



## Frequently Asked Questions

### New Federal Maritime Commission Rules (FMC) and Safety of Life at Sea (SOLAS) Convention

#### SOLAS: Post Webinar Q&A

This FAQ addresses a number of issues. The following are comments from the USCG Assistant Commandant for Prevention Policy, Rear Adm. Paul Thomas in response to raised issues and questions at the conclusion of an FMC meeting held in February of 2016.

- . Delayed implementation is not an option. SOLAS is an international convention ratified by the U.S. and most major flag states that applies to vessels, not ports or shippers.
- . Most vessels loading in the U.S. are foreign-flag ships from IMO signatory countries. Those countries will implement the VGM requirement as to their vessels, and the U.S. has no say in that.
- . USCG will not impose fines under SOLAS with respect to inaccurate weight certificates because USCG does not believe it has any enforcement authority to do so.
- . USCG does not plan to adopt or publish any allowable error variance.
- . Regarding enforcement, USCG observes that a container without a compliant VGM certificate will be subject to a hold order and can't be loaded, but there will be no fines. Once the container is weighed or the shipper provides a certificate, the container can be loaded.
- . The ultimate message from USCG is that the shipping industry must find business solutions. USCG is not convinced it needs to or has any jurisdiction to take any steps, but will continue to listen and facilitate such solutions if possible.

**Q.** Is it acceptable for a drayage carrier to scale a container on way to the port and put the weight documentation with other documents?

**A.** As a Commercial issue, the objective of the SOLAS amendments is to ensure that the carrier and terminal operator have available as a condition for ship loading an accurate gross mass of each packed container. Shippers should develop effective procedures in conformance with the SOLAS requirements to obtain such information with that objective in mind. There is no requirement that the carrier or terminal operator weigh a packed container for which the shipper has already provided the verified gross mass. If, however, the packed container is weighed, for whatever reason, and the gross mass is different from that provided by the shipper by an amount deemed to be material, then the carrier and terminal operator will need to have a process for determining which value to use. VOCCs will determine what notice of VGM is required. *Source: Verified Gross Mass Industry FAQs, December 2015.*

**Q.** Simple math. Individually: tare, product and pallet weights are known. Is hand written total weight amount on shippers BOL be acceptable?

**A.** Verified Gross Mass = actual container weight plus weight of cargo loaded into the container.

**Q.** How can we protest this? This regulation is not operationally practical!

**A.** Send comments to USCG by using this [link](#).

**Q.** SOLAS compliance seems to imply the shipper on the MBL is the responsible party. That would make an NVOCC the responsible party always!

**A.** The shipper on the VOCC MBL is the responsible party.

**Q.** How will we verify weight 100% if the container is shipper, load stow and count?

**A.** Use a scale that complies with national and state law.

**Q.** So, if we are the NVOCC and we have a customer loading a container at their warehouse and they declare 10,000 kgs, do we just accept that or do we have to have that verified? How?

**A.** The shipper must verify the weight and sign a weight certification. This is an International and National issue: As an International issue, nothing in SOLAS would prevent a company from offering such a service as long as the company uses weighing equipment that meets the applicable accuracy standards and requirements of the state in which the equipment is used. However, a shipper using the mass obtained from a company providing such verified gross mass and provide it to the carrier and the terminal operator. However, mass should be obtained using calibrated and certified weighing equipment that complies with the accuracy standards of the jurisdiction in which the equipment is used. As a National issue, in jurisdictions that do not implement Method 2 registration and certification requirements, where a freight forwarder enters into contracts of carriage with maritime carriers (i.e. acts as a principal), it is the freight forwarder who is named as the shipper on the maritime carrier's bill of lading and as such is legally responsible under SOLAS for obtaining and providing the verified gross mass. If such a freight forwarder, named as shipper on the bill of lading, seeks to rely on another party (such as a customer) to provide that verified gross mass information, it is the forwarder's responsibility to be satisfied that the other party accurately determines the verified gross mass that is then provided to the carrier. If the forwarder is acting as an agent, it will not be named as shipper on the bill of lading. Consequently, it will not be responsible for obtaining and providing the verified gross mass; the shipper named on the bill of lading will.

*Source: Verified Gross Mass Industry FAQs, December 2015.*

**Q.** If we have to verify the weight and take and weight, obviously there will be a fee for that. Do you see this being a new fee in the industry?

**A.** Yes, the costs are expected to be as high as \$300.

**Q.** Will the terminals or steam ship lines reject the containers from loading if the weight is declared as 10,000 kgs and it weighs more or less than the declared amount?

**A.** The amount of variation depends on the state the goods are loaded. How the VOCC deals with under or overweight container will depend on the VOCC, tariff and regulation.

**Q.** Who is considered the principal when a foreign agent issues their own paper or carriers paper but was instructed to do so by the US OTI Foreign NVOCC is the principal?

**A.** The Foreign NVOCC is the principal.

**Q.** Regarding SOLAS compliance, is it the shipper on the MBOL or the HBOL?

**A.** It is the shipper on the MBL issued by the VOCC.

**Q.** When will verifying the weight be enforced?

**A.** July 1, 2016.

**Q.** Is there any differentiation on the application of these regulations for Jones Act steamship lines which are governed by the STB rather than the FMC?

**A.** Safety Of Life At Sea - this international convention is the most important treaty protecting the safety of merchant ships. It divides all vessels in two groups: SOLAS and non-SOLAS vessels. SOLAS vessels need to comply with GMDSS satellite and radio equipment carriage requirements. SOLAS vessels are all cargo ships of 300 GT and upwards and all passenger ships with some exceptions. Detailed SOLAS vessels definition may be found in ALRS Volume 5. Non SOLAS vessels do not need to comply with GMDSS radio equipment carriage requirements, but will increasingly use it, because that causes an important increase of the safety at sea. Some countries have incorporated GMDSS radio equipment carriage requirements into their domestic marine legislation that is valid for non SOLAS vessels under their flag.

**Q.** How do we account for variable weight of fuel onboard truck is weighing container after loading?

**A.** VGM variation is an issue of concern. Reference this [link](#) to navigate to the USCG's website for additional information.

**Q.** How do we account for the variable weight of the fuel onboard the truck (not part of truck tare weight) when getting weight from weigh station on the way to the port?

**A.** VGM variation is an issue of concern. Reference this [link](#) to navigate to the USCG's website for additional information.

**Q.** How does this regulation or rule change the Intermodal Safe Container Act where the person that loads the container has the primary responsibility for the proper cargo weight that is loaded into a container. Does the Intermodal Safe Container Act not apply with this new ruling?

**A.** No.

**Q.** Bill of Lading only refers to the Vessel Operator and not the NVOCC, correct?

**A.** VOCC.

**Q.** My concern is enforcement once the container reaches the U.S. If a container is found to not be accurate, the importer is now affected. I understand the USCG is putting out a policy letter this month that has not been posted so no one is really sure on their enforcement handling. Are we to assume they still be able to pick up the container, does it get detained, how does the USCG go about fining a foreign shipper?

**A.** Reference this [link](#) to navigate to the USCG website for additional information.

**Q.** Does the "rule" clearly stipulate it's the VOC BL, and not the lowest HBL?

**A.** VOCC MBL

### **FMC: Post Webinar Q&A**

**Q.** Please clarify when the new licensing process begins.

**A.** NEW - The FMC will grant NEW OTIs licenses that expire three years after issuance. OTIs will have to renew their licenses after every three-year period by applying online no later than 60 days prior to the renewal date of the license. RENEWAL - Existing licenses will be phased-in over a three-year period in order to facilitate smooth and timely processing by Commission staff. More over, the renewal requirement will be implemented only when the necessary programming of the Commission's computer systems has been completed and tested so that on-line processing can be reliably activated. To this end, the renewal requirements of § 515 .14( c) and (d) will become effective, and implementation of the on-line renewal process will commence, December 9,2016. The FMC expects it to work with a sign on - password, but is not sure. They are still trying to determine how it will work.

**Q.** Will the FMC prompt license holders as to the renewal every 3 years?

**A.** They are planning to send notices to the tariff publisher, surety, and last known address of OTI. I recommend that OTI update their contact details with FMC.

**Q.** If my license was issued in April 2010, I will have to renew my license in 2017 but no later than 60 days prior to that date?

**A.** You have an existing license. Renewals will be phased in. FMC is planning to notify OTIs.

**Q.** Well, in any case, will we be notified by the FMC?

**A.** That is the plan. I recommend you update your contact details with the FMC, surety and tariff publisher.

**Q.** Does the FMC require that QI references reside in or be residents of the U.S.?

**A.** No. But the FMC will call them or send them an e-mail so the reference must be responsive.

**Q.** When does the three year renewal process start? We've had our license for 20+ years. December 9th 2016 or 2017?

**A.** Phased in. FMC is working on the process.

**Q.** Can you clarify what an "Unincorporated Branch" is?

**A.** An unincorporated branch that has the same corporate status as the parent and is merely registered in the state, not separately incorporated.

**Q.** I understand the three year renewal but from what date will the three years be counted from?

**A.** Phase in over time; the FMC will send notices. It will depend on the FMC and they are still working on how to implement.

**Q.** Existing license holders will NOT have to apply until December 9, 2019, right?

**A.** FMC will notify of the phase in period.

**Q.** Are references required as part of the renewal process?

**A.** No.

**Q.** FMC renewal - if license issued 12-01-10 the renewal must be sent 60 days prior to 12-01-19 = 10-02-19; correct?

**A.** Renewals will be phased in and the FMC will send notice. OTIs should update their contact details with FMC, surety and tariff publisher.

### **Getting a VGM compliant weight is a three step process:**

1. NTEP Certification - Does the scale have a Certificate of Compliance?: reference [link 1](#) or [link 2](#) to confirm.
2. Calibration - If the scale is certified, is it calibrated and reported to the local county weight and measure office?
3. State Certification - If 1 & 2 are met, does the scale have a seal certified by the local county inspector placed on it? Reference this [link](#) to confirm

**If the answer to these three questions is a "yes," then I am of the opinion that the scale can offer a VGM certified weight.**