

July 20, 2007

FEDERAL MARITIME COMMISSION

46 CFR PART 515

DOCKET NO. 07-06

**Amendment to Regulation Governing the Filing of
Proof of Financial Responsibility**

RIN 3072-AC33

AGENCY: Federal Maritime Commission

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing the filing of proof of financial responsibility for ocean transportation intermediaries. The Commission proposes to amend the regulations at 46 CFR 515.25(a) by reducing the amount of time an applicant may have to file the requisite proof of financial responsibility upon approval of applicant's license application from two (2) years to 120 days.

DATES: Submit original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 8, Microsoft Word 2003, or earlier versions of these applications, no later than August 27, 2007.

ADDRESS: Address all comments concerning this proposed rule to:

Bryant L. VanBrakle, Secretary
Federal Maritime Commission
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Washington, D.C. 20573-0001
(202) 523-5725
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FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

The Commission's regulations at 46 CFR 515.25(a) currently state that, upon approval for an ocean transportation intermediary ("OTI") license, an applicant must provide valid proof of financial responsibility prior to the issuance of the license by the Commission's Bureau of Certification and Licensing ("BCL"). The regulation currently allows an applicant two (2) years in which to furnish such proof of financial responsibility, failing which the application will be considered invalid by the Commission.

An extended time period of two (2) years between approval of an OTI application and an applicant's procurement of financial responsibility has created significant areas of concern for the Commission. First, this may be viewed as an opportunity by applicants who have been deemed approved but who have gone two (2) years without procuring a surety bond to, nonetheless, commence providing OTI services. This result would frustrate the statutory goal of protecting

the shipping public. Second, an applicant's inability or unwillingness to procure a surety bond over the course of two (2) years may be an indication of questionable financial integrity, a key factor in establishing an applicant's continuing fitness to perform OTI services.

Based on a study conducted by BCL staff of new OTI licenses issued in fiscal year 2006, it appears that the greatest majority of qualified applicants did not require two (2) years to procure surety bonds. BCL statistics show that more than half of the qualified applicants obtained surety bonds within 30 days of approval of their applications and 87 percent of the applicants obtained surety bonds in a time period of 120 days or less. The remainder of the applicants, or 13 percent, required between 120 days and two (2) years to obtain surety bonds subsequent to approval of their OTI applications. This is an indication that reducing the allotment of time for providing proof of valid financial responsibility is unlikely to be burdensome upon either the industry in general or new OTI applicants in particular.

Given the current bonding practices of a significant majority of new OTI applicants, it appears that a time frame in excess of 120 days is unnecessary while creating an opportunity for abuse of the licensing process. Accordingly, the Commission proposes to amend 46 CFR 515.25(a) by reducing the period of time within which an OTI applicant is required to provide the requisite proof of financial responsibility subsequent to approval of the application from two (2) years to 120 days. This would ensure greater efficiency on the part of OTI applicants in complying with financial responsibility requirements following approval of their applications. Upon expiration of the 120-day time period, if valid proof of financial responsibility has not been provided by an applicant, the OTI application would be considered invalid thereby requiring the filing of a new application for an OTI license.

In conjunction with the aforementioned amendment, the Commission further proposes to remove as unnecessary the third sentence of 46 CFR 515.25(a) dealing with supplementary investigations for the determination of an applicant's continued qualification if more than six (6) months elapse between the time of the approval of the application and an applicant's submission of financial responsibility to the Commission. Removal of the option of supplementary investigations from 46 CFR 515.25(a) likewise necessitates removing paragraph (b)(3) of 46 CFR 515.5 inasmuch as the collection of fees for supplementary investigations would no longer be appropriate.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Federal Maritime Commission certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The rule directly applies to the licensing requirements of OTIs, which are regulated persons (or businesses) under the Commission's jurisdiction that qualify as small entities under the guidelines of the Small Business Administration. The rule will modify the financial responsibility requirements that must be met by persons applying for a license to operate as an OTI. The modifications in the rule will simplify the OTI licensing application process, and increase administrative efficiencies, while further serving to safeguard the shipping public from unlicensed operators. The rule imposes no new or additional cost burden on persons applying for an OTI license, nor will it have a harmful effect on the general public, the U.S. economy, or any of the regulated entities under the jurisdiction of the Commission.

List of Subjects in 46 CFR Part 515

Common carriers, Exports, Non-vessel-operating common carriers, Ocean transportation intermediaries, Financial responsibility requirements, Reports and recordkeeping requirements, Surety bonds.

Accordingly, the Federal Maritime Commission proposes to amend 46 CFR Part 515 subpart C as follows:

Subpart C – FINANCIAL RESPONSIBILITY REQUIREMENTS; CLAIMS AGAINST OCEAN TRANSPORTATION INTERMEDIARIES

1. The authority citation for part 515 to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9107; 46 U.S.C. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718 (recodified October 2006 as 46 U.S.C. 305, 40102, 40104, 40501-40503, 40901-40904, 41101-41106, 41107, 41108, 41109, 41301-41302, 41305-41307, 42101, 42301-42306, and 42307); Pub. L. 105-383, 112 Stat. 3411, 21 U.S.C. 862.

2. In 46 CFR 515.5, remove paragraph (b)(3).

3. Revise 46 CFR 515.25(a) to delete the fourth sentence and to change the last sentence to read as follows:

(a) * * * * * Should the applicant not file the requisite proof of financial responsibility within 120 days of notification, the Commission will consider the application to be invalid.

By the Commission.


Bryant L. VanBrakle
Secretary