CERTIFIED EXPORT SPECIALIST (CES)

Case Study #003 – Federal Maritime Commission

Study Material & Quiz
Federal Maritime Commission
Study Material

Introduction

This case study will introduce you to the Federal Maritime Commission (FMC); the independent U.S. Government Agency that regulates ocean transportation in the U.S. trades (shipments that sail to or from U.S. ocean ports). We will focus on the requirements that impact ocean freight forwarders and Non-Vessel Operating Common Carrier (NVOCC).

Background

The FMC administers the Ocean Shipping Reform Act of 1984 (OSRA) which is implemented under 46 CFR 500-565, commonly referred to as “the FMC regulations”. The FMC is responsible for protecting the U.S. shipping public from unfair shipping practices, as you can see in their Mission and Vision statements and the excerpt listing some of the actions that they take.

The FMC’s Mission Statement is:

*To foster a fair, efficient and reliable international ocean transportation system and to protect the public from unfair and deceptive practices.*

The FMC’s Vision Statement is:

*Fairness and Efficiency in the U.S. Maritime Commerce.*

Source: [http://www.fmc.gov/about/about_fmc.aspx](http://www.fmc.gov/about/about_fmc.aspx)

The FMC ensures competitive and efficient ocean transportation services for the shipping public by:

- Reviewing and monitoring agreements among ocean common carriers and marine terminal operators (MTOs) serving the U.S. foreign oceanborne trades to ensure that they do not cause substantial increases in transportation costs or decreases in transportation services
- Maintaining and reviewing confidentially filed service contracts and Non-Vessel-Operation Common Carrier (NVOCC) Services Agreements to guard against detrimental effects to shipping
- Providing a forum for exporters, importers, and other members of the shipping public to obtain relief from ocean shipping practices or disputes that impede the flow of commerce
- Ensuring common carriers’ tariff rates and charges that are published in private, automated tariff systems and electronically available
- Monitoring rates, charges, and rules of government-owned or -controlled carriers to ensure they are just and reasonable
- Taking action to address unfavorable conditions caused by foreign government or business practices in U.S. foreign shipping trades
The FMC protects the public from financial harm, and contributes to the integrity and security of the U.S. supply chain and transportation system by:

• Helping resolve disputes involving shipment of cargo, personal or household goods, or disputes between cruise vessel operators and passengers
• Investigating and ruling on complaints regarding rates, charges, classifications, and practices of common carriers, MTOs, and Ocean Transportation Intermediaries (OTIs), that violate the Shipping Act
• Licensing shipping companies with appropriate character and adequate financial responsibility
• Identifying and holding regulated entities accountable for mislabeling cargo shipped to or from the United States

The Commission consists of 5 Commissioners (one designated as the Chairman) and a staff that manages a wide variety of functions, from licensing to enforcement and dispute resolution. They regulate Vessel Operating Common Carriers (VOCCs) and Terminals; International Household Goods Movers; Ocean Transportation Intermediaries (OTIs) which includes both Forwarders and NVOCCs; and Passenger Vessel Operators (Cruise Industry). We will focus on the sections of the regulations that impact OTIs.
Licensing Requirements 46 CFR 515

U.S. freight forwarders and NVOCCs must be licensed by the FMC. Foreign owned NVOCCs can either set up a U.S. company and be licensed, or they can simply register with the FMC. Unlicensed foreign based (registered) NVOCCs must have an “agent for process” in the United States (See 46 CFR 515.24).

To obtain a license, the forwarder and/or NVOCC must have proper financial backing, satisfied by the posting of a bond. A registered foreign NVOCC must post a higher bond than their licensed counterparts.

<table>
<thead>
<tr>
<th>OTI Type</th>
<th>Bond Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Freight Forwarder</td>
<td>$50,000 **</td>
</tr>
<tr>
<td>Licensed NVOCC</td>
<td>$75,000 **</td>
</tr>
<tr>
<td>Unlicensed Foreign Based NVOCC</td>
<td>$150,000</td>
</tr>
</tbody>
</table>

** Licensed OTIs must add $10,000 for each branch office

A company may apply for a license to operate as a forwarder, an NVOCC or both. The license itself will end in either “F” designating a forwarder license, “N” designating an NVOCC license or “NF” indicating that the applicant is licensed to act in both capacities. If you apply for a license as a Forwarder and NVOCC, you must obtain two bonds – one for each function (see: 46 CFR 515.21).

To ensure responsible supervision over both forwarding and NVOCC operations, the FMC requires that each licensed OTI appoint a “Qualifying Individual” (see: 46 CFR 515.11) who meets the experience and oversight requirements in the regulation.

What is the difference between a Freight Forwarder and an NVOCC?

Although many companies identify themselves as “freight forwarders” that handle transactions from beginning to end, the FMC makes a clear distinction between a freight forwarder and a Non-Vessel Operating Common Carrier (NVOCC). This differentiation is distinct to the United States.

As defined by the FMC, a freight forwarder may only make freight arrangements on behalf of its principal, booking cargo with a carrier (either a Vessel Operating Common Carrier (VOCC) or a Non-Vessel Operating Common Carrier (NVOCC), in exchange for a booking commission, referred to as “freight forwarder compensation” (46 CFR 515.42). A freight forwarder, shipping
cargo in and out of U.S. ports, is not allowed to mark up the ocean freight for profit nor are they allowed to issue bills of lading. The forwarder will prepare bill of lading instructions for the carrier so that they know how to issue the bill of lading, but the forwarder may not issue bills of lading in their own name.

An NVOCC, on the other hand, operates as a carrier, issuing bills of lading in its own name. In an NVOCC transaction, the NVOCC is the carrier in its relationship with the Beneficial Cargo Owner, and it is the Shipper on the underlying carrier (usually the “VOCC”) Master ocean bill of lading. The NVOCC “buys” space from the “VOCC” and then “re-sells” it to their customer at a profit. Therefore you will hear the terms “buy rates” and “sell rates”.

Although you may hear that you cannot be both a forwarder and an NVOCC on the same transaction, what this actually means that you CANNOT collect freight forwarder compensation as a forwarder AND ALSO mark up the ocean freight.

The FMC lists the typical services for both Forwarders and NVOCCs in 46 CFR 515.2 Definitions (source for the following definitions).

Freight Forwarder 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 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.

Preparing B/L Instructions to give to carriers. This is NOT issuing actual bills of lading.
NVOCC Services

(1) 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.

NVOCC Rate “Filing” Requirements

Both VOCCs and NVOCCs must “memorialize” their sell rates to their principal prior to receiving the cargo. For VOCCs, that can be done in their published tariff or in a Service Contract.

What do we mean by “receipt of cargo” from an NVOCC perspective?

• LCL: When the NVOCC receives cargo at its warehouse or when cargo is received by a co-loader on its behalf
• FCL (Port): When cargo is received by the VOCC
• FCL (Through Rate): When cargo is received by the intermodal carrier; when cargo is loaded into the container at the shipper’s premises (on door moves)

Note: When an NVOCC issues a Bill of Lading, that B/L is a contract of carriage between the NVOCC and its principal. The principal is either the shipper or the consignee. If an NVOCC has a “freight collect” shipment where the business was sold by an agent overseas, the rate that must be filed is the final sell rate that the overseas agent is charging that customer.

Exceptions

Certain products are exempt from rate filing requirements. These include bulk cargo, forest products, recycled metal scrap, new assembled motor vehicle, waste paper, and paper waste. For a full list, see 46 CFR 520.13.
Rate “Filing” Methods

For NVOCCs, there are three methods of “maintaining” -- also known as “memorializing” -- sell rates:

1. **NVOCC Tariff ( “Common Carriage”)  46 CFR 520**
   - Requirements apply to both VOCCs and NVOCCs
   - Everyone pays the same rate for the same commodity between the same 2 points/ports
   - Tariffs must be available to the public therefore rates are not confidential
   - Most common, but most restrictive

2. **NVOCC Rate Arrangement (NRA)  46 CFR 532**
   - For use of NVOCCs only (not VOCCs)
   - Mimics a quote with some additional requirements
   - Rates are confidential
   - Somewhat restrictive / record keeping requirements

3. **NVOCC Service Arrangement (NSA)  46 CFR 531**
   - For use of NVOCCs only – but essentially the same as Service Contracts used by VOCCs
   - NSA and amendments are filed with the FMC
   - Certain “essential terms” are filed in the tariff, but NSAs are otherwise confidential.
   - Most flexible

Each method has different regulatory requirements which must be adhered to by the NVOCC.

**Tariff Requirements**

The regulations include rules that govern NVOCC tariffs. Some examples of the requirements follow:

- Rates must remain effective for a minimum of 30 days
- You must give 30 days notice in the tariff to increase a rate or surcharge*
  * Note: Tariff rules apply to surcharges in NRA rules tariffs as well.
- Rates and surcharges can be reduced immediately upon filing
- There can only be one rate for a single commodity between the same two points or ports
- There are compliant methods that can be used to differentiate rates:
  - Service or transit time
  - Structure (CY/CY, Door/Door, CY/Door, Door/CY, etc.)
More specific commodity description (but never something that doesn't properly describe the commodity) Note: The more specific commodity rate always applies

Size/weight/length (as an example: up to and including 25 cbm vs. over 25 cbm)

- Examples that you cannot use: Brand names, customer names, synonyms

**NRA Requirements 46 CFR 532.5**

The NRA is the method that closely resembles a regular quotation. It exempts NVOCCs from certain requirements listed under the Ocean Shipping Reform Act 46 U.S.C. Part A Ocean Shipping and the corresponding listed sections under 46 CFR 520. There are currently, however, some requirements that are not part of normal business practices. The NVOCC must adhere to all of the NRA requirements if they elect to use this more flexible method.

- The NVOCC must post a notice in a prominent place in its rules tariff
- The NVOCC must offer free electronic access to its rules tariff
  - Unless specifically exempted, all FMC rules for tariffs continue to apply
- The NVOCC and its principal (customer) must agree to the NRA in writing before cargo is received at origin by the NVOCC or its agent
  - Email and other electronic communication acceptable if it shows acceptance
  - Neither a booking nor receipt of cargo constitute “written acceptance” of the NRA.
- An NRA cannot be changed once first shipment has been received
- If an NRA refers to the surcharges in its Rules Tariff, the surcharge amount is locked in at the amount at the time of receipt of the first shipment
  - GRIs and surcharge increases cannot be applied 46 CFR 532.5(e)
  - Long term NRAs are not recommended
  - No other terms (such as a volume commitment) can be included in an NRA
- NRAs must be available for review by the FMC for 5 years from the completion date of performance (i.e. delivery of the last shipment against that NRA) 46 CFR 532.7
- The FMC seems to consider 30 days as a reasonable amount of time to be able to produce records. This is not stated in the regulations
  - The FMC can disqualify the NVOCC from using the NRA exemption if they are not able to produce the records timely
NSA Requirements

The NSA is the equivalent of a VOCC Service Contract. All NSAs and their subsequent amendments must be uploaded to the FMC in their SERVCON system. Cargo cannot be received until the NSA is uploaded. These contracts are otherwise confidential. They are flexible and allow special terms (example: lower rates in exchange for volumes). They are appropriate for long term arrangements.

- NSAs can refer to tariff surcharges which can be charged at the amounts in effect at the time of shipment (i.e. not locked in like they would be with an NRA)
- Changes can be made only by uploading a signed amendment into the SERVCON system

Application of Rates

Rates must be applied according to your tariff rules. Surcharges must be charged according to the tariff rules unless the single line item rate supersedes the tariff amount. The rates that must be filed must be the sell rates that cover that contract of carriage and the commodity represented on the bill of lading. The rates shown on the NVOCC bill of lading, the amount invoiced to the principal (actual customer) and the amount collected must all match the filed rate. You must be able to demonstrate to the FMC that you collected the amount filed in your tariff, NRA or NSA.

Co-Loading 46 CFR 520.11(c)

Co-loading means the combining of cargo by two or more NVOCCs for tendering to an ocean common carrier under the name of one or more of the NVOCCs. Many NVOCCs co-load cargo with other NVOCCs. The regulations require that the existence of this “Carrier to Carrier” agreement be noted in the tariff. There should not be a bill of lading issued, therefore you are likely to receive a document that looks like a bill of lading but which might be titled “receipt for shipment”.

Fines and Penalties

Within the FMC, the Bureau of Enforcement is responsible for investigating non-compliance to the regulations. Some examples of violations are failure to file a tariff, charging rates that are not in (or are different from) the tariff/NRA/NSA, paying rebates or accepting rebates from carriers, using someone else’s Service Contract or allowing a party to use your Service Contract. Fines will be issued on a per occurrence basis.
The current fines (May 2015) are:

- Violation: $9,000 per occurrence
- Knowing violation: $45,000 per occurrence
- Operating without a tariff: $80,000

Fines are adjusted periodically. To see the current penalty amounts, refer to 46 CFR 506.4 – “Cost of Living Adjustments to Civil Monetary Penalties”

**Record Keeping**

OTIs must maintain records for a period of 5 years. The “5 year period” is defined differently in various sections of the regulation.

**Freight Forwarders:** The FMC calls out specific requirements for Freight Forwarders which include keeping: records in the United States for 5 years; records of financial data; separate files for each shipment with copies of documents and invoices for services; and receipts and disbursements by shipment (See 46 CFR 515.33).

**NVOCCs:** Must maintain:

- Tariffs: For 5 years from the date the information is superseded, cancelled or withdrawn. As an example, if the NVOCC expires all of the rates in their tariff with 30 days’ notice, they must keep a copy of their tariff available for 5 years from the expiration date (46 CFR 520.10).
- NSAs: For 5 years from the termination of each NSA (See 46 CFR 531.12)
- NRAs: For 5 years from the completion date of performance of the NRA. In other words, 5 years from the date you complete the last transaction covered by that NRA (46 CFR 532.7).
1. **What is the law administered by the Federal Maritime Commission?**
   - The Foreign Trade Regulations
   - The Ocean Shipping Reform Act of 1984 (OSRA)
   - The Maritime Administration Act

2. **A foreign NVOCC must be licensed by the FMC.**
   - True
   - False

3. **The position in an NVOCC responsible to the FMC for properly managing the FMC requirements within an NVOCC organization is called:**
   - Empowered Official
   - Qualifying Individual
   - Ocean Freight Manager

4. **Which method of maintaining sell rates does not apply to NVOCCs?**
   - NRA
   - Service Contract
   - Public Tariff
   - NSA

5. **What is the current fine for operating without a tariff?**
   - $45,000
   - $50,000
   - $75,000
   - $80,000

6. **I am an NVOCC handling a shipment loading on the rail in Chicago and sailing out of the port of Montreal. Am I required to file a rate?**
   - Yes
   - No
7. The FMC does not regulate which of the following?
   - Cruise Ship Industry
   - Longshoremen
   - Freight Forwarders
   - Vessel Carriers
   - International Household Goods Movers

8. Which of the following is not considered a Freight Forwarder Service under the FMC Regulations?
   - Preparing export declarations
   - Arranging for cargo insurance
   - Preparing bill of lading instructions
   - Purchasing transportation services from a VOCC and offering for resale to the customer

9. I am an NVOCC and I do not want my competitors to see my sell rates. How can I avoid that?
   - Tell your tariff publisher not to allow access to your tariff.
   - Use NRAs and NSAs instead of tariff filing.
   - File different rates in the tariff than you actually charge.

10. I am a U.S. company and have applied for an OTI license to perform NVOCC functions only. I have a corporate office in New York and branch offices in Miami, Houston and Los Angeles. How much is the bond I must post?
    - $50,000
    - $75,000
    - $105,000
    - $150,000
11. My company has opted to use NRAs exclusively. I have posted a notice in my tariff as required. I issued an NRA (quotation) to my customer on March 27 advising that the rate will be subject to my tariff Bunker Adjustment Factor (BAF). The NRA is valid for 15 days. The customer has accepted the NRA in writing. The first shipment is received on March 30. My tariff BAF is $450.00. A second shipment is received on April 2. My tariff BAF increased to $500.00 on April 1. I can charge $500.00 because the NRA is subject to my tariff BAF

   o True
   o False

12. I am an NVOCC. My agent at origin is a registered foreign NVOCC. On my import shipments, the agent issues his own house bills of lading. Do I still have to file rates?

   o Yes
   o No

13. I am an NVOCC. My agent at origin is a registered foreign NVOCC. For shipments that they ship to me, they use my house bills of lading, which is allowed under our agency agreement. Do I have to file rates?

   o Yes
   o No

14. I am an NVOCC. I issued an NRA for 1 x 20 Ft. Container of machinery for sell rate of $2500.00 All Inclusive. The first shipment has been received, and now I realized that my buy rate actually increased to $2600.00 so I’ll be losing $100.00. I explained the situation to my customer who agreed to a new sell rate of $2700.00. Because the customer agreed to the increase in writing, we are OK, right?

   o Yes
   o No

15. I am not an NVOCC. I am a freight forwarder arranging transportation on behalf of my customer. I have arranged to move a 40’ container to Rotterdam at a rate of $3500.00. I have built in my profit and will be invoicing my customer $3600.00. This is OK, right?

   o Yes
   o No
16. How much experience is required to be the Qualifying Individual for an OTI?

- 5 years in international business
- 3 years working for an importer or exporter’s logistics department
- 3 years as an OTI

17. My FMC license number is 1234F. I am allowed to issue Bills of Lading.

- True
- False

18. Where in the regulation will I find the requirements for NVOCC Service Arrangements?

- 46 CFR 515
- 46 CFR 531
- 46 CFR 506
- 46 CFR 520

19. Which commodity is not exempt from tariff filing / NRA / NSA requirements?

- Bulk cargo
- Metal Scrap
- Used self-propelled vehicles
- Waste paper
- All of the above are exempt

20. What is the bond amount required for a freight forwarder?

- $150,000
- $50,000 plus $10,000 for each branch office
- $50,000
- $75,000 plus $10,000 for each branch office