SOLAS Weight Certification. The SOLAS container weight verification requirements will take effect July 1, 2016. These will be mandatory globally on all containerized maritime shipping. Shippers, including non-vessel operating common carriers (NVOCCs), must provide a certified gross weight certificate to the ocean carrier and the port terminal operator before loading vessels. This requirement will impact shippers and ocean transportation intermediaries (OTIs) to the extent that an OTI is contractually bound to provide or arrange those services for its customers or is acting as a NVOCC, since a NVOCC is treated as a shipper for purposes of SOLAS. Failure to properly certify cargo weight can lead to ocean carrier penalties, terminal penalties and cargo being held (and not loaded) at the terminal.

OTIs and their customers need to prepare now for this requirement by identifying facilities with appropriate scales for this process, reviewing insurance policies for proper coverage and including provisions in tariffs, housebills and other terms and conditions to properly allocate costs for damages resulting from SOLAS issues. Hapag-Lloyd stated that it would leave misdeclared and overweight containers off its vessels. APMT, and likely other terminals, will offer a weighing service to ensure that containers passing through its ports and loaded onto vessels are properly declared. For intermediaries and shippers, the best course of action will be to find their own weighing sources. Failure to plan for compliance may result in costly consequences.

New FMC Regulations. The Federal Maritime Commission has issued final rules governing the licensing, bond requirements and duties of OTIs (NVOCCs and ocean freight forwarders). Most of these rules took effect on December 9, 2015; the rules on three-year license renewals take effect December 9, 2016. NVOCCs and ocean forwarders should note the renewal date of their license(s). Failure to renew by the deadline results in revocations. Other changes include:

- **Bonds.** Bond requirements for branches have been eliminated.

- **Claims, court action and judgment information.** Surety companies must now notify the FMC of claims against bonds, court actions and/or judgments against licensees and registered NVOCCs. The FMC cannot make these public, but they could bring the FMC to your door.

- **Document requests.** OTIs must promptly respond to requests from authorized FMC representatives for all records and books of accounts maintained by the OTI and its agents. Because overseas agents are not
generally prone to respond to these kinds of requests, OTIs could face related regulatory consequences. Overseas agents that generate their own cargo that moves on your housebill often do not view themselves as agents, but in this instance, they are. Contract language concerning documentation requests could help secure the requested documents or establish mitigating circumstances.

**Responsibility for acts of agents.** A new regulation states: “A licensed ocean transportation intermediary shall be fully responsible for the acts and omissions of any of its employees and agents that are performed in connection with the conduct of such licensee's business.” Care must be taken to define whether third-party activities are handled by an agent versus an independent contractor, de-emphasizing the agency relationship where possible.

**Port Congestion/Demurrage Issues Continue.** Congestion continues to grow at large U.S. ports, especially at the two largest U.S. container gateways, Los Angeles-Long Beach and New York-New Jersey, both of which are dealing with bigger ships and continuing chassis supply and trucker issues. This situation will be exacerbated in early spring by the opening of the expanded Panama Canal, providing larger vessels easy access through the canal.

While the West Coast labor problem was settled, demurrage and detention issues have and will continue. Of primary concern are serious demurrage and detention charges assessed when shippers are precluded from a timely pickup of their containers through no fault of their own. We expect this will continue.

Current California law protects truckers from demurrage and detention charges that result through no fault of their own. Until the FMC implements regulations that provide the same protection to shippers, including NVOCCs, demurrage and detention charges will continue to be assessed unfairly under the antiquated tariff system. In the meantime, NVOCCs should include clear language in their tariffs to protect themselves from such charges.

**Trucking Changes.** Several changes in trucking laws and practices could impact shippers, including transportation intermediaries. To minimize risk and avoid costly unintended consequences, shippers should be mindful of the following:

**Motor carrier safety data.** The Fixing America's Surface Transportation Act (FAST Act) was signed by President Obama on December 4, 2015. One of its many provisions (including restoration of the Export-Import Bank) requires that the Compliance, Safety, Accountability (CSA) and Safety Measurement System (SMS) data related to motor carrier compliance and safety performance be removed from public viewing on the Federal Motor Carrier Safety Administration website. This information can now be retrieved only by government agencies and the motor carriers themselves. The data are unavailable to transportation intermediaries, including property brokers, who are required to vet motor carriers for shipper customers unless the motor carriers provide it.

If transportation intermediaries have contractual obligations with customers to vet motor carriers with whom they arrange transport for safety ratings, the best practice is to require the motor carrier(s) retained to provide their safety ratings periodically as a condition of hiring them for transport.

**Port drivers.** The California Labor Commissioner's office ruled in December 2015 that 37 drivers at Carson-based Pacific 9 Transportation, which hauls goods between the ports of Los Angeles and Long Beach, qualify as employees, not independent contractors. The decision affects approximately 12,000 drivers in California. This will likely affect other port drivers throughout the nation as well, resulting in increased costs to truckers that will be passed on to shippers, including OTIs/NVOCCs.

OTIs will need to keep an eye on this development for pricing purposes. While the decision may result in pricing increases for motor carrier transport, it also may help reduce the recent truck driver shortages that contributed to port congestion issues, among other things.

**Coercion of Commercial Drivers.** On November 30, 2015, the Department of Transportation (DOT) issued its final rule prohibiting coercion of commercial drivers. The rule expands the current whistleblowing provisions, jointly administered by the Department of Labor and the DOT, to apply to coercion by not only motor carriers but also transportation intermediaries, consignees and shippers. Covered drivers are protected
from discharge, discipline or discrimination for engaging in certain protected activities focusing on safety regulations issued for the trucking industry.

DOT has indicated it will investigate any “non-frivolous” claim that a motor carrier, shipper, receiver or transportation intermediary, or its respective agent, officer or representative, has coerced a driver to operate a commercial motor vehicle in violation of federal safety regulations.

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