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CURRENTS: Keeping in Tow with Maritime Legal Updates from Benesch's Transportation & Logistics Practice Group

Setting Sail Towards Understanding the FMC's Proposed Rule on OTI Licensing



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On October 10, 2014, the Federal Maritime Commission (FMC) published in the *Federal Register* a notice proposing to amend the regulations governing, among other things, the licensing of Ocean Transportation Intermediaries (OTIs). The period for providing comments to the proposed amendments closed on December 12, 2014. These changes will be the first significant modification to the OTI regulations in over fifteen years.

Covered non-vessel-operating common carriers (NVOCCs) and ocean freight forwarders (OFFs) should keep a safe anchor watch over the proposed regulatory amendments and prepare to incorporate them into their policies, contracts, and general business practices when they take effect. Also, non-OTI entities that advertise or hold themselves out as providing OTI services should be aware that they could face sanctions under the proposed amendments for doing so without an OTI license or having registered with the FMC.

Provisions Dropped from the ANPR

Significantly, the FMC dropped the proposed increases to OTI financial responsibility requirements, new advertising requirements, new licensure qualifications, and new grounds for revocation or suspension of licenses. These

revisions were previously published in the May 21, 2013 Advanced Notice of Proposed Rulemaking (ANPR), which was extensively opposed in comments submitted by various OTIs.

Provisions Retained from the ANPR

The proposed regulatory amendments create new requirements for the renewal of licenses and registrations, require common carriers to verify OTI licenses, registrations, tariff publication and financial responsibility, provided that the verifications can be made at a single location on the FMC's website. The regulations also establish a new expedited hearing procedure.

Highlights of the Proposed Amendments

REGISTRATION AND RENEWAL. The proposed amendments require OTIs to register and renew their licenses every three years, with renewals due 60 days prior to the renewal date, using entirely on-line and what are expected to be user-friendly renewal forms. Applicable fees will be due within 10 days of submitting the requisite application and forms.

DEFINITIONS. The FMC has revised several definitions, including "freight forwarding services" and "non-vessel-operating common carrier services," to cover the preparation of documents pursuant to which cargo is transported, irrespective of whether they are equivalent to ocean bills of lading. Another definitional change is that the term "registered NVOCC" would be added to identify non-U.S.

resident foreign NVOCCs that decide to register with the FMC rather than obtain a license through the FMC.

REGISTERED FOREIGN-BASED NVOCCS AND UNINCORPORATED OTI BRANCH OFFICES.

Under the proposed amendments, foreign-based registered NVOCCs would be required to use licensed OTIs as agents in the U.S. in performing OTI services in the U.S. This would replace the current requirement that only licensed intermediaries in the U.S. may perform OTI services on behalf of an unlicensed OTI (i.e., a foreign-based NVOCC). The proposed amendments would also remove the requirement that OTIs procure and maintain additional financial responsibility for their unincorporated branch offices.

OTHER CHANGES. The amendments would explicitly prohibit any entity from advertising or holding itself out as providing OTI services without a valid OTI license or FMC registration. One amendment also clarifies the totality of information that the FMC will consider in determining whether an applicant has the necessary character to render OTI services, e.g., violations of shipping and criminal laws or statutes, operating as an OTI without a license or registration, bankruptcies, tax liens, judgments, non-compliance with immigration status requirements, and denial, revocation or suspension of a Transportation Worker Identification Credential or customs broker

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license. Lastly, the regulations contain new provisions: identifying changes to an OTI licensee's organization that would have to be regularly reported, including business address changes; authorizing electronic certifications by OFFs to carriers that forwarding services have been provided; and governing OTI responses to FMC requests for information and recordkeeping.

OTIs and non-OTIs that advertise or hold themselves out as providing OTI services should begin considering compliance with the new proposed amendments by updating business policies, contracts, shipping documents, and standard practices.

For more information

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STEPHANIE S. PENNINGER is Chair of Benesch's Maritime Transportation focus area. Her experience includes representing motor carriers, third party logistics providers, ocean transportation intermediaries, national shippers, large private fleets and water carriers in the domestic, non-contiguous trade lanes concerning transportation and logistics matters, including: providing counseling concerning maritime and admiralty law issues and regulatory compliance, handling maritime casualty matters, drafting ocean transportation service agreements and prosecuting and defending freight charge disputes and cargo claims for loss, damage or delay.

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