

ORIGINAL

(S E R V E D)
(NOVEMBER 17, 2003)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 03-14

REVOCATION OF LICENSES AND
ORDER TO DISCONTINUE OPERATIONS IN U.S.- FOREIGN TRADES
FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF
THE OCEAN SHIPPING REFORM ACT OF 1998

ORDER TO SHOW CAUSE

Effective May 1, 1999, the Ocean Shipping Reform Act of 1998 (“OSRA”), Pub. L. 105-258, 112 Stat. 1902, made numerous changes to the Shipping Act of 1984 (“1984 Act”), 98 Stat. 67 (46 U.S.C. app. secs. 1701 through 1720). As a result of those amendments, section 19 of the 1984 Act, 46 U.S.C. app. § 1718, established a new form of regulated entity, ocean transportation intermediaries (“OTI”), defined to include ocean freight forwarders and non-vessel-operating common carriers (“NVOCC”). While continuing the requirement that all freight forwarders be licensed by the Federal Maritime Commission (“Commission”), the revised section 19 for the first time required that NVOCCs operating in the United States also be licensed. In addition, NVOCCs are required by section 8 of the 1984 Act, 46 U.S.C. app. §1707, as amended, to publish their tariffs

in an automated tariff system. New financial responsibility requirements also were imposed upon OTIs as part of OSRA.

Concurrent with the effective date of OSRA, the Commission prescribed new regulations at 46 CFR Part 5 15 (*Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries*), implementing those revisions to the 1984 Act with respect to OTI licensing and financial responsibility (64 FR 11156, March 8, 1999). The Commission also prescribed new regulations implementing the OSRA requirements as to carrier automated tariff systems, at 46 CFR Part 520 (*Carrier Automated Tariffs*) (64 FR 11218, March 8, 1999). The Commission, by letter of April 5, 1999, initially notified all freight forwarders and NVOCCs of the new OSRA licensing, financial responsibility and tariff publishing requirements. From that time, as each new OTI was licensed, all licensees have been advised of the applicable regulatory requirements with respect to tariffs and bonding.

The Commission has taken a number of actions subsequently to inform and advise OTIs of the new requirements, and to encourage prompt, voluntary compliance with the new mandates of OSRA. In May 2000, the Commission first sent letters to over 500 entities that failed to achieve compliance with the OSRA requirements, warning each company that continued failure to comply with bonding or licensing requirements placed them at risk of revocation of licenses or other action to suspend such OTI's right to continue operations in U.S. trades. Each recipient was specifically notified of any deficiencies in its prior filings for which corrective filings were necessary, and urged to promptly provide all submissions required to comply with OSRA. Thereafter, the Commission instituted a proceeding directing those companies which had not yet complied to show cause why the Commission should not revoke existing licenses or provisional licenses for failure to comply

with section 19 of the 1984 Act. See, Docket No. 00-12, *Revocation of Licenses, Provisional Licenses and Order to Discontinue Operations in U.S. - Foreign Trades for Failure to Comply with the New Licensing Requirements of the Ocean Shipping Reform Act of 1998*, Order to Show Cause, served December 7, 2000, 28 S.R.R. 1675 (FMC, 2000).¹

In January 2003, the Commission commenced additional efforts to promote compliance with the OSRA requirements among those licensed and unlicensed (foreign) NVOCCs who have previously tiled evidence of their financial responsibility (i.e., NVOCC surety bonds) with the Commission. The OSRA implementing regulations specify that each NVOCC must furnish the Commission a completed Form FMC-1 indicating the location of its electronically published tariff. See 46 C.F.R. §520.3(d).² Existing licensees were contacted individually by telephone and by fax, requesting their cooperation in furnishing any missing FMC-1 information. Such informal contacts succeeded in achieving voluntary compliance with respect to most licensees.

In July 2003, the Commission followed up with a more formal letter, notifying each remaining licensee that continued failure to comply placed them at risk of license revocation or other action to suspend such OTI's right to continue operations in U.S. trades. Following direct notice to

¹Eighty-one (81) companies were named initially as Respondents. Immediately following issuance of the Order to Show Cause, 22 OTIs contacted the Commission and complied with OSRA requirements, while 4 OTIs elected to cancel their bonds. The Commission ultimately entered findings of revocation or other relief against the 55 remaining OTIs found not in compliance with OSRA, 29 S.R.R. 193 (FMC, 2001).

²In accordance with 46 C.F.R. §520.3(e), the tariff location submitted by each NVOCC, ocean common carrier and conference is published on the Commission website in order to ensure ready public access to carriers' tariff information. OSRA instituted new procedures which superceded statutory requirements that such tariffs be filed directly with the Commission and maintained in the Commission's Automated Tariff Filing and Information System ("ATFI") database.

the affected parties and an extended period to bring themselves into compliance, 14 OTIs still have not met the requirements imposed by the passage of OSRA. These latter OTIs are comprised of NVOCCs who are based in the U.S. and currently licensed by the Commission.³

Commission regulations require that each NVOCC in the United States must be licensed and, among other requirements, file a Form FMC-1 indicating the location of its electronically published tariff. The NVOCCs listed in Schedule A each maintain an OTI license issued by the Commission, but have otherwise failed to establish or maintain an electronically published tariff and to maintain a current Form FMC- 1 on file with the Commission. The Commission now proposes to revoke the licenses of the NVOCCs for these failures, and to direct them to cease and desist from operating in the U.S.-foreign trades.

The July 2003 letters were sent to all firms listed in Schedule A. While a substantial majority of entities receiving these warning letters have now complied, those 14 OTIs listed in Schedule A to this Order still have not filed their FMC-1 Form or otherwise met the tariff publication requirements imposed by OSRA and the Commission's implementing regulations. Accordingly, those companies listed in the Schedule were notified, by phone and by fax, that they were not in compliance with OSRA and that formal proceedings could be pursued against them.

NOW THEREFORE, IT IS ORDERED That, pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. § 1710, the entities listed in Schedule A to this Order are directed to show cause why the Commission should not revoke their licenses for failure to comply with section 19 of the Shipping Act of 1984, 46 U.S.C. app. §1718, as amended, and 46 CFR Part 515.

³Foreign domiciled NVOCCs also have the option of becoming licensed upon meeting the OTI (NVOCC) requirements of 46 C.F.R. Part 5 15.

IT IS FURTHER ORDERED That, pursuant to section 11 of the Shipping Act of 1984, the entities listed in Schedule A to this Order are directed to show cause why the Commission should not order each of them to cease and desist from operating as an ocean transportation intermediary in the foreign trade of the United States, for failure to comply with sections 8 and/or 19 of the Shipping Act of 1984, as amended, and 46 CFR Parts 515 and 520;

IT IS FURTHER ORDERED That this proceeding is limited to the submission of affidavits of facts and memoranda of law;

IT IS FURTHER ORDERED That any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR § 502.72. Such petition shall be accompanied by the petitioner's memorandum of law and affidavits of fact, if any, and shall be filed no later than the day fixed below;

IT IS FURTHER ORDERED That the entities listed in Schedule A to this Order are named as Respondents in this proceeding. Affidavits of fact and memoranda of law shall be filed by Respondents and any intervenors in support of Respondents no later than December 17, 2003;

IT IS FURTHER ORDERED That the Commission's Bureau of Enforcement be made a party to this proceeding;

IT IS FURTHER ORDERED That reply affidavits and memoranda of law shall be filed by the Bureau of Enforcement and any intervenors in opposition to Respondents no later than January 16, 2004;

IT IS FURTHER ORDERED That rebuttal affidavits and memoranda of law shall be filed by Respondents and intervenors in support no later than February 2, 2004;

IT IS FURTHER ORDERED That:

(a) Should any party believe that an evidentiary hearing is required, that party must submit a request for such hearing together with a statement setting forth in detail the facts to be proved, the relevance of those facts to the issues in this proceeding, a description of the evidence which would be adduced, and why such evidence cannot be submitted by affidavit;

(b) Should any party believe that an oral argument is required, that party must submit a request specifying the reasons therefor and why argument by memorandum is inadequate to present the party's case; and

(c) Any request for evidentiary hearing or oral argument shall be filed no later than January 16, 2004;

IT IS FURTHER ORDERED That notice of this Order to Show Cause be published in the *Federal Register*, and that a copy thereof be served upon each respondent at its last known address;

IT IS FURTHER ORDERED That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR § 502.118, as well as being mailed directly to all parties of record;

FINALLY, IT IS ORDERED That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR § 502.61, the final decision of the Commission in this proceeding shall be issued by May 17, 2004.

By the Commission.


Bryant L. VanBrakle
Secretary

Schedule A - NVOCCs in the United States

| Organization No. | Name |
|-----------------------------|---|
| 017305 | Distribution Support Systems, Inc. |
| 016972 | Elemar International Forwarding, Inc. |
| 016827 | Fedex Supply Chain Services, Inc. |
| 013879 | Full Circle Maritime Corp. |
| 007550 | Glad Freight Int'l, Inc. |
| 017643 | Grizzard Customs Brokers, Inc. |
| 017064 | International Transport Solutions, Inc. |
| 017573 | Kallista USA, LLC |
| 016654 | Logis Services of America, Inc. |
| 015103 | Navilca Int'l, Inc. |
| 013039 | Oceanic Shipping Company |
| 017720 | Orion Logistics Inc. |
| 017084 | Stuart Logistics, Inc. |
| 015551 | V.S. Import Services, Inc. |