MAY 31, 2013 PROPOSED FMC REGULATIONS—46 CFR §515

Reg. # **N** = "New" **C** = "Changed" **D** = "Deleted"	**Current Policies**	**Proposed (New) Policies**
C: §515.2(n) - Definitions	Formerly no reference to LLCs and their organization differences.	Specifically includes "limited liability companies"
C: §515.2(h)		*Freight forwarding services* redefined to include preparation of "export documents, including required 'electronic information'".
C: §515.2(k)		*Non-vessel operating common carrier services* redefined to include preparation of ocean common carrier and NVOCC bills of lading "or other shipping documents". - this is also added under "freight forwarding services" above.
C: §515.2(o)		Definition of *principle* revised to be more "concise".
N: §515.2(a)		Definition of *advertisement* created (for the purposes of 515.31(j)): "any written or electronic communication to the public, or a portion thereof, to provide, perform or conduct ocean transportation services in connection with a direct or indirect offer or sale of ocean transportation intermediary services. Advertisement includes publication of a website, posting on the Internet or listing in an electronic database."

N: §515.2(r)		Definition of *registered non-vessel-operating common carrier* created: "an NVOCC whose primary place of business is located outside the United States and who elects not to become licensed as an NVOCC, but to register with the Commission as provided in §515.19, post a bond or other surety in the required amount and publish a tariff as required by 46 CFR Part 520."
N: §515.2(p)		Definition of *qualifying individual* created so as to "reflect the intention that a licensee's QI cannot be someone that is nominally responsible for OTI operations while not actively involved in assuring that OTI functions are properly carried out." A QI, according to the new regulations, "means an individual who (1) is an employee of a licensed OTI, (2) is at least twenty-one (21) years of age, (3) is responsible for general supervision of the licensee's OTI operations, and (4) meets the experience and character 54 requirements of section 19 of the Shipping Act (46 U.S.C. 40901-40904) and this Part."
D: §515.3 – License; when required		Deleted part of 515.3 that requires that "A separate license is required for each branch office that is separately incorporated." Note that this deletion is not intended to give separately incorporated branch offices an exemption to the licensing process. Rather, it is intended to reflect the fact that the current requirement goes without saying.
C: §515.3	"Only persons licensed under this part may furnish or contract to furnish ocean transportation intermediary services in the United States on behalf of an unlicensed ocean transportation intermediary."	"Registered NVOCCs must utilize only licensed ocean transportation intermediaries to provide NVOCC services in the United States. In the United States, only licensed OTIs located in the United States may act as agents to provide OTI services for registered NVOCCs."

C: §515.4(b) – License; when required		An OTI's unincorporated branch offices do not increase the bond amount (no longer additional $10K per location). Each separate incorporated office needs a full license and bond, however.
D: §515.4(d)	"An ocean freight broker is not required to be licensed to perform those services specified in §515.2(n)."	"[Deleted] as it is no longer needed."
C: §515.5(b) – Forms and Fees		"Modified to provide that all license applications and registration forms must be filed electronically unless a waiver request to file on paper is granted by the Director of the Bureau of Certification and Licensing"
N: §515.5(c)		Requires OTI's to pay any applicable fees within 10 business days of filing their FMC license applications. **N:** §515.5(c)(2)
C: §515.11 – Basic requirements for licensing; eligibility		- Clarifies that licensing requirements apply to the applicant as a whole not just QI, so the Commission will consider the character of the principal owners & officers as well. - Requires that the licensee's QI must have three years of "relevant and diverse experience" in performing OTI activities - Defines "principal shareholder" as one who owns directly, indirectly or constructively 5 percent or more of the total combined voting power or 5 percent or more of the combined value of all classes of the OTI's shares. (with the exception of "equity owners")
C: §515.11(a)(2)		Now provides that the three years of OTI experience required for a license may not be met by working for an unlicensed, nonbonded or unregistered OTI. However, working for a "cargo owner" suffices.

D/N: §515.11(a)(3)		"The current content of section 515.11(a)(3) is no longer needed, and is deleted, as it provided for NVOCCs that had tariffs and financial responsibility in place at the time the OSRA licensing requirements came into effect to be temporarily grandfathered pending promulgation of regulations. The replacement paragraph, as proposed, makes clear the Commission may consider all information relevant to the determination of whether the applicant has the necessary character to render OTI services." (ANPRM p9)
N: §515.11(b)(4)		Identifies who can be the QI for an LLC: must be a member or manager (or equivalent position) unless specified by the operating agreement that an "officer who is responsible for the general supervision of the LLC's OTI operations" may hold the position.
N: §515.11(e)		"Provide[s] that a foreign-based NVOCC that opts to obtain a license rather than register is required to establish a presence in the United States by opening an unincorporated office that is operated by a *bona fide* employee and qualifies to do business where it becomes resident" (ANPRM p10)
C: §515.12 – Application for license	New application filings posted in the Federal Register.	Notice of new application filings will now be posted to the FMC's website as well as the Federal Register.
N: §515.12(c)		Creates rules governing when the Bureau of Certification and Licensing will close applications
D: §515.12(e)	Provides for electronic filing in the alternative to paper filing	Superseded by 515.5(b)
N: §515.13(c)	OTI licenses do not need to be renewed.	OTI licenses must now be renewed every two years

N: §515.13(d)		License renewal application forms must be submitted 60 days prior to the expiration date of their license Also, license expiration dates will always stay on the same month/day for each OTI to avoid confusion.
C: §515.15(c) – Denial of license		Hearing provisions altered to accommodate for 515.17 below
C: §515.16(a) – Revocation or suspension of license		- "Revised to also refer to the new hearing procedures set forth in section 515.17" (ANPRM p13) - License revocations and suspensions now permitted when "an OTI fails to respond to a lawful order or request of the Commission or an authorized Commission representative." (Ibid) - also when "an OTI makes a materially false or misleading statement to the Commission in connection with an application for, amendment to, or renewal of, a license" (Ibid.) - also when an OTI fails to file and maintain a Form FMC-1 and a published tariff - also when an OTI commits "any act, omission or matter upon which a new license application may be denied pursuant to section 515.15" - also when an NVOCC "knowingly and willfully accepts cargo from, processes, books, or transports cargo for an OTI that does not have an OTI license or has not registered, or fails to provide proof of financial responsibility."
N: §515.16(a)(9)		"A foreign-based NVOCC that elects to become licensed may have that license terminated or suspended for failure to establish or maintain an unincorporated office operated as required by section 515.11(e)." (ANPRM 14)

N: §515.16(b)		"Revised to provide for publication of notices of revocation and suspension on the Commission's website." (ANPRM 14)
C: §515.17 – Hearing procedures	OTI's have the right to a full evidentiary hearing in appealing a license revocation, denial, or suspension.	These appeal procedures would be "streamlined" by taking away this right and replacing it with a new expedited, internal review procedure.
N: §515.19 – Registration of foreign NVOCCs		"Foreign-based NVOCCs that choose to operate as registered NVOCCs, rather than obtaining a license, must submit a registration form, the required fee and evidence of financial responsibility pursuant to section 515.21(a)(3). New and renewal registrations will be issued for periods of two years. Registrations will be renewed by submission of an updated registration form and required fee." (ANPRM p15) **Some points about registered NVOCCs:** - Applications for registration will be concise - The FMC will not look into the experience or character of applicants - Complete registrations will become effective upon receipt by the Commission - Registrations can be revoked/suspended *for virtually all of the same actions in §515.16(a) above.* - Appeals to revocations or suspensions go through 515.17 above; i.e., registered NVOCCs will have no right to a full evidentiary hearing should their license be denied, revoked or suspended.
C: §515.20 – Changes in organization (formerly 515.18)	30-day window to notify FMC of QI change	15-day window to notify FMC of QI change. Agency reemphasizes the fact the QI must always be the overseer of the company's OTI operations.

N: §515.20(e)	Report Change of Address, of QI, bond, etc. within 30 days	*Other Changes:* "Other changes in material fact of a licensee shall be reported to the Commission within 30 days. Material changes include, but are not limited to: changes in business address; any criminal indictment or conviction of a licensee, QI, or officer; any voluntary or involuntary bankruptcy filed by or naming a licensee, QI, or officer; changes of five (5) percent or more of the common equity ownership or voting securities of the OTI; or, the addition or reduction of one or more partners of a licensed partnership, one or more members or managers of a Limited Liability Company, or one or more branch offices. No fee shall be charged for reporting such changes." (ANPRM 73)
C: §515.21 – Financial responsibility requirements	Current Bonds: OFFs: 50K NVOCCs: 75K Registered (unlicensed) NVOCC's: 150K Group Financial Responsibility: 3000K	**New Bond Rules:** 1. OFFs: 75K; NVOCCs: 100K; Registered NVOCCs: 200K; Group: 4000K 2. 515.21(a)(3) "revised to clarify that registered OTIs are strictly responsible for the acts or omissions of their employees and agents, wherever they are located" (ANPRM 19) 3. OTI's must restore bonds, and provide proof to the FMC that they have done so, within 60 days of a claim being made. Until they have done so, they cannot accept any new OTI business. Failure to do so within 60 days results in a license/registration revocation 4. See 515.21(e) ANPRM pp 21 & 75
N: §515.23(c) & (d) – Claims against an ocean transportation intermediary		Propose three levels of priority "tiers" for payment of claims against a bond. Shippers and consignees obtain first priority. (It is unstated whether an NVOCC is still a shipper in this case.) Then common carriers, marine terminal operators, and other third party creditors may claim. Claims of the agency itself would be paid last.

N: §515.23(e)		"Establishes requirements for common carriers, marine terminal operators and financial responsibility providers (pursuant to the terms of the financial instrument forms contained in the ANPR) to submit notice to BCL of court actions or claims filed or claims received (in the case of the providers). Those notices of court actions and claims will be published on the Commission's website for information purposes only. The notices would not be intended to indicate the merits or outcome of such actions or to indicate violations of the Shipping Act, the Commission's regulations or any other statute or regulation. For example, the general notices will provide shippers with timely information relevant to other parties' commercial experience with a particular OTI, whether or not a shipper pursues a claim of its own in court or with the financial responsibility provider." (ANPRM 22)
N: §515.23(f)(3)		Sureties would be prohibited from "paying any claims that amount to more than 20 percent of the face amount of the bond for a period of at least five months after the date the claim is received."
C: §515.24 – Agent for service of process		Mail or Courier to perform legal service on Registered NVOCCs. State rules still apply on Domestic entities.
C: §515.25 – Filing of proof of financial responsibility		Requires that foreign NVOCC's will not become officially registered until after producing proof of financial responsibility, submitting FMC-1 and publishing a tariff
C: §515.26		"Licenses and registrations may be revoked without hearing or other proceeding in the event that the required financial responsibility is terminated."

C: §515.31 – General duties		**Agent Oversight** - "OTI's must include their names and license or registration numbers on all shipping documents and communications (including written, printed and electronic communications), and require their agents to include the OTI principal's name, license or registration number on all shipping documents issued on behalf of the OTI" (ANPRM 27) - "OTIs are prohibited from using an agent to provide OTI services in the United States unless the agent includes the required information regarding its OTI principal in all shipping documents issued on its principal's behalf." (ANPRM 28) - Any entity that issues advertisements and/or shipping documents in its own name is presumed to be conducting OTI business. -"Agency agreements between OTIs and agents must be in writing, signed by the parties and made available to the Commission." (ANPRM 31) - No entity may advertise OTI services without having a license/registration and proof of bond.
C: §515.33		"All OTIs shall maintain records pertaining to their OTI business and that the records must be maintained in useable form and readily available to the Commission. This records retention requirement applies whether the records are kept in the United States or in foreign locations. The requirement to keep such records solely in the United States is deleted." (ANPRM 31)
D: §515.41(c)	Ocean freight forwarders must charge same fees to all shippers.	The FMC has determined that this is no longer necessary

C: §515.42	Submit a written notice to Carriers prior to collecting Brokerage Commission.	"515.42(c) is revised to specifically permit electronic certifications by forwarders to carriers that forwarding services have been provided. Such electronic certifications (e.g., exchanges of emails) must identify the shipments for which compensation is made and contain confirmations between the forwarder and the common carrier that the services for which forwarder compensation is to be paid have been provided. This provision will ensure, for example, that the forwarder will confirm the carrier's list of shipments is correct, and, if not, the forwarder will advise the carrier of shipments that should be added or deleted. Certifications must be retained for a period of 5 years by the common carrier." (ANPRM 32)
N:		Creation of new class of NVOCC: "Small package and Barrel" for household goods. (The Commission is seeking comments on such a change, not actually proposing it at this time.)
Appendices		The appendices haven't actually changed; the Agency has simply moved them all to the end of 515 to make the regulations more clear.