

FEDERAL MARITIME COMMISSION

46 CFR PART 515

[DOCKET NO. 07-06]

RIN 3072-AC33

**AMENDMENT TO REGULATIONS GOVERNING THE FILING OF
PROOF OF FINANCIAL RESPONSIBILITY**

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: The Federal Maritime Commission (“FMC” or “Commission”) amends its regulations governing proof of financial responsibility for ocean transportation intermediaries (“OTIs”) required to be filed prior to commencement of OTI services. The amendment reduces the amount of time an applicant has to file the requisite proof of financial responsibility from two years to 120 days, after approval of the applicant’s license application. Upon expiration of the 120-day time period, if valid proof of financial responsibility has not been provided by the applicant, its OTI application will be considered invalid. Applications approved prior to the effective date of this Final Rule will continue to be subject to the two-year time period to submit valid proof of financial responsibility.

DATE: Effective November 5, 2007.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

The Commission published a Notice of Proposed Rulemaking (“NPRM”) on July 25, 2007, in the Federal Register, 72 FR 40813-14, to amend its regulations at 46 CFR § 515.25(a) to require an applicant for an OTI license to provide valid proof of financial responsibility within 120 days of approval of its application, prior to issuance of a license by the Commission’s Bureau of Certification and Licensing. The current regulation allows an applicant two years from the date of approval in which to furnish proof of financial responsibility, failing which the application will be considered invalid by the Commission.

The Commission proposed this change for two reasons. First, if applicants illegally provide OTI services in the two years following approval but before procurement of financial responsibility, the statutory goal of protecting the shipping public is frustrated. Second, applicants’ inability or unwillingness to procure financial responsibility may indicate questionable financial integrity, a key factor in establishing an applicant’s fitness to perform OTI activities.

BCL staff analysis shows that the majority of new applicants obtain surety bonds within 120 days or less. Therefore, reducing the time for providing proof of valid financial responsibility to 120 days is unlikely to burden OTI applicants.

The Commission received two comments to its NPRM. The Transportation Intermediaries Association (“TIA”), whose members include OTIs, supports the Commission’s proposal to reduce the amount of time from two years to 120 days. TIA states that its member companies are put at a competitive disadvantage when other OTIs do not comply with laws or regulations. The National Industrial Transportation League (“NITL”) also provided comments in support of the NPRM. NITL’s members include OTIs and entities that use the services of OTIs. Both TIA and NITL believe that reducing the time for OTI applicants to provide proof of responsibility prior to offering OTI services will better protect the shipping public.

OTI applicants whose applications were approved prior to the effective date of the Final Rule will continue to have two years from approval in which to furnish proof of financial responsibility. If no proof is furnished within this period, the OTI application would be considered invalid, thereby requiring the filing of a new application. Any new application will be subject to the 120-day period for filing evidence of financial responsibility.

In addition, the Commission amends 46 CFR § 515.25(a) by deleting reference to supplementary investigations for the determination of an applicant’s continued qualification, if more than six months elapse between approval of the application and an applicant’s submission of financial responsibility to the Commission. The supplementary investigations will become unnecessary due to the reduction of time the applicant is permitted to obtain financial responsibility. Removal of the option of supplementary investigation from 46 CFR § 515.25(a)

likewise necessitates removing paragraph 515.5(b)(3), since the collection of fees for supplementary investigations will no longer be applicable.

This rule is not a “major rule” under 5 U.S.C. § 804(2) and therefore is not subject to review by the Office of Management and Budget’s Office of Information and Regulatory Affairs.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. §§ 601 et.seq., the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant 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 and which qualify as small entities under the guidelines of the Small Business Administration. The rule will decrease the amount of time an applicant has to file the requisite proof of financial responsibility upon approval of applicant’s license application, from two years to 120 days. The modifications in the rule will simplify the OTI licensing application process and increase administrative efficiency, 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. In its NPRM, the Commission stated its intention to certify this rulemaking. No comments from interested parties contested the Commission’s certification. Thus, the rule is hereby certified.

The rule contains no additional information collection or recordkeeping requirements. Therefore, the requirements of the Paperwork Reduction Act, 44 U.S.C. § 3501 et. seq., do not apply.

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 amends 46 CFR Part 515 as follows:

PART 515 -- LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

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

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 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, 41107-41109, 41301-41302, 41305-41307, 42101, and 42301-42307); Pub. L. 105-383, 112 Stat. 3411; 21 U.S.C. 862.

Sec. 515.5 [Amended]

2. In Sec. 515.5, remove paragraph (b)(3).


3. Amend Sec. 515.25(a) by removing the fourth sentence and revising the last sentence to read as follows:

Sec. 515.25 Filing of proof of financial responsibility.

(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