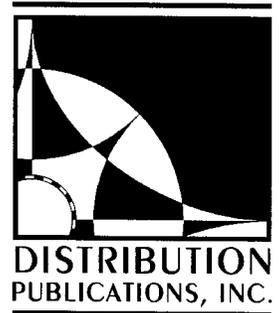


August 30, 2013  
Via Email: [secretary@fmc.gov](mailto:secretary@fmc.gov) and hand delivery

Ms. Karen V. Gregory  
Secretary  
**Federal Maritime Commission**  
800 North Capitol Street, N.W.  
Washington, D.C. 20573-0001



Re: Docket 13-05 – Proposed Rule

Dear Ms. Gregory,

On behalf of Distribution-Publications, Inc., I am pleased to take this opportunity to comment on Docket 13-05, Amendments to Regulations Governing Ocean Transportation Intermediary (OTI) Licensing and Financial Responsibility Requirements, and General Duties.

As tariff publishers, we advise licensed entities on the Commission's regulations and publish tariffs for more than 1,300 NVOCCs. These tariffs are accessible to the Commission and the shipping public at [www.dpiusa.com](http://www.dpiusa.com). As an FMC Practitioner I have personally handled OTI license applications on a daily basis since March 1999. The Commission's records show I have submitted over 400 applications since January 2006. Based on this experience, we have expertise in the subject matter of this petition and an interest in this proceeding. With regard to Docket 13-05, our comments are as follows:

1. **Section 515.14 – Issuance, renewal, and use of license.** We support the Commission's proposal to issue licenses for a two year period, and the implementation of a streamlined license renewal process. Under the current licensing regulations, licenses are perpetual, but licensees are required to report to the Commission promptly when any of the details in their license applications change, including contact information, changes in business or organization, ownership, officers or directors, or affiliated entities. In our experience, many licensees do not comply with this reporting requirement. They comply only when the Commission prompts or requires them to. We agree the license renewal requirement is necessary to ensure that information essential to the Commission's oversight of OTIs is verified periodically.

The license renewal requirement will foster a more fair and efficient licensing procedure. Under the current perpetual license regulations those licensees who fail to report changes to their businesses are very rarely penalized for this non-compliance. This is unfair to those licensees who take the time and expense to report to the Commission as required.

We agree renewing all 4,500-plus licenses at the same time is not a workable plan for the Commission or the industry. We suggest the Commission consider implementing the license renewal process based on the original license effective dates and start with the oldest licenses. Phase in the expiration dates over a period of two years or more. To make the process efficient we recommend the FMC-18 system for electronic submission of license applications be used for license renewals. This should provide licensees with access to their previous applications, and

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require they update details as required by the regulations, or to confirm to the Commission that all the information previously submitted remains current.

With regard to license certificates, we urge the Commission to begin issuing license approval letters and license certificates electronically. The current procedure of issuing paper letters and certificates with wet signatures and sending these by US Mail is outdated and inefficient. This will save all stakeholders in the licensing process time and costs.

After submitting an application and all its supporting documents electronically via the Commission's FMC-18 system why is the approval letter to the applicant advising it has been "found qualified for licensing" sent by US Mail? This wastes time. Applicants are anxious to receive these approval letters. They have many business plans they are ready to implement. Why make them wait weeks longer due to this paper process? These approval letters should be issued electronically via the FMC-18 system. I've suggested this to the OTI office previously and cannot understand why this has not been implemented.

The FMC-18 system for electronic submission of license applications should also be used to issue electronic certificates. The Commission must recognize that most the industry relies on [www.fmc.gov](http://www.fmc.gov) to verify the licensed status of NVOCCs and ocean forwarders, and not the paper license certificates. The current procedure of issuing paper certificates and mailing them adds another week or more to the licensing process. This can be extremely frustrating to applicants. Several have told me delays caused by this painfully slow last step in the process have caused them to lose business and potential revenues they were counting on. Electronic certificates would reduce costs, speed the licensing process and benefit all stakeholders.

The Commission's website must be updated to clearly show license / registration effective dates and expiration dates. As other commenters have pointed out, current industry practices emphasize speed and efficiency, and increasing involve one-line rate quotation and booking and documentation. Paper license certificates do not serve the Commission's mandate to support an efficient and economic ocean transportation system that is in harmony with and responsive to international shipping practices.

## **2. Section 515.16 – Revocation or suspension of license.**

We support the changes and additions proposed for this section of the regulations. These will also foster a more fair and efficient licensing procedure. Under the current regulations, several NVOCCs who have failed to publish and/or maintain tariffs as required by the Commission's regulations have not had their licenses revoked. This is unfair to NVOCCs who comply with the Commission's tariff regulations. We urge the Commission to update its website to clearly indicate licenses that have been revoked and/or reissued.

**3. Section 515.17 – Hearing procedures governing: denial, revocation, or suspension of OTI licenses**

We support the changes and additions proposed for this section of the regulations and agree these will provide a more efficient process.

**4. Section 515.19 – Registration of foreign-based non-vessel-operating common carriers**

We support the implementation of Form FMC-65, and the requirement for foreign-based unlicensed (aka registered) NVOCCs to prepare and submit this form no later than Oct 17, 2013. In our experience, many NVOCCs serving the US trades are not well informed on the Shipping Act and the Commission's regulations, and many operate under misconceptions and misunderstandings. The new form FMC-65 has prompted many NVOCCs to read the Shipping Act and the Commission's licensing regulations and to make a more vigorous effort to comply. This is a positive development, and it supports the Commission's mission and vision statement.

We look forward to the development of the Commission's website to include registration effective and expiration dates for each registered NVOCC. We urge the Commission to provide access to this important information via [www.fmc.gov](http://www.fmc.gov) not later than October 17, 2013.

- a. We also suggest the Commission consider the potential efficiencies that could be realized by combining its forms FMC-1, FMC-65, and FMC-78 into a new combined form which would be filed electronically via [www.fmc.gov](http://www.fmc.gov). Currently, only FMC-1 can be filed on-line. A single electronic form would be more efficient. The signature requirement could be handled with an attachment.

**5. Section 515.20 – Changes in organization.**

We support the changes and additions proposed for this section of the regulations. These will help clarify the license reporting requirements. We recommend the FMC-18 system for electronic submission of license applications be made accessible to licensees to enable to report changes in their organization more efficiently.

**6. Section 515.21 - Financial responsibility requirements.**

No comments.

**7. Section 515.23 - Claims against an ocean transportation intermediary.**

No comments.

**8. Section 515.24 - Agent for service of process**

We serve as agent for service of process over 500 registered NVOCCs. We understand the problems summarized in Docket 13-05. We agree the proposed changes are necessary and will help protect consumers and other claimants from actions to avoid service.

**9. Section 515.25 - Filing of proof of financial responsibility.**

We agree the proposed clarifications are necessary and appropriate.

**10. Section 515.26 - Termination of financial responsibility.**

We agree the proposed revision is appropriate.

**11. Section 515.27 - Proof of compliance – NVOCC.**

We agree the proposed revision is appropriate. This prompts us to again remind the Commission that its website must be upgraded to provide the effective dates and expiration dates for OTI-NVOCC licenses and registrations. Without these dates the website is inadequate.

**12. Subpart D – Duties and Responsibilities of Ocean Transportation Intermediaries; Reports to Commission, Section 515.31 - General duties.**

We are pleased to see the Commission finally updating its regulations to recognize Docket 06-08, in other words, the Landstar decision, and key recommendations from Fact Finding Investigation No. 27 (FF 27). Over the past four years we have been contacted many times by licensees for guidance on this important decision. The absence of any mention of it in the Commission's licensing regulations has left many licensees wondering if, or how, or when they may utilize agents. The amendments to Section 515.31 will clarify this key question, and, by doing so help support industry fairness and efficiency.

We agree with the findings of FF 27 regarding the activities of unlicensed OTIs who pretend to operate "as agents" of other licensed entities. Our licensed clients and other interested parties have brought this to our attention many times. The adoption of Sections 515.31(j)(3) and Section 515.31(k) and Section 515.31(l) are important and useful steps forward by the Commission to address this problem.

**13. Section 515.33 - Records required to be kept.**

We agree the proposed revision is appropriate.

**14. Section 515.41- Forwarder and principal; fees.**

We agree the proposed revision is appropriate.

**15. Section 515.42- Forwarder and carrier; compensation.**

We support the changes proposed for this section of the regulations to permit electronic certification by forwarders. We agree this will provide a more efficient process.

**16. Request for Comments Relating Particularly to Fact Finding No. 27 Recommendation to establish a New “Small Package/Barrel” NVOCC License**

We do not support this proposal. We don't agree the current licensing and financial responsibility requirements discourage small unlicensed OTI's from obtaining licensing. There are hundreds of small businesses who have obtained licensing. In our view, the current requirements are not excessive. They are too modest. In order to better protect the shipping public from unfair and deceptive practices we recommend the Commission consider revising its licensing requirements.

The three year industry experience requirement for licensees should not be reduced for a new small package/barrel trade license category. Unlike U.S. Customs and Border Protection, the Commission has no testing requirement for the Qualifying Individuals. The current requirements for industry experience and references provide the Commission with little more than a thumbnail sketch of the actual industry knowledge of the prospective licensee. Applicants are required to certify they have read a copy of the Commission's licensing regulations and pertinent sections of the Shipping Act. However, in our experience, many applicants, including applicants who have been found qualified for licensing, do not take the time and effort required to read and understand these regulations. Some of these applicants have fundamental misunderstandings of the Commission's regulations, and operate their businesses accordingly. The absence of any testing by the Commission during the licensing process is one key reason for this.

In our experience OTIs who restrict their operations to the transportation of household goods and personal effects do not need less training and experience than OTIs who handle commercial cargo. In fact, we believe the opposite is true. The shipper of commercial cargo often has strong industry knowledge, access to cargo insurance, and it often handles the loading of its goods. On the other hand, shippers of household goods and personal effects are usually consumers who have little or no knowledge of international shipping. They rely on their OTI for much more than ocean transportation, and require their OTI to handle export packing, inland transportation, container loading and unloading, customs clearance, and cargo insurance. The OTI who specializes in household goods effects needs industry experience, knowledge and patience.

We recommend the Commission develop and implement a simple set of timed tests of each QI's knowledge of the Commission's licensing regulations and pertinent sections of the Shipping Act, and incorporate this into the licensing process. Utilize the FMC-18 on-line system for this purpose. This would be an "open book" test, but would be timed and would serve a useful purpose. Applicants will take it seriously and it will prompt them to actually read Commission's licensing regulations and pertinent sections of the Shipping Act, and gain a better understanding of these. Applicants for the OTI-NVOCC license should also be tested on the basic concepts of 46 CFR Parts 520, 531 and 532. Rotate and update the tests on a regular basis to help insure the integrity of results. The result will be better qualified QI's who are better equipped to advise and direct their organizations in compliance with the Commission's regulations. This will serve the Commission's mission and vision statement more effectively than the current process.

**17. Questions Regarding the Proposed Rule's Economic Impact on Regulated Entities**

Not applicable. DPI is not an OTI.

**18. Comments on new forms resulting from the Proposed Rule: OTI License Renewal Form (Section 515.14(d)), Registration/Renewal Form for Foreign-based NVOCCs (Section 515.19(a))**

- b. **OTI License Renewal Form (Section 515.14(d)):** We urge the Commission to rethink this form. Why create and require yet another inefficient paper based form? As previous noted in item 1 of these comments, the FMC-18 system for electronic submission of license applications be used for license renewals. This should provide licensees with access to their previous applications, and an efficient opportunity to update its details, or to confirm to the Commission that all the information previously submitted remains current.
- c. **Registration/Renewal Form for Foreign-based NVOCCs (Section 515.19(a)):** we presume this is a new version of the Form FMC-65 that was recently implemented under Docket 11-22. We suggest the Commission consider the potential efficiencies that could be realized by combining its forms FMC-1, FMC-65, and FMC-78 and creating a new combined form which would be filed electronically via [www.fmc.gov](http://www.fmc.gov) These three forms require very similar information. A single electronic form would be more efficient for all stakeholders.

I welcome the opportunity to discuss these comments further with the Commission.

Sincerely,

  
James E. Devine, President  
*Distribution Publications, Inc.*