

# ORIGINAL

August 6, 2007

FEDERAL MARITIME COMMISSION  
46 CFR Part 515

Docket No. 07-08

RIN 3072-AC32

OPTIONAL METHOD OF FILING FORM FMC-18, APPLICATION FOR A LICENSE AS  
AN OCEAN TRANSPORTATION INTERMEDIARY

**AGENCY:** Federal Maritime Commission

**ACTION:** Final Rule

**SUMMARY:** The Federal Maritime Commission (“FMC” or “Commission”) amends its regulations relating to the method of filing Form FMC-18, Application for a License as an Ocean Transportation Intermediary (“OTI”), to provide for optional filing of OTI applications through a new electronic filing system. This optional filing system is intended to facilitate more efficient processing and review of applications for licensing. A filing fee of \$250 will apply to new applicants for OTI licensing, and \$125 for existing licensees who might want to use the optional electronic filing system to update their licensing records or to submit changes in the licensee’s organization for which prior Commission approval is required.

**DATE:** Effective September 24, 2007.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

By Notice of Inquiry in Docket No. 01-08, the Commission first solicited comments concerning the impact of the Government Paperwork Elimination Act and the Electronic Signatures in Global and National Commerce Act on all sectors of the U.S. ocean shipping industry. Comments received in response to the Notice were supportive and encouraging of the Commission's efforts to provide expanded electronic filing options for information collections.

Responsive to comments filed in reply to that inquiry, the Commission signaled its intent to embark upon an E-government strategy which focuses on automating as many documents and processes (both internal and external) as possible, and facilitating greater access to Commission information, forms and applications. The Commission concluded therein that establishing electronic options for most of its information collection processes was both viable and prudent. Since that time, the Commission has commenced an initiative for publishing electronic copies of Commission decisions; approved procedures by which non-vessel-operating common carriers ("NVOCCs") may file electronic copies of NVOCC Service Arrangements ("NSAs"); upgraded the SERVCON system for filers of service contracts and NSAs; reorganized and updated the Commission's website at [www.fmc.gov](http://www.fmc.gov) to improve transparency and accessibility to information; authorized the filing of agreement minutes and monitoring reports in electronic format, etc. The Commission's Annual Performance Plan envisions the continued use of technological enhancements to improve efficiency and facilitate the exchange of information within the Commission and between the Commission and the shipping industry.

Working in conjunction with the Commission's Office of Information Technology, the Bureau of Certification and Licensing ("BCL") commenced efforts in 2005 to automate the process of filing its application for OTI licensing, Form FMC-18. Under existing 46 C.F.R. § 515.12, this application is submitted entirely in paper format, in duplicate. Supporting documentation required by the application process likewise must be filed in paper format.

BCL recently completed the initial software development and associated testing to support an automated application filing system. The Commission now proposes to make BCL's automated filing system available as an optional method by which to file Form FMC-18. Use of the automated system will not be required; interested parties may continue to submit Form FMC-18 in paper format and those filings will be received and processed in the same manner as before.

As developed by the Office of Information Technology and its contractors, the new automated filing system will facilitate the filing of Form FMC-18 in electronic format. Supporting documentation previously submitted in paper form will be appended electronically as part of the filing process. Validity checks incorporated into the automated filing process will alert the filer to the need to submit missing documentation at time of filing, thereby ensuring a more complete application and facilitating quicker processing of OTI applications by BCL staff. A visually cleaner and more helpful electronic interface also has been implemented to guide and assist the filing applicant in completing the application.

The automated OTI filing system may be accessed through the Commission's website, [www.fmc.gov](http://www.fmc.gov). The filing system is password-protected to ensure the security of information being collected and to appropriately restrict external access to data to the applicant and its authorized filing agents. Both applicants for initial OTI licensing and current licensees seeking

to amend or add an additional service (i.e., add NVOCC authority to an existing freight forwarder license) to their existing authority/license can make use of the automated filing system on an optional basis. Following implementation of automated filing on a voluntary basis, further automation of licensing-related functions, such as the use of e-signature technology, electronic filing of bonds and electronic payment options for fees, may be addressed by the Commission in future rulemakings.

The Commission may publish a rule as final, without being subject to the notice and comment requirements under the Administrative Procedure Act (“APA”), 5 U.S.C. § 553, if the rule is interpretive, a general statement of policy, pertains to agency reorganization, or is a rule of practice and procedure. See 5 U.S.C. § 553(b)(A); see also Bachow Communications, Inc. v. FCC, 237 F.3d 683, 690 (D.C. Cir. 2001) (“Like the rules governing the filing of applications, rules permitting (or suspending) amendments are ‘rules of agency organization, procedure, or practice’ exempt from the Administrative Procedure Act’s notice and comment requirement.”) The D.C. Circuit has held that the “critical feature” when determining whether a rule is procedural in nature is that “it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.” James Hurson Assocs., Inc. v. Glickman, 229 F.3d 277, 280 (D.C. Cir. 2000) (citing JEM Broad. Co. v. FCC, 22 F.3d 320, 326 (D.C. Cir. 1994)).

The Commission publishes this rule as final, implementing the voluntary electronic filing of Form FMC-18 under 5 U.S.C. § 553 (b)(A), because this change is solely procedural in nature. Applicants will have the option to file electronically or to continue utilizing the paper format. If the Commission later determines that electronic filing be made a requirement of all applicants, a notice and comment period would be provided as required under 5 U.S.C. § 553.

In order to promote the use of the electronic filing option by the public and to facilitate transfer of OTI records from a paper-based format to a more convenient and accessible digital format, the Commission also has decided to assess a lesser filing fee for those using the optional electronic filing method during this initial testing period. A filing fee of \$250 will apply to new applicants for OTI licensing, and \$125 for existing licensees who might wish to use the optional electronic filing system to update their licensing records or to submit changes in the licensee's organization for which prior Commission approval is required. See 46 C.F.R. § 515.18. Those using the electronic filing method also will directly assist BCL in its transition to an electronic recordkeeping system, by reducing the need for Commission staff to manually re-key data now residing primarily in paper format.

This rule is not a significant regulatory action as defined by Executive Order 12866, Regulatory Planning and Review, 58 Fed. Reg. 51,735 (Sept. 30, 1993) and therefore, is not subject to review by the Office of Information and Regulatory Affairs, in the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. §§ 601 et seq., the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant impact on a substantial number of small entities. These changes establish an optional provision for U.S. licensed OTIs and applicants for OTI licensing, which may be used at their discretion. While these businesses qualify as small entities under the guidelines of the Small Business Administration, the rule poses no economic detriment, but rather provides a more cost-effective alternative than would otherwise be available to assist U.S. OTIs in obtaining licenses or in notifying the Commission of changes in the licensee's business structure or operations.

The rule contains no additional information collection or record keeping requirement. Therefore, the requirements of the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq. do not apply.

**List of Subjects for 46 CFR Part 515:**

Classified information, Freedom of Information, Privacy, Sunshine Act

For the reasons set out above, the Commission amends 46 CFR Part 515 as follows:

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

1. Revise 46 C.F.R. § 515.12 to add a new subparagraph (e) as follows:

\* \* \* \*

(e) *Optional method of filing Form FMC-18.* In lieu of completing and filing Form FMC-18 in paper format, applications and amendments thereto may be completed and submitted to the Bureau of Certification and Licensing by using the automated FMC-18 filing system in accordance with the instructions found on the Commission’s home page, [www.fmc.gov](http://www.fmc.gov). A \$250 fee for filing a new application and a \$125 fee for filing an amended application will be assessed for filers using the automated FMC-18 filing system instead of the fees listed at § 515.5(b)(1), (2).

2. Revise 46 C.F.R. § 515.18 to add a new subparagraph (f) as follows:

\* \* \* \*

(f) *Optional method of filing Form FMC-18.* In lieu of completing and filing Form FMC-18 in paper format, applications for approval of changes in organization, transfer of license, or changes in the identity or status of the designated qualifying individual required under this section may be completed and submitted to the Bureau of Certification and Licensing by using the automated FMC-18 filing system in accordance with the instructions found on the Commission’s home

page, [www.fmc.gov](http://www.fmc.gov). A \$250 fee for filing a new application and a \$125 fee for filing an amended application will be assessed for filers using the automated FMC-18 filing system instead of the fees listed at § 515.5(b)(1), (2).

By the Commission.

A handwritten signature in cursive script, appearing to read "Bryant L. VanBrakle".

Bryant L. VanBrakle  
Secretary