(a) *General.* Notwithstanding § 503.72, a majority of the Commissioners may hold a meeting that is not open to public observation to discuss official agency business if:

(1) No formal or informal vote or other official agency action is taken at the meeting;

(2) Each individual present at the meeting is a Commissioner or an employee of the Commission;

(3) At least one (1) Commissioner from each political party is present at the meeting, if there are sitting Commissioners from more than one party; and

(4) The General Counsel of the Commission is present at the meeting.

(b) *Disclosure of nonpublic collaborative discussions.* Except as provided under paragraph (c) of this section, not later than two (2) business days after the conclusion of a meeting under paragraph (a) of this section, the Commission shall make available to the public, in a place easily accessible to the public:

(1) A list of the individuals present at the meeting; and

(2) A summary of the matters discussed at the meeting, except for any matters the Commission properly determines may be withheld from the public under § 503.73.

(c) *Exception.* If the Commission properly determines matters may be withheld from the public under § 503.73, the Commission shall provide a summary with as much general information as possible on those matters withheld from the public.

(d) *Ongoing proceedings.* If a meeting under paragraph (a) of this section directly relates to an ongoing proceeding before the Commission, the Commission shall make the disclosure under paragraph (b) of this section on the date of the final Commission decision.

5. Amend § 503.85 by revising paragraph (a) introductory text to read as follows:

§ 503.85 Agency recordkeeping requirements.

(a) In the case of any portion or portions of a meeting or portion or portions of a series of meetings determined by the agency to be closed to public observation under the provisions of §§ 502.73 through 503.75, the following records shall be maintained by the Secretary of the agency:

* * * * *

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

6. 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.

7. Revise § 515.3 to read as follows:

§ 515.3 License; when required.

Except as otherwise provided in this part, no person in the United States may advertise, hold itself out, or 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.

8. Amend § 515.4 by revising paragraph (b) to read as follows:

§ 515.4 License; when not required.

* * * * *

(b) *Agents, employees, or branch offices of an ocean transportation intermediary.* A disclosed 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 under the procedures in § 515.20(e). A licensed ocean transportation intermediary is 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.

* * * * *

9. Amend § 515.19 by revising paragraph (g)(1)(vii) to read as follows:

§ 515.19 Registration of foreign-based unlicensed NVOCC.

* * * * *

(g) * * *

(1) * * *

(vii) Knowingly and willfully accepting cargo from or transporting cargo for the account of:

(A) an NVOCC that does not have a published tariff as required by 46 U.S.C. 40501 and part 520 of this chapter, and a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part; or

(B) an OFF that does not have a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part; and

* * * * *

10. Amend § 515.21 by revising paragraph (a) introductory text, and paragraphs (a)(1), and (a)(2) to read as follows:

§ 515.21 Financial Responsibility Requirements

(a) *Form and amount.* Except as otherwise provided in this part, no person may advertise, hold oneself out, or act as an ocean transportation intermediary unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility. The bond, insurance, or other surety covers the transportation-related activities of an ocean transportation intermediary only when acting as an ocean transportation intermediary.

(1) Any person in the United States advertising, holding oneself out, or acting as an ocean freight forwarder as defined in § 515.2(m)(1) shall furnish evidence of financial responsibility in the amount of \$50,000.

(2) Any person in the United States advertising, holding oneself out, or acting as an NVOCC as defined in § 515.2(m)(2) shall furnish evidence of financial responsibility in the amount of \$75,000.

* * * * *

11. Amend § 515.27 by revising paragraph (a), paragraph (b) introductory text, and paragraphs (b)(1), and (c) to read as follows:

§ 515.27 Proof of compliance—NVOCC.

(a) No common carrier may knowingly and willfully accept cargo from or transport cargo for the account of:

(1) An NVOCC that does not have a published tariff as required by 46 U.S.C. 40501 and part 520 of this chapter, and a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part; or

(2) An OFF that does not have a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part.

(b) A common carrier can obtain proof of an NVOCC or OFF's compliance with the OTI licensing, registration, tariff and financial responsibility requirements by:

(1) Consulting the Commission's Web site www.fmc.gov as provided in paragraph (d) of this section, to verify that the NVOCC or OFF has complied with the applicable licensing, registration, tariff, and financial responsibility requirements; or

* * * * *

(c) A common carrier that has employed the procedure prescribed in paragraph (b)(1) of this section shall be deemed to have met its obligations under 46 U.S.C. 41104(a)(11), unless the common carrier knew that such NVOCC or OFF was not in compliance with the applicable tariff or financial responsibility requirements.

* * * * *

PART 530—SERVICE CONTRACTS

12. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40301-40306, 40501-40503, 41307.

13. Amend § 530.6 by revising paragraph (d) to read as follows:

§ 530.6 Certification of shipper status.

* * * * *

(d) *Reliance on NVOCC proof; independent knowledge.* An ocean common carrier, agreement or conference executing a service contract shall be deemed to have complied with 46 U.S.C. 41104(a)(12) upon meeting the requirements of paragraphs (a) and (b) of this section, unless the carrier party had reason to know such certification or documentation of NVOCC tariff and bonding was false.

PART 532—NVOCC NEGOTIATED RATE ARRANGEMENTS

14. The authority citation for part 530 continues to read as follows:

Authority: 46 U.S.C. 40103.

15. Amend § 532.2 by revising paragraph (e) to read as follows:

§ 532.2 Scope and applicability.

* * * * *

(e) The prohibition in 46 U.S.C. 41104(a)(2)(A);

* * * * *

16. Amend § 532.7 by revising paragraph (c) to read as follows:

§ 532.7 Recordkeeping and audit.

* * * * *

(c) Failure to keep or timely produce original NRAs will disqualify an NVOCC from the operation of the exemption provided pursuant to this part, regardless of whether it has been invoked by notice as set forth above, and may result in a Commission finding of a violation of 46 U.S.C. 41104(a)(1), 41104(a)(2)(A) or other acts prohibited by the Shipping Act.

PART 535—OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984

17. The authority citation for part 535 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40101-40104, 40301-40307, 40501-40503, 40901-40904, 41101-41109, 41301-41302, and 41305-41307.

18. Amend § 535.602 by revising paragraph (b)(6) to read as follows:

§ 535.602 Federal Register notice.

* * * * *

(b) * * *

(6) A request for comments, including relevant information and documents, regarding the agreement and the date by which comments should be submitted in order to be most useful to the Commission’s review of the agreement during the 45-day waiting period.

19. Amend § 535.603 by revising paragraph (a) to read as follows:

§ 535.603 Comment.

(a) Persons may file with the Secretary written comments, including relevant information and documents, regarding a filed agreement. Commenters may submit the comment by email to secretary@fmc.gov or deliver to Secretary, Federal Maritime Commission, 800 N. Capitol St. NW., Washington, DC 20573-0001. The Commission will treat such comments as confidential in accordance with § 535.608.

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20. Amend § 535.608 by revising paragraph (a) to read as follows:

§ 535.608 Confidentiality of submitted material.

(a) Except for an agreement filed under 46 U.S.C. ch. 403, all information and documents submitted to the Commission by the filing party(ies) or third parties regarding an agreement will be exempt from disclosure under 5 U.S.C. 552. Included in this disclosure exemption is information provided in the Information Form, voluntary submission of additional information,

reasons for noncompliance, replies to requests for additional information, and third-party comments.

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PART 545—INTERPRETATIONS AND STATEMENTS OF POLICY

21. The authority citation for part 545 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40307, 40501-40503, 41101-41106, and 40901-40904; 46 CFR 515.23.

22. Amend § 545.1 by revising paragraph (a) to read as follows:

§ 545.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.

(a) 46 U.S.C. 40502 authorizes ocean common carriers and agreements between or among ocean common carriers to enter into a service contract with a shippers' association, subject to the requirements of the Shipping Act of 1984 ("Act"). 46 U.S.C. 41104(a)(10) prohibits carriers from unreasonably refusing to deal or negotiate. 46 U.S.C. 40307(a)(3) exempts from the antitrust laws any activity within the scope of the Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

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By the Commission.

Rachel E. Dickon,
Secretary