

§515.2

46 CFR Ch. IV (10–1–12 Edition)

intermediary license. Persons operating without the proper license may be subject to civil penalties not to exceed \$5,500 for each such violation unless the violation is willfully and knowingly committed, in which case the amount of the civil penalty may not exceed \$27,500 for each violation; for other violations of the provisions of this part, the civil penalties range from \$5,500 to \$27,500 for each violation (46 U.S.C. 41107–41109). Each day of a continuing violation shall constitute a separate violation.

[64 FR 11171, Mar. 8, 1999, as amended at 74 FR 50719, Oct. 1, 2009]

§515.2 Definitions.

The terms used in this part are defined as follows:

(a) *Act* means the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998.

(b) *Beneficial interest* includes a lien or interest in or right to use, enjoy, profit, benefit, or receive any advantage, either proprietary or financial, from the whole or any part of a shipment of cargo where such interest arises from the financing of the shipment or by operation of law, or by agreement, express or implied. The term “beneficial interest” shall not include any obligation in favor of an ocean transportation intermediary arising solely by reason of the advance of out-of-pocket expenses incurred in dispatching a shipment.

(c) *Branch office* means any office in the United States established by or maintained by or under the control of a licensee for the purpose of rendering intermediary services, which office is located at an address different from that of the licensee’s designated home office.

(d) *Brokerage* refers to payment by a common carrier to an ocean freight broker for the performance of services as specified in paragraph (n) of this section.

(e) *Commission* means the Federal Maritime Commission.

(f) *Common carrier* means any person holding itself out to the general public to provide transportation by water of passengers or cargo between the United

States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities.

(i) if the common carrier and the owner of those commodities are wholly-owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities, and

(ii) only with respect to those commodities.

(g) *Compensation* means payment by a common carrier to a freight forwarder for the performance of services as specified in §515.42(c).

(h) *Freight forwarding fee* means charges billed by a freight forwarder to a shipper, consignee, seller, purchaser, or any agent thereof, for the performance of freight forwarding services.

(i) *Freight forwarding services* refers to the dispatching of shipments on behalf of others, in order to facilitate shipment by a common carrier, which may include, but are not limited to, the following:

- (1) Ordering cargo to port;
- (2) Preparing and/or processing export declarations;
- (3) Booking, arranging for or confirming cargo space;
- (4) Preparing or processing delivery orders or dock receipts;
- (5) Preparing and/or processing ocean bills of lading;
- (6) Preparing or processing consular documents or arranging for their certification;
- (7) Arranging for warehouse storage;
- (8) Arranging for cargo insurance;
- (9) Clearing shipments in accordance with United States Government export regulations;
- (10) Preparing and/or sending advance notifications of shipments or other

Federal Maritime Commission

§515.2

documents to banks, shippers, or consignees, as required;

(11) Handling freight or other monies advanced by shippers, or remitting or advancing freight or other monies or credit in connection with the dispatching of shipments;

(12) Coordinating the movement of shipments from origin to vessel; and

(13) Giving expert advice to exporters concerning letters of credit, other documents, licenses or inspections, or on problems germane to the cargoes' dispatch.

(j) *From the United States* means oceanborne export commerce from the United States, its territories, or possessions, to foreign countries.

(k) *Licensee* is any person licensed by the Federal Maritime Commission as an ocean transportation intermediary.

(l) *Non-vessel-operating common carrier services* refers to the provision of transportation by water of cargo between the United States and a foreign country for compensation without operating the vessels by which the transportation is provided, and may include, but are not limited to, the following:

(1) Purchasing transportation services from a VOCC and offering such services for resale to other persons;

(2) Payment of port-to-port or multimodal transportation charges;

(3) Entering into affreightment agreements with underlying shippers;

(4) Issuing bills of lading or equivalent documents;

(5) Arranging for inland transportation and paying for inland freight charges on through transportation movements;

(6) Paying lawful compensation to ocean freight forwarders;

(7) Leasing containers; or

(8) Entering into arrangements with origin or destination agents.

(m) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

(n) *Ocean freight broker* is an entity which is engaged by a carrier to secure

cargo for such carrier and/or to sell or offer for sale ocean transportation services and which holds itself out to the public as one who negotiates between shipper or consignee and carrier for the purchase, sale, conditions and terms of transportation.

(o) *Ocean transportation intermediary* means an ocean freight forwarder or a non-vessel-operating common carrier. For the purposes of this part, the term

(1) *Ocean freight forwarder* means a person that—

(i) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and

(ii) processes the documentation or performs related activities incident to those shipments; and

(2) *Non-vessel-operating common carrier* (“NVOCC”) means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

(p) *Person* includes individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(q) *Principal*, except as used in Surety Bond Form FMC-48, and Group Bond Form FMC-69, refers to the shipper, consignee, seller, or purchaser of property, and to anyone acting on behalf of such shipper, consignee, seller, or purchaser of property, who employs the services of a licensed freight forwarder to facilitate the ocean transportation of such property.

(r) *Reduced forwarding fees* means charges to a principal for forwarding services that are below the licensed freight forwarder's usual charges for such services.

(s) *Shipment* means all of the cargo carried under the terms of a single bill of lading.

(t) *Shipper* means:

(1) A cargo owner;

(2) The person for whose account the ocean transportation is provided;

(3) The person to whom delivery is to be made;

(4) A shippers' association; or

(5) a non-vessel-operating common carrier that accepts responsibility for

§515.3

payment of all charges applicable under the tariff or service contract.

(u) *Small shipment* refers to a single shipment sent by one consignor to one consignee on one bill of lading which does not exceed the underlying common carrier's minimum charge rule.

(v) *Special contract* is a contract for freight forwarding services which provides for a periodic lump sum fee.

(w) *Transportation-related activities* which are covered by the financial responsibility obtained pursuant to this part include, to the extent involved in the foreign commerce of the United States, any activity performed by an ocean transportation intermediary that is necessary or customary in the provision of transportation services to a customer, but are not limited to the following:

(1) For an ocean transportation intermediary operating as a Freight forwarder, the freight forwarding services enumerated in §515.2(i), and

(2) For an ocean transportation intermediary operating as a non-vessel-operating common carrier, the non-vessel-operating common carriers services enumerated in §515.2(l).

(x) *United States* includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

[64 FR 11171, Mar. 8, 1999, as amended at 65 FR 15254, Mar. 22, 2000; 65 FR 26512, May 8, 2000]

§515.3 License; when required.

Except as otherwise provided in this part, no person in the United States may act as an ocean transportation intermediary unless that person holds a valid license issued by the Commission. A separate license is required for each branch office that is separately incorporated. For purposes of this part, a person is considered to be "in the United States" if such person is resident in, or incorporated or established under, the laws of the United States. 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.

46 CFR Ch. IV (10-1-12 Edition)

§515.4 License; when not required.

A license is not required in the following circumstances:

(a) *Shipper*. Any person whose primary business is the sale of merchandise may, without a license, dispatch and perform freight forwarding services on behalf of its own shipments, or on behalf of shipments or consolidated shipments of a parent, subsidiary, affiliate, or associated company. Such person shall not receive compensation from the common carrier for any services rendered in connection with such shipments.

(b) *Employee or branch office of licensed ocean transportation intermediary*.

(1) An individual employee or unincorporated branch office of a licensed ocean transportation intermediary is not required to be licensed in order to act solely for such licensee, provided that such branch offices:

(i) Have been reported to the Commission in writing; and

(ii) Are covered by increased financial responsibility in accordance with §515.21(a)(4).

(2) Each licensed ocean transportation intermediary will be held strictly responsible for the acts or omissions of any of its employees or agents rendered in connection with the conduct of its business.

(c) *Common carrier*. A common carrier, or agent thereof, may perform ocean freight forwarding services without a license only with respect to cargo carried under such carrier's own bill of lading. Charges for such forwarding services shall be assessed in conformance with the carrier's published tariffs.

(d) *Ocean freight brokers*. An ocean freight broker is not required to be licensed to perform those services specified in §515.2(n).

(e) *Federal military and civilian household goods*. Any person which exclusively transports used household goods and personal effects for the account of the Department of Defense, or for the account of the federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration, or both, is not subject to the requirements of subpart B of this