

Office of Inspector General

**Review of the
Federal Maritime Commission
Ocean Transportation Intermediary
Financial Responsibility Program**

OR11-02



September 2011

FEDERAL MARITIME COMMISSION



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Office of Inspector General
Washington, DC 20573-0001

September 30, 2011

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Dear Mr. Chairman and Commissioners,

The Office of Inspector General (OIG) reviewed agency controls in place to ensure that ocean transportation intermediaries (OTI) (i) obtain a bond prior to licensing, (ii) maintain a bond while providing OTI services, and (iii) are inactivated in public databases maintained by the Federal Maritime Commission (FMC) when bonds are terminated or cancelled. We also reviewed whether OTI status information maintained on the Commission's website is accurate and up to date.

The Bureau of Certification and Licensing (BCL) gets high marks for its management of the "bond" program. Licenses are conditionally approved pending receipt of bond information. BCL sends out notices to new applicants timely alerting them to approaching deadlines for bond submissions. We also found that termination notices are timely sent to OTIs whose bonds were cancelled and that licensees are removed from the *OTI List* on the agency's website when bonds are revoked or terminated.

On the other hand, we identified several discrepancies between two FMC website databases, the *OTI List* and the *Links to Tariffs* database. Both links are used by the public and industry to obtain important information regarding OTI license status and tariff location respectively. These two databases should reconcile, but they do not. We identified 105 discrepancies, i.e., companies appearing on one database but not the other. In virtually all of the discrepancies, names of unlicensed Non-Vessel Operators (NVO) were identified on the active tariff list. Besides presenting confusing and contradictory information to the public and industry, the users could erroneously conclude that an NVO meets all Commission regulations by appearing on the *Links to Tariffs* list. Procedures to streamline removal of organizations from *Links to Tariffs* should be implemented.

The bond and tariff programs would benefit from enhanced automated processes. Currently, the programs are administered in two different bureaus on two separate applications. The problem cited above would be addressed if the systems were merged into a larger enterprise-wide database system. A single application would pull data from two or more databases, completely transparent to the user. End users (industry and the public) now have to connect to different agency databases to collect information needed to process a transaction. There should be one icon for users to click on that provides all information needed to determine, for example, whether an OTI is licensed and the location of its tariff. The agency has been working for years to implement an enterprise

management system but such a system is still months if not years away. In the interim, we are recommending that a link be established that would rely on technology to maintain consistency between the databases. For example, a license revocation posted to BCL's database would immediately deactivate a tariff listing in the Bureau of Trade Analysis' (BTA) Form FMC-1 database. Relying more on automation and less on manual processes should have a material and immediate impact on database consistency without requiring new technologies to be purchased.

The OIG thanks staff in BCL and BTA for their efforts to assist the OIG review team, and especially for always finding the time to answer "one more question." Their efforts and suggestions, more than anything else, resulted in concrete ideas for improvements in the processes reviewed.

I am available to answer any questions about our review.

Respectfully submitted,

/Adam R. Trzeciak/
Inspector General

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The Office of Inspector General (OIG) reviewed agency controls in place to ensure that ocean transportation intermediaries (OTI) (i) obtain a bond prior to licensing, (ii) maintain a bond while providing OTI services, and (iii) are removed from public databases maintained by the Federal Maritime Commission (FMC) when bonds are terminated or cancelled. We also reviewed the interrelationship between bonds and tariffs, how information about an OTI's status is shared between two Commission bureaus that administer these two programs and whether OTI status information maintained on the Commission's website is accurate and up to date.

Introduction

A Non-Vessel-Operating Common Carrier (NVOCC) provides transportation services, by water, of cargo between the United States and a foreign country, for compensation, without operating the vessels by which the transportation is provided. An ocean freight forwarder dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers. An ocean transportation intermediary (OTI) is an ocean freight forwarder and/or a NVOCC.

According to 46 CFR Part 515 (*Shipping*), no person in the United States may act as an OTI unless that person holds a valid license issued by the Commission. To be eligible for an OTI license, the applicant must demonstrate to the Commission that it: (i) possesses the necessary experience; that is, its qualifying individual has a minimum of three years experience in ocean transportation intermediary activities in the United States and the necessary character to render OTI services; and (ii) has obtained and filed with the Commission a valid surety bond, proof of insurance or guaranty. Commission regulations at 46 CFR 515.21 require that all OTIs provide proof of financial responsibility, which almost always is in the form of a bond.¹

Depending on the nature of services provided and whether the OTI is foreign or domestic, the minimum required bond or surety value will differ. Any person operating in the United States as an ocean freight forwarder, for example, must furnish evidence of financial responsibility in the amount of \$50,000; a person operating in the United States as a NVOCC must furnish evidence of financial responsibility in the amount of \$75,000; and an unlicensed foreign-based entity not operating in the United States but providing OTI services for transportation to or from the United States, must secure a bond or other financial instrument in the amount of \$150,000.

¹ One reason for this may be the requirement that the financial responsibility instrument must be available to pay claims that occurred during the term of the instrument, even after the instrument has been cancelled. Representatives of the surety industry have advised that the surety bonds meet this requirement better than insurance or guaranty.

When applicants are approved and submit evidence of financial responsibility, Bureau of Certification and Licensing (BCL) staff will enter relevant information in the Commission's Registered Persons Index (RPI) database and mail the freight forwarder and/or NVOCC license to the licensee. When NVOCC licenses are issued, a copy of the transmittal letter is placed by BCL staff in an inbox, designated by the Bureau of Trade Analysis (BTA), as notice to expect a Form FMC-1, *Tariff Registration Form*, from the NVOCC.² The transmittal letter reminds OTIs of Commission regulations they must follow, and NVOCCs are specifically reminded of the requirement to maintain a tariff and to report its location to the FMC.³ Until recently, licensees were required to publish rate and rules tariffs. However, in April 2011, the FMC voted to exempt Non-Vessel Operators (NVO) from rate tariff requirements in select circumstances.⁴

Once applicant data is entered in the RPI and the license is active, and the applicant files the Form FMC-1 (NVOCC or foreign entity only), the information will be uploaded and publicly available on the Commission's website at the (1) *OTI List* and (2) *Links to Tariffs*. It is important to note that the NVOCC must be activated in both the RPI and the Form FMC-1 before the information is uploaded to the *OTI List* on the FMC's website; that is, there are two databases maintained separately in two FMC bureaus and the information displayed on the website is dependent on the NVOCC being active in both of those databases.

Removing an OTI from the website also requires coordination between two bureaus. If BCL deactivates a license in the RPI, it is removed only from the *OTI list*; it remains on the *Links to Tariffs* list until BTA staff removes it from the *Links to Tariffs* database. In this instance, the two web pages will display conflicting information. Conversely, if BTA deactivates an OTI from its *Links to Tariffs* list, it will be removed from the *OTI List* too, thus both web pages will display the same information. Understanding this relationship helps to explain how these two separately maintained databases can display inconsistent if not confusing information about OTI status to the public and industry.

Upon receipt of notice of termination of such financial responsibility, the Commission will notify the concerned licensee that, without hearing or other proceeding, it will revoke the license as of the termination date of the financial responsibility instrument, unless the licensee submits valid replacement proof of financial responsibility before such termination date or the surety issues a rescission. Replacement financial responsibility must bear an effective date no later than the termination date of the expiring financial responsibility. The bond terminates no less than 30 days after written notice by the surety is received at the Commission. This notice period allows licensees to, if appropriate, secure a replacement bond.

Common carriers are required to verify that an OTI has met the Commission's license (and NVOCC tariff requirements) before accepting its cargo for transport. To assist with this requirement, the Commission posts the names of OTIs with valid FMC licenses on its webpage.

² Freight forwarders are not required to maintain a tariff.

³ A tariff is a publication containing the actual rates, charges, classifications, rules, regulations and practices of a common carrier.

⁴ Effective April 18, 2011, licensed Non-Vessel-Operating-Common Carriers are permitted to take an exemption from the tariff rate publication requirements of the Shipping Act and the FMC's regulations if they use a negotiated rate arrangement.

For this reason, it is critical that the databases linked on the webpage are accurate, consistent and up to date.

Objectives, Scope and Methodology

The objectives of this compliance review were to determine whether the agency's OTI financial responsibility (bond) program is efficiently and effectively managed, and Commission regulations are followed by OTIs and enforced by the agency. Specifically, we reviewed the "bond program" administered in the Bureau of Certification and Licensing to assess whether controls are in place to ensure that (i) licensees have established financial responsibility prior to receipt of an FMC license; (ii) licenses are revoked when an OTI bond is terminated; (iii) foreign unlicensed NVOCCs are removed from the OTI list when their bonds are terminated and (iv) information maintained on the agency's public webpage regarding license status is accurate.

During the review, the OIG broadened the scope to include aspects of the tariff program in the Bureau of Trade Analysis, specifically those aspects pertaining to uploading and removing information about NVOCCs to/from the FMC website and the accuracy of the information residing there.

The OIG began the review by identifying the universe of licenses issued or amended during the period FY 2005 through FY 2010. From this universe of 2,107 licenses, we randomly selected 42 OTI applications and licenses maintained in the agency's Registered Persons Index to identify application receipts and approvals, bond effective dates and license effective dates.

We assessed the timeliness of the bond terminations and license revocations processed in BCL during the months of July and August, 2010, and performed a reconciliation of the *NVOCC OTI List* with the *Links to Tariffs* database from the agency's public webpage as of May 13, 2011 (approximately 9,000 total entries). We then researched discrepancies found between the lists, documented reasons for the discrepancies, and prepared an aging analysis of the resulting discrepancies. Although there are two separate databases involved, the information displayed to the public should align and be timely.

Using the same sample months of July and August, 2010, we identified 181 bond termination letters sent to OTIs by BCL. We reviewed these letters and documented (a) the license number; (b) the OTI name; and dates associated with (c) termination notices received from sureties, (d) FMC notices to OTIs, (e) bond terminations, and (f) Federal Register notices. To assess timeliness, we compared the date FMC received the termination letter from the bond company with the date FMC mailed the termination notices to the OTI, and we verified that Federal Register notices were published when required. We then performed internet searches of those entities whose licenses had been surrendered or revoked to determine if these firms were advertising OTI services without an FMC license.

The review followed the President's Council on Integrity and Efficiency Inspection Standards, issued in January 2011.

Introduction to Findings

The OIG review found the FMC's program to ensure that carriers obtain and maintain financial responsibility works well. Licenses are conditionally approved pending receipt of bond information. BCL sends out notices to new applicants timely alerting them to approaching deadlines for bond submissions. We also found that termination notices are timely sent to OTIs whose bonds were cancelled and that licensees are removed from the *OTI List* on the agency's website when bonds are revoked or terminated.

On the other hand, we identified several discrepancies between the *OTI List* and the *Links to Tariffs* list on the agency's website. Both links are used by the public and industry to obtain important information regarding OTI license status and tariff location respectively. These two databases should reconcile, but they do not. We identified 105 discrepancies, i.e., companies appearing on one database but not the other. In virtually all of the discrepancies, names of unlicensed NVOs were identified on the active tariff list. Besides presenting confusing and contradictory information to the public and industry, the users could mistakenly conclude that an NVO meets all Commission regulations by appearing on the *Links to Tariffs* list when it no longer does. Procedures to streamline removal of organizations from the *Links to Tariffs* should be implemented.

The bond and tariff programs would benefit from enhanced automated processes. Currently, the programs are administered in two different bureaus on two separate applications that do not interface (communicate) with each other. The problem cited above would be addressed if the systems were merged into a larger enterprise-wide database system. The agency has been working for years to implement an enterprise management system but such a system is still months if not years away.

We noted that the bond program relies heavily on one individual who must perform a variety of tasks to keep all facets moving. We are concerned that, while BCL has identified a "back up," should current staff leave or become incapacitated, the alternate is not exposed to the myriad of tasks and decisions that keep the program from bogging down under the weight of the volume of transactions. The documented procedures that would assist the alternate, or any replacement, to keep the program up and running are at least 10 years old; however, they are in the process of being updated. We encourage BCL to complete the update, focusing on work processes.

Lastly, we identified a requirement on sureties and bond companies that should be discontinued. Specifically, these companies are required to report to the Commission when claims are made against the bond. Staff indicated that claims paid, rather than claims filed, are a more reliable barometer of problems with OTIs. Staff has begun to draft regulation revisions that would require reporting to the FMC claims paid out as a less burdensome alternative to current practices. Another option is to decrease the frequency of reports required, for example, requiring one annual report of claim activity instead of reporting each event. Either method should include some monitoring or enforcement mechanisms to ensure OTIs comply with the new requirements.

Details of our evaluation results are provided below along with recommendations for corrective action.

Finding 1. Front End Financial Responsibility Requirements Are Managed Well

The front end of the bond program appears to be working well. New licensees, after receiving notification from BCL that their license application has been approved, must submit evidence of financial responsibility, i.e., a bond. The notification letter each successful applicant receives states, in part, that the applicant “*has been found qualified for licensing as an Ocean Transportation Intermediary (OTI). A license will be issued after the Federal Maritime Commission has received acceptable proof of financial responsibility...*” Importantly, the letter alerts the applicant that a surety bond must be received by the Commission within 120 days of approval, or the application will be considered invalid. The letter also reminds applicants that NVOCCs must maintain a tariff in an automated tariff system and submit Form FMC-1 to notify the Commission of the tariff location to be in compliance with 46 CFR Part 520, *Carrier Automated Tariff Systems*, although it imposes no deadlines for such action.

If after 90 days the applicant has not submitted proof of financial responsibility, the Director, Office of Transportation Intermediaries, sends a second letter to the applicant. This letter reminds the applicant that (i) 90 days has passed since the initial notification and (ii) missing the 120 day deadline (from the original tentative approval date) to provide the Commission evidence of financial responsibility will invalidate the conditional license approval. It also reminds the applicant of potential penalties should the applicant hold out as an OTI without a license. One reason an NVOCC may decide to forgo the license is bond/tariff cost: the financial requirements on small companies can be significant.⁵

If after 120 days the applicant has not submitted proof of financial responsibility, the Office of Transportation Intermediaries notifies the applicant, in writing, that the deadline has passed without evidence of financial responsibility provided by the applicant and that the application is now invalid.

The 120-day deadline is a recent requirement implemented in 2007 when the Commission issued a final rule reducing the time period from two years to 120 days for filing proof of financial responsibility. If the deadline is not met, the licensee is informed that conditional license approval expired and the applicant must reapply. Table 1 provides information on the average lag time between conditional license approval and bond submission. Statistics indicate that the average licensee provides the evidence of financial responsibility before the “90-day” letter must be sent.

⁵ The OIG did not review bond and/or tariff costs, but agency staff told us that the cost of a license, a bond and tariff, often result in delays by applicants in providing all agency-required documentation, especially among small operations, while OTIs comparison shop.

**Table 1. Bond Submission after Notice of Conditional License Approval
(in days)**

Fiscal Year	Average Days	Day Range
2005	24	7 -- 54
2006	35	8 -- 140
2007	13	1 -- 65
2008	26	2 -- 112
2009	44	5 -- 58
2010	21	3 -- 38

The OIG believes OTIs that do not submit evidence of financial responsibility after 120 days may be at risk of “holding out,” i.e., accepting goods or cargo for transport while not complying with FMC regulations. For example, some may be unable to afford a bond before generating revenue first. We asked BCL staff what actions it takes to follow up with OTIs to determine whether they were holding out without a license, i.e., providing names to the Bureau of Enforcement or to the Area Representatives for possible follow up. BCL staff told us that it updates the RPI database to show the application is expired, but it does not follow up with these former applicants. Staff also believes that applicants are adequately warned about the penalties associated with operating without a license in the three notification letters each applicant receives during the application process.

The OIG obtained the names of 27 OTIs that received “120-day letters” and were warned about the consequences of holding out. Two of the 27 ultimately completed all licensing requirements. A search of the internet found that one of the remaining 25 companies was advertising OTI-related services. The OIG forwarded the name to the Office of the Managing Director for follow up by the area representatives.

Recommendation 1. The OIG recommends that BCL forward the names of all companies who appear to be holding out (companies completing all licensing requirements, except financial responsibility) to the Managing Director’s Office for follow up through the Bureau of Enforcement or area representatives.

Finding 2. Bond Revocations Result in Timely Removal from FMC’s Public List of Licensed Carriers

After reviewing the “front end” of the financial responsibility requirements, e.g., adding new licensees to the database, we focused on how well the agency *removes* licensees from the public webpage when bonds are cancelled. This is a critical step in providing the public and the industry with accurate and timely information about which companies have met FMC requirements, and which no longer do.

Vessel operators and NVOs are required to verify, via FMC website or other means, that companies from whom they are accepting goods or cargo are licensed by the FMC.^{6 7} Also, consumers rely on the accuracy of FMC public databases when searching for licensed carriers to move household goods. If a carrier is not in compliance, but appears on the FMC website as an “approved” carrier, then the agency is providing inaccurate information to industry and consumers about the status of a carrier. Further, if carriers are holding out, an unsuspecting consumer may enter into a contract with a carrier that lacks the consumer protections a license provides, including a bond.

The terms of the bond permit either the surety or the principal to cancel the bond. The bond is cancelled thirty days from the date of receipt of cancellation by the Commission, unless the surety/principal requests a date greater than 30 days. In practice, virtually all cancellations are received from the surety. Unless and until the surety notifies the agency, it is liable for any bona fide, transportation-related claims against the carrier while the bond is in effect. Not surprisingly, evidence suggests compliance with this requirement is strong.

When the agency learns from a surety that a bond will be cancelled, the FMC notifies the licensee, in writing, that the agency received notice and that the NVO must submit a new bond (or have the cancellation rescinded by the surety) if it wishes to remain licensed. The timing of the letter is important to remind the carriers that a new bond must be in place by the time the old bond expires. The OIG reviewed the timing of 181 notification letters sent in July 2010 – August, 2010. We found that 97 percent of the notices were mailed to the OTIs in 15 days or less after termination notice from the surety company was received by the agency; 68 percent of the notices were sent in nine days or less. Only one notice was sent after the 30 day deadline.

Of the 181 notices, 111 of these responded by obtaining a new bond to maintain their license. All of the remaining 70 carriers were removed from the *OTI List* on the public website, although we could not determine how long after the bond cancellation this occurred because the RPI does not track this information. We noted that 17 of the 70 companies who failed to provide evidence of financial responsibility still maintain an active website advertising freight forwarder or NVOCC services months after license cancellation or revocation. Two of these companies claimed to hold a valid license issued by the FMC.

A surety may cancel a bond for a number of reasons. For example, the licensee may notify the surety that it will be ceasing operations, as described above. Other reasons involve nonpayment of bond premiums or other business-related considerations often referred to by the surety as “underwriting reasons.” The FMC does not become involved with the reasons for

⁶ According to Commission regulations at C.F.R. 515.27, a common carrier can obtain proof of an NVOCC's compliance with the tariff and financial responsibility requirements by (i) reviewing a copy of the tariff published by the NVOCC; and (ii) consulting the Commission to verify that the NVOCC has filed evidence of its financial responsibility. A common carrier that has employed these procedures is deemed to have met its obligations under section 10(b)(11) of the Act (46 U.S.C. 41104(11)).

⁷ One foreign carrier recently paid \$1.2 million in civil penalties to resolve alleged violations of the Shipping Act, including an allegation that this company “*provid(ed) transportation services to and enter(ed) into service contracts with, unlicensed, untariffed and unbonded ocean transportation intermediaries.*”

cancellation. According to FMC staff, most bond cancellations (revocations) originate with the surety.

There are three likely outcomes when the FMC receives the bond termination notice from the surety. In some cases, the surety rescinds the termination request and the bond coverage does not lapse. A more common outcome is that the carrier will provide evidence of new coverage. FMC staff told the OIG that receipt of coverage may occasionally be delayed for a few days, but the surety backdates the coverage period so there is no lapse in coverage. Finally, carriers' licenses are revoked for failure to maintain a bond. Many of these OTIs will voluntarily surrender their license prior to the termination date, although the FMC requests that the original license be returned in all instances.

Importantly, when an OTI changes sureties, it is not required to submit a new license application; it simply sends in the new bond to the FMC. According to BCL workload statistics, there were 3,528 new or replacement bonds received in fiscal year 2010. However staff explained that this count includes a single bond received from multiple sources. For example, if the same bond is reviewed at various times over several days (due to errors and omissions, etc), or if it is submitted by more than one source (by the surety and the principal or by different methods such as email, fax or mail), each event will be counted separately because each requires an independent review. Staff told the OIG that this workload statistic is not reported outside the agency. Staff also opined that if the agency had an electronic bond (e-bond) system, it would reduce the workload significantly by removing the need to review thousands of individual pieces of paper.

When a bond is revoked with no replacement, agency regulations require that the carrier be served with an *Order of Revocation*. The original license is required to be returned to the Commission and a notice of this action be published in the Federal Register. (See C.F.R. §515.16 (5)(b)). The purpose of this notification is to provide the industry notice that, by virtue of not maintaining financial responsibility, the OTI is no longer licensed by the FMC. We reviewed how well BCL reports bond cancellations / revocations in the Federal Register. Of the 70 revocations and cancellations we reviewed resulting from failure to maintain a bond, all were found to be posted to the Federal Register.

Finding 3. Adding OTI Names to the FMC's "List of Tariffs"

When an applicant is licensed, the applicant information is uploaded to the RPI. However, the NVO's name is not yet posted to the *OTI List*. Before this occurs, the licensee must complete the Form FMC-1, *Tariff Registration Form*.

When an NVO license is awarded, the licensee receives a letter from BCL transmitting the license. According to 46 CFR 515.14(a), the Commission will issue the license if it determines, as a result of its investigation, that the applicant possesses the necessary experience and character to render ocean transportation intermediary services and has filed the required bond. The letter informs the new licensee that it must be *familiar with (Commission) regulations, located at 46 CFR Part 515, Licensing Responsibility Requirements and General Duties of Ocean Transportation Intermediaries*. The transmittal letter also informs each NVOCC

licensee of the requirement to maintain a tariff in an automated tariff system and submit Form FMC-1 to notify the Commission of the location of its tariff. 46 CFR 520 requires that NVOs maintain a tariff in an automated tariff system prior to providing ocean transportation services. Only NVOs are required to maintain a tariff; freight forwarders are not.

Although our preliminary objectives were to assess how well the agency's OTI financial responsibility program is operating, we learned during our fieldwork the importance of the tariff requirement and the interrelationship between tariffs, bonds and licenses. Specifically, before a licensee will be posted on the Commission's webpage, it must have a license and a tariff. While the bonding and licensing processes are managed in BCL, the tariff requirement is administered by the BTA. Both bureaus play an integral role in ensuring that accurate information is communicated to carriers and consumers regarding the license status of NVOCCs on the FMC website.

The tariff registration process works in the following way. BTA learns of a new licensee when BCL transmits the license to the new licensee. BTA allows each new licensee 30 days to obtain a tariff and to notify the FMC of its tariff location. When the Form FMC-1 is submitted, the NVO's tariff location will be posted on the FMC website at *Links to Tariffs* and the company will appear as a licensed carrier on the *OTI List*.

If the newly licensed NVOCC has not submitted the Form FMC-1 in 30 days, then BTA will contact the licensee informally to assist with tariff compliance via phone, facsimile or email. BTA told the OIG that most licensees inform the FMC that they are searching for a publisher or they are looking into self publishing. After an additional 15 days (45 cumulative days), BTA sends out a formal letter signed by the Director, Office of Service Contracts and Tariffs, noting that the Form FMC-1 still has not been received and that the NVOCC is risking civil penalties and license revocation. A response due date is provided, but BTA officials told the OIG that they have no means to enforce the deadline; a license cannot be revoked for lack of a tariff without due process, according to 46 C.F.R. §515.16(a)(1), and no civil penalties have ever been assigned due solely to the failure to maintain a tariff.

If the NVOCC has not submitted a Form FMC-1 in response to the two formal contacts (BCL & BTA) and one informal contact (BTA), BTA makes another informal attempt, but at the same time, begins searching SERVCON, the agency's service contract database, to determine whether the newly licensed NVOCC is accepting cargo in violation of agency regulations (failure to maintain a tariff).

BTA staff told the OIG that it is frustrated because it cannot require a licensee to submit a tariff. Since an active license and the FMC-1 are required before the NVOCC's company name is posted on the FMC's webpage, and because carriers are required to determine that an NVOCC is licensed and has a tariff, the benefits for posting would seem to outweigh the costs to comply. BTA told the OIG that most do eventually comply with the tariff requirement, and estimated that five companies a year drop off. BTA staff said that, after the reorganization that occurred at the Commission in FY 2010, it no longer coordinates with the Commission's Bureau of Enforcement or area representatives regarding the possibility of these carriers holding out.

The OIG believes that, absent the ability to impose a deadline on filing Form FMC-1 for the newly licensed or foreign unlicensed but bonded NVOCCs, BTA has little it can do to speed up the filing of a tariff. The risk is that some of these companies may be holding out at least for a while without following all Commission requirements. The OIG is making no recommendation at this time. With the NVOCC exemption from rate tariff requirements, BTA should reassess new licensee timeliness when filing a rules tariff, as many companies may find compliance less burdensome. If timeliness does not improve, the Commission should consider imposing deadlines for NVOCCs to file the Form FMC-1 or be required to surrender their license.

Finding 4. Removing NVOCCs from the Form FMC-1 and OTI List

As discussed above, technical controls built into the publicly facing *OTI List* require an activated RPI and Form FMC-1 before a company is posted to the *OTI List*. The same technical control removes carriers from the *NVO OTI List* when a Form FMC-1 or the RPI for this licensee is deactivated. It is imperative that only those carriers meeting all FMC requirements appear on the *OTI List*.

While deactivating a licensee in either the RPI or *Links to Tariffs* databases result in removing the licensee from the OTI list, only deactivating the license in the Form FMC-1 database will remove it from the active tariff list on the FMC website. Based on our review of the databases, it appears that the *NVOCC/ OTI List* contains only licensed and foreign domiciled NVOCCs with tariffs. On the other hand, we identified a number of carriers who remained on the *Links to Tariffs* list for weeks and months after the NVO license was surrendered or revoked. The risk to the public and industry is that either of these groups, when checking the *Links to Tariffs*, may mistakenly conclude that an NVO is in compliance with Commission requirements when, in fact, it is not.

The *OTI List* link provides the user with the options to display either *Ocean Freight Forwarder* or the *NVOCC* licensed entities. Immediately below these tabs, the following general information is provided:

The OTIs listed have complied with the Commission's regulatory requirements; as follows:

- *Ocean Freight Forwarder OTIs that have obtained a license and submitted the necessary proof of financial responsibility*
- *NVOCC OTIs that have obtained a license, submitted the necessary proof of financial responsibility, and reported the publication of a tariff by filing a current Form FMC-1*
- *Foreign-based NVOCC OTIs that have submitted the necessary proof of financial responsibility, and reported the publication of a tariff by filing a current Form FMC-1*

Information on the *Links to Tariffs* page is not as clear. It makes a distinction between *information accepted for filing* (i.e., the active tariffs) and tariffs that are no longer active due to

cancellations, revocations, etc. Clearly, tariffs appearing on the “no longer active” page do not meet the FMC requirements for licensure. However, companies appearing on the companion link (active tariffs) would, by contrast, appear to meet FMC requirements. Some of these may be holding out and accepting cargo / payment.

There are primarily two scenarios leading to deactivation of a tariff from the *Links to Tariffs* page. In the first instance, the tariff publisher alerts BTA that it will no longer be supporting a tariff for a particular carrier. Unlike surety companies that notify the Commission of bond terminations, tariff publishers are under no similar obligation, so notice can come in at any time. According to BTA staff, if a tariff publisher sends written instructions to the FMC, it is usually to communicate that the tariff is already down. When such notice is received, BTA staff told us that it immediately deactivates the Form FMC-1, which also removes the OTI from the *NVOCC/OTI List*. BTA then follows a similar approach and timeframe employed for new licensees; specifically, it attempts to determine from the carrier its status, e.g., is it looking for a new publisher, self publishing or ceasing operations. During this time, the carrier continues to hold the license even though it is no longer on the *OTI List*. BCL staff explained that it cannot revoke a license based on an inactive Form FMC-1 without due process.

BTA also receives a copy of BCL’s license Revocation Order that is sent to carriers who have lost their license. On approximately a monthly basis, BTA staff picks up the revocation notices from the designated inbox, which is then used as the source document for deactivating the Form FMC-1. Without a license, the NVO should be removed from the *Links to Tariffs* “active list” immediately by deactivating the Form FMC-1. Until this occurs, the *OTI List* and the *Links to Tariffs* will not reconcile. Some revocation orders can be 30 days old by the time they are retrieved by BTA. So it is important that the Form FMC-1 be deactivated as soon as BTA receives a revocation order to ensure consumers and industry has consistent and accurate information.

Because the FMC requires that all OTIs be in compliance with FMC regulations before they are posted to the Commission’s webpage, it is logical to conclude that all NVOCC’s posted in the active *Links to Tariffs* listing are compliant with the Commission’s regulations. However, the OIG found that many NVOCCs were no longer licensed.

The OIG ran a search using a database software tool of the two databases to identify companies that appeared on one public list, but not the other. The search was run on May 13, 2011, so information collected is “as of” this date. We compared two public databases (*NVO/OTI List* and the *Links to Tariffs*)⁸ to identify discrepancies. In total, we identified 105 instances where the two databases did not reconcile. Only five of the 105 names were on the *OTI list* but not on the *Links to Tariffs*. In other words, these five companies appeared to have a valid license without a tariff. We provided the names of the five companies to BCL staff for research. Staff explained that three of the discrepancies resulted from timing differences (our search occurred just a few hours before the names were removed from the RPI); the remaining discrepancies could not be explained because BCL staff could not locate the licensing file.

⁸ Freight forwarders are not required to maintain a tariff and were excluded from this analysis.

We also looked at the remaining 100 discrepancies where U.S. NVOs were active on the *Link to Tariffs*, but were not licensed. Again, our concern here is that a company may appear to be a licensed carrier if a consumer or industry member checks the tariff link. The other related concern is that the agency is providing inaccurate and confusing information on its webpage.

Of the 100 discrepancies, we noted that 26 companies underwent a name change, requiring a new license to be issued. The old licensee was removed from the *OTI List* when the new license became active in the RPI. But, the “old” license remained on the *Links to Tariffs* public database pending deactivation by BTA. The licensee has to republish his new tariff in order to appear on the OTI list, a requirement often overlooked by NVOCCs. Because the two databases are not in alignment, neither the new nor the old name and license will appear on the *OTI List*, perhaps denying the carrier some business. BCL staff told us that it receives calls from carriers inquiring about the license status of NVOCCs for this reason.

When a new license is issued, BTA receives a copy of the letter to the NVOCC, but it does not remove the prior name unless BCL indicates on the NVO letter that there has been a name change. Instead the original tariff (FMC-1) is maintained on the web until a new FMC-1 is submitted with the name change and new organization number. If BTA does not recognize that the new license is the result of a name change, it will treat it like a new licensee and wait for a new Form FMC-1 to be submitted. BTA staff told us that the volume of transactions that it has to process often make spotting name changes difficult.

Discrepancies between the *OTI List* and the *Links to Tariffs* associated with bond terminations are more common. Of the 100 discrepancies between the two databases, 60 were due to failure to maintain a bond. BCL receives a notice from the bond company stating that the bond will be cancelled as of a certain date – at least 30 days hence. BCL notifies the NVOCC and reminds it of the bond requirement. BTA learns of the revocation when BCL sends out the *Order of Revocation*. The OIG identified 28 of the 60 occurrences where the tariff remained active for between 61 days and 1179 days, with an average of 209 days, after the license was revoked. These 28 observations were still active on May 13, 2011 when the analysis was performed. Further, seven of these 28 companies had an active website on June 1, 2011, advertising ocean transportation services.

We discussed reasons for these discrepancies with both BTA and BCL staff, creating a dialog between the two bureaus on how to better the process. Clearly, the volume of transactions in BTA has slowed the processing of many tariff registration forms. But deactivating tariffs should be automatic, especially for license revocations, where there is no reason to identify a tariff in the agency’s active tariff database when it does not have a NVOCC license.

As a result of this dialog, one participant suggested that a bridge between the RPI and Form FMC-1 be constructed that would automatically deactivate an NVOCC from the Form FMC-1 database when a license is revoked or surrendered. This could not only reduce manual tasks for BTA, but it would also free up time to process new FMC registrants. The OIG also believes a disclaimer should be added to the *Links to Tariffs* site to ensure that visitors know to check the *OTI list* for licensed carriers and not to rely on the *Links to Tariffs* database for

licensed carriers. Notwithstanding, adding a bridge between two databases would have a significant impact on discrepancies between these two databases.

Recommendation 2. The OIG recommends BTA post a disclaimer to the Link to Tariffs list on the website informing visitors to check the OTI List to verify OTI compliance with FMC regulations.

Recommendation 3. The OIG recommends that BCL, working with representatives in BTA, request the agency's Office of Information Technology to develop a protocol between the NVOCC OTI List and Form FMC-1 web displays that would enhance consistency between the two sites. Specifically, license revocations, when entered into the RPI, should automatically sync with the Form FMC-1 for the same entity without the need for manual steps by BTA to deactivate the tariff registration.

Finding 5. Updated Policies and Procedures are Needed

According to the FMC's annual internal control self assessment transmittal letter sent to all agency managers, the objectives of the FMC's system of management accountability and internal control is to provide reasonable assurance that:

- Programs achieve their intended results;
- Resources are used consistent with the agency mission;
- Programs and resources are protected from waste, fraud, and mismanagement;
- Laws and regulations are followed; and
- Reliable and timely information is obtained, maintained, reported, and used for decision-making.

Effective internal controls over processing transactions begin with documented policies and procedures. These documents set forth the fundamental framework and the underlying methods and processes all employees rely on to do their jobs. It is important that an organization establish policies and procedures so that staff knows what is to be done and performance can be properly evaluated. Further, policies and procedures help to ensure that basic organizational processes are performed in a consistent way that meets the organization's needs. Without this framework of understanding by employees, conflict can occur, poor decisions can be made and serious harm can be done to the organization's reputation. Further, the efficiency and effectiveness of operations can be adversely affected.

While the agency's OTI financial responsibility program has documented procedures that would enable someone with reasonable familiarity with the program objectives to perform the myriad of tasks necessary to ensure the efficient and effective functioning of the program they have not been updated recently. Procedures we reviewed lacked specificity involved in processing specific bond scenarios (riders, terminations, voluntary surrender, etc.). However, we noted that BCL has started to revise the outdated procedures and has included a flowchart approach that identifies specific work steps involved in different scenarios. Updated,

documented procedures are especially important should current staff leave the agency or become incapacitated for any reason.

As staff has recognized the importance of updated, documented procedures and has already begun to prepare them, the OIG is making no recommendation.

Finding 6. Surety Requirement to Report Claims is not Enforced and Information, when Submitted, is Seldom Used

According to Form FMC-48, *Ocean Transportation Intermediary Bond*, the underwriting surety is required to notify the Director, Bureau of Certification and Licensing, of any claims made against the bond. According to BCL officials, one reason for requiring sureties to report is to put the Commission on notice about potential concerns regarding select licensees. In other instances, the information may be used when assessing the suitability of a qualifying individual for an OTI license. However, a claim itself is unsubstantiated and may not be valid or lead to a payout against the bond.

The OIG spoke to BCL officials to learn whether the information is being used and to assess compliance rates among sureties. BCL staff told us that compliance is good, although not perfect. BCL staff also stated that the requirement is not enforced and it would not always know when a claim was made to be able to measure compliance. BCL has previously recommended revision of the Commission's OTI regulations to require notification to the FMC when a claim is paid and a requirement that the bond be restored to its full dollar amount.⁹

BCL officials indicated, notwithstanding the requirement, it does not routinely use the information when it is obtained in the current format. Most importantly, it can be dated information. A claim could have been made against an OTI years earlier with the claim being paid out only recently.

On the other hand, the OIG continues to believe that information concerning claims can be useful to help the agency spot potential problems in many cases. However, rather than require sureties to submit claim information as it occurs, it may be less of a burden on them to submit an annual report of claim activity. While we recognize that not all claims will be paid out, it still provides a good barometer of potential problems.

Recommendation 4. The OIG recommends BCL either (i) modify the OTI Bond form to require the reporting of claims paid out against the bond, or (ii) continue to collect claim information, but on an annual basis. We defer to BCL to determine which approach best meets agency needs while protecting consumers.

⁹ Current regulations do not require that a bond be replenished after a claim is paid. BCL staff told the OIG that, in practice, most sureties cancel coverage after paying a claim, necessitating the OTI obtain coverage from a different surety.

Summary

The FMC's program to ensure the licensees obtain financial responsibility is working well. Due to a combination of staff expertise and built-in controls, the agency is able to ensure that licensed carriers maintain a bond to protect consumers should the need arise.

The program is somewhat unique in that it relies on coordination between two bureaus to ensure that industry and the public are provided with accurate and timely information regarding which carriers are licensed and bonded, and which no longer are, due more often than not to the failure to maintain a bond. In addition to relying on individuals to coordinate across bureau lines, databases are used to capture information that do not completely interface with each other. Not surprisingly, we found that information pertaining to carriers on the FMC's webpage was inconsistent and misleading. When the agency implements an enterprise-wide platform to integrate related data, this concern will be addressed. In the meantime, we call upon the Office of Information Technology to work with staff in BCL and BTA to explore the possibility of a bridge between the two databases that would enhance consistency while reducing manual task

Management Comments

Memorandum

TO : Inspector General **DATE:** September 29, 2011

FROM : Director, Bureau of Certification and Licensing

THROUGH : /Managing Director/

SUBJECT : Review of the Ocean Transportation Intermediary Financial
Responsibility Program

The Bureau of Certification and Licensing (BCL) has reviewed the Office of the Inspector General (OIG) report on its review of BCL's Ocean Transportation Intermediary Financial Responsibility Program. BCL also consulted with the Bureau of Trade Analysis (BTA) and includes its comments herein. BCL and BTA agree with the IG's conclusion that the bond and tariff programs would benefit from enhanced automated processes. Our responses to the report's recommendations follow.

Recommendation 1. *The OIG recommends that BCL forward the names of all companies who appear to be holding out (companies completing all licensing requirements, except financial responsibility) to the Managing Director's Office for follow up through the Bureau of Enforcement or area representatives.*

Response: This information is contained in the Regulated Persons Index (RPI) database and is accessible through its report function entitled "*Approved Applications – Awaiting Bond or Not Finalized.*" BCL will contact the Director of Field Investigations (DFI) by October 7, 2011 to arrange a meeting to discuss this report. BCL can also assist with any training on the RPI's report functions or answer questions associated with the RPI's data. The DFI can determine the efficacy of follow up.

Recommendation 2. *The OIG recommends BTA post a disclaimer to the Link to Tariffs list on the website informing visitors to check the OTI List to verify OTI compliance with FMC regulations.*

Response: Pending longer term automated solutions (either linking of the BCL and BTA databases or the combining of the two into a single database) BTA agrees with the OIG recommendation that a disclaimer be placed on the FMC website that the Tariffs List on the website not be relied upon to verify OTI compliance with FMC regulations. Given BTA's current dependence on manual processes, a disclaimer is important to address those situations which would invariably arise where there are discrepancies due to human error between the BCL and BTA databases. BTA will develop and submit draft language by December 31, 2011.

Recommendation 3. *The OIG recommends that BCL, working with representatives in BTA, request the agency's Office of Information Technology to develop a protocol between the NVOCC OTI List and Form FMC-1 web displays that would enhance consistency between the two sites. Specifically, license revocations, when entered into the RPI, should automatically sync with the Form FMC-1 for the same entity without the need for manual steps by BTA to deactivate the tariff registration.*

Response: BTA has for some time sought the automation that the OIG recommends for the very reasons that the OIG cites. BTA fully realizes that the public, and BTA itself, will be much better served through more accurate postings with less time delays and cumbersome manual processes. OIT advises that this will be accomplished as funds are available.

In the mean time, BTA has developed a manual work-around procedure to deactivate unlicensed or unbonded NVOCCs from the *List of Tariffs* website. This was implemented in August, 2011.

Recommendation 4. *The OIG recommends BCL either (i) modify the OTI Bond form to require the reporting of claims paid out against the bond, or (ii) continue to collect claim information, but on an annual basis. We defer to BCL to determine which approach best meets agency needs while protecting consumers.*

Response: This issue is being addressed in the review to update 46 CFR Part 515, presently underway. The current bond form (FMC-48) requires sureties to notify the FMC when there is a claim against a bond, rather than payment of a claim. A claim may or may not be valid, and thus, that information, by itself, may be of little value. However, BCL believes that sureties should also report claims paid out against the bond. Since paid claims can reduce the amount available to pay future claims, this information would be useful in determining the remaining value of a bond and would allow BCL to ensure that bonds are restored to the full coverage amount to enhance protection of the shipping public. Although BCL cannot predict when the rulemaking will be complete, we will provide an update by March 31, 2012.

Summary

BCL appreciates the IG's commendation on its management of the OTI bond program. The OIG report did not make recommendations regarding Finding 5, *Updated Policies and Procedures are Needed*, because BCL has begun updating its written standard operating procedures for OTI bond processing to include more specificity with respect to certain types of bond filings. BCL agrees that these updates are useful and also will facilitate cross-training for backup coverage of the key individual handling the OTI bond workload on a day-to-day basis. BCL and BTA will discuss the IT solutions proposed with OMD to ascertain budgetary priorities.

If you have any questions regarding the above responses, please let me know.

/Sandra L. Kusumoto/

cc: Director, Bureau of Trade Analysis