



FIATA Group Bond Programme

Does Your Company Need to Register with the United States Federal Maritime Commission?

If you act as an **NVOCC** and provide transportation by water of cargo between the U.S. and another country (whether import or export) for compensation without operating the vessels by which the transportation is provided, **the answer is YES**. To put it another way, if you issue your house bill of lading for ocean shipments between another country and the U.S., you need to register. Following are a few frequently asked questions:

May I share my license to operate as an OTI with an unlicensed person or company?

No, only a licensee may operate pursuant to its license.

What can happen to me if I continue to operate without registering and obtaining proof of financial responsibility?

If the U.S. Federal Maritime Commission (FMC) determines that you are operating without their knowledge and without proof of financial responsibility and a tariff, you will be fined. Fines range from US\$6,000 to US\$60,000 per violation. Your ability to move cargo to/from the U.S. will be impacted as will your relationships with trading partners in the U.S.

How often does the FMC fine NVOCCs that are operating in violation of U.S. regulations?

It happens all the time. *Some examples follow:*

A Hong Kong based NVOCC and an unlicensed NVOCC: An NVOCC based in Hong Kong, allegedly accessed another OTI's service contract and utilized the services of an unlicensed NVOCC, as destination agent in the U.S. for shipments made under this service contract, in violation of section 515.3 of the FMC's regulations. The unlicensed NVOCC allegedly violated the Shipping Act by failing to have a license, proof of financial responsibility, or a tariff at the time it performed these services for the Hong Kong based NVOCC. In settlement of these allegations, the Hong Kong based NVOCC and the unlicensed NVOCC collectively paid \$22,000.

A company in Mexico City, Mexico: A company in Mexico City, Mexico previously held

itself out as a VOCC in the U.S. trades, but does not operate any vessels in the U.S. trades. It was alleged that this company violated the Shipping Act by operating as an OTI without license, bond, or tariff and by failing to provide transportation services in accordance with the routes, rules, and rates set forth in its published tariff. In compromise of these allegations, this company made a payment of \$45,000.

A Hong Kong shipping company: A Hong Kong shipping company has been ordered by the FMC to pay a civil penalty of US\$7,900,000. This company has also been ordered to cease and desist from operating as an NVOCC serving the U.S. According to an FMC Docket, this company violated the Shipping Act by misuse of service contracts with several ocean carriers, and by operating as an NVOCC without a valid bond for over six months. The civil penalty of US\$7,900,000 in this case was based on \$22,500 for each of 120 violations of section 10(a) (1) and \$25,000 for each of 208 days (September 4, 2002 to March 31, 2003) that the company continued to operate as an OTI/ NVOCC without a surety bond, in violation of section 19(b) (1) of the 1984 Act. These penalties are close to the maximum allowed by law.

A collection agent based in New York and two freight forwarders located in Spain: Company A and Company B are located in Spain where both operate as freight forwarders. A third company (Company C), based in New York, served as the U.S. collection agent, and as consignee or notify party for shipments handled by Company A. These three companies have common owners and/or officers. It was alleged that the three companies acted as an ocean transportation intermediary (OTI) in the U.S. foreign trades without an NVOCC bond, a tariff, and an OTI license. It was also alleged that these companies unlawfully accessed the service contract of an ocean carrier in order to obtain transportation at less than the applicable rates and charges of the carrier. These three Companies paid FMC the sum of \$90,000.

What are the requirements of an unlicensed non-U.S.-based NVOCC OTI?

A non-U.S.-based NVOCC OTI that is not resident in, or incorporated or established under

the laws of the U.S. and intends on remaining unlicensed, must file proof of financial responsibility in the amount of US\$150,000. It must also identify an agent for service of process in the U.S. and use a licensed OTI for any OTI services performed in the U.S. on its behalf. It must also file Form FMC-1 with the FMC and publish and maintain a tariff.

Can I become licensed if I choose to?

While most non-U.S. based NVOCCs find it easier to remain unlicensed, you have the option to become licensed if you choose. Non-U.S.-based NVOCCs that choose to be licensed must submit Form FMC-18, together with the required documentation and the fee. In addition, it must establish a presence in the U.S. such as an unincorporated branch office. The qualifying individual may obtain his experience outside the U.S. The amount of financial responsibility is \$75,000 plus \$10,000 for each unincorporated branch office in the U.S. other than the one used to establish a presence. A Form FMC-1 must be filed and a tariff must be published and maintained.

How can I satisfy the FMC's financial responsibility requirement?

FIATA has entered into an agreement with Avalon Risk Management, Inc. Avalon can assist you in becoming a member on the FIATA Group Bond, posted with the FMC.



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www.avalonrisk.com

To become a member on the
FIATA Group Bond
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