



NOTICE OF PROPOSED REGULATION AMENDMENTS – May 5, 2015

Pursuant to the Waterfront Commission of New York Harbor Resolution dated March 25, 2015, the Commission proposes to amend its regulations to address the concerns of warehouse operators and representatives of the commercial real estate industry regarding the scope of the Commission's jurisdiction and the applicability of the Waterfront Commission Act to their members. The proposed regulations clarify the exercise of the Commission's jurisdiction, and implement fair and equitable provisions consistent with the Commission's statutory mandate insofar as warehouses are concerned.

The proposal provides for the issuance of a conditional stevedore license to warehouses that are engaged to perform labor or services involving, or incidental to, the movement of freight into or out of containers (which have been or which will be carried by a carrier of freight by water) at locations outside of a marine terminal, upon submission of an annual self-certification of compliance. In lieu of the statutory assessments, those warehouses may elect to make an annual payment in the amount of \$2,500. Such warehouses would be exempt from the current application requirements, audits, and licensing requirements for longshoremen and other security personnel.

The amendments also clarify that freight must be handled within 1,000 yards of a pier that is in regular use for the movement of non-bulk (i.e., break-bulk or containerized) freight between vessel and shore in order to be considered "waterborne freight," and that the Commission will only consider such piers in its 1,000-yard measurement for purposes of designating other waterfront terminals. In addition, other waterfront terminals shall not exceed 1,000 yards from the currently established boundaries of such piers.

The proposed amendments promote the Commission's mission of Port efficiency and economic growth, fair hiring and employment, and combatting criminality, while ensuring that the operations of warehouses in the direct Port vicinity and that of the commercial real estate industry are not adversely impacted by the Commission's activities.

A copy of the Commission's proposed regulatory amendments are attached.

DATES AND ADDRESSES:

Comments and related materials must be submitted in writing on or before May 26, 2015. The proposed amendments will be presented for Commission approval at a public meeting held on May 27, 2015, 2015 at 9 a.m. at 39 Broadway – 4th Floor, New York, New York 10006. Anyone wishing to present their comments on the record may also do so at that meeting.

Please submit written comments using one of the listed methods:

- **Mail:** Waterfront Commission of New York Harbor, 39 Broadway - 4th Floor, New York, New York 10006; Att: Phoebe S. Sorial, General Counsel (or hand delivery to same address between 9 a.m. to 5 p.m., Monday through Friday);
- **Email:** Phoebe Sorial at psorial@wcnyh.gov; or
- **Fax:** (212) 480-0587.

FOR FURTHER INFORMATION CONTACT:

If you have questions on the proposed amendments, please contact Phoebe Sorial at (212) 905-9202.

Grey Highlight = Additions

~~Strike Through = Deletions~~

Section 3.2 Persons required to be licensed as stevedores; persons not required to be licensed as stevedores.

(a) A stevedore license is required by any person (other than an employee) who is engaged under a contract or other arrangement with a carrier of freight by water or a licensed stevedore or, with respect to paragraphs (2) and (3) of this subdivision only, any person within the meaning of that term contained in part II, § 5-a(6)(c) of the Act (1969 amendments) (including a parent corporation or a subsidiary corporation of such carrier or licensed stevedore or "any person"):

(1) in the movement of waterborne freight carried or consigned for carriage by such carrier on vessels of such carrier berthed at piers, on piers at which such vessels are berthed or at other waterfront terminals, or to provide clerking and checking services in connection therewith; or

(2) to perform all or any part of labor or services incidental to the movement of waterborne freight on vessels berthed at piers, on piers or at other waterfront terminals (including marine terminals), including, but not limited to, cargo storage or warehousing, cargo repairing, marine carpentry, strapping, lashing, chocking, coopering; weighing; scaling, cargo inspection and sampling, maintenance, mechanical, container or equipment repair, crane maintenance and repair, tire repair, vehicle preparation, export packing, labeling, cleaning and maintenance services, horse and cattle fitting and grain ceiling; or

(3) to perform labor or services involving, or incidental to, the movement of freight into or out of containers (which have been or which will be carried by a carrier of freight by water) on vessels berthed at piers, on piers or at other waterfront terminals. ~~;~~ ~~or~~

(4) A license issued under paragraph (2) or (3) of this subdivision shall be restricted to the performance of the services contemplated by said paragraph.

(b) Absent extraordinary circumstances, a conditional stevedore license shall be granted to any person who is engaged to perform labor or services involving, or incidental to, the movement of freight into or out of containers (which have been or which will be carried by a carrier of freight by water) only at a warehouse, depot or other terminal which is located outside of a marine terminal (i.e. "other waterfront terminal"), upon submission of an annual self-certification of compliance indicating that the prospective licensee:

(1) maintains books and records containing a true and accurate account of the receipts and records arising out of his activities within the Port of New York district; and

(2) selects and hires employees in a fair and non-discriminatory manner in accordance with the requirements of applicable state and federal equal employment opportunity laws; pays such employees in accordance with applicable state and/or federal minimum wage requirements and/or applicable collective bargaining agreement(s); has not been issued any citation for willful violation(s) of federal or state laws or regulations relating to the health, safety or welfare of its employees at such other waterfront terminal within the preceding five (5) years; and has not hired any individual who is not required to fulfill the duties for which he or she is to be compensated (i.e., no-show or low-show employment); and

(3) does not have, as an officer, director, member, manager, partner, principal stockholder, or person with direct operational managerial authority, any individual who has been convicted of a felony within the preceding five (5) years; has not, to the best of his knowledge, hired any person who has been convicted of a racketeering activity within the preceding five (5) years, or any person who has been identified by a federal, state or local law enforcement agency as a member or an associate of organized crime group, a terrorist group, or a career offender cartel (as those terms are defined by § 5-h(6) and §5-i(6) of the Act); and has not, to best of his knowledge, hired any person whose application for registration or licensure has been denied, or whose registration or license has been revoked or suspended, by the Commission.

(c) Any person granted a conditional stevedore license pursuant to this Part may, in lieu of assessments, elect to make an annual payment in the amount of \$2,500. Such payment shall not exceed assessments that would have otherwise been required under Article XIII(3) of the Act.

(d) Persons issued a conditional stevedore license under Paragraph (b) of this Part shall be exempt from the application provisions set forth by Article VI(2) of the Act and the expenses of administration provisions as set forth by Part II, §2(A) of the Act.

(e) Any person ineligible for a conditional stevedore license by reason of inability to certify self-compliance with the provisions set forth in Paragraph (b) of this Part may petition the commission for a waiver of ineligibility, setting forth the reason(s) for such inability to certify self-compliance. The commission may in its discretion issue an order removing such ineligibility upon a showing of good cause.

(f) A conditional stevedore license issued under Paragraph (b) of this Part shall be renewable on an annual basis, and shall be restricted to the performance of the services contemplated by said paragraph.

~~(b)~~ (g) A stevedore license shall not be required:

(1) by any person engaged exclusively in moving by means of floating mechanical equipment bulk cargo consisting of a single commodity loaded or carried without wrappers or containers and delivered by the carrier without transportation mark or count; or

(2) by any person who is not principally engaged in the movement of waterborne freight and who on occasion moves waterborne freight for or on behalf of a carrier of freight by water or a stevedore, exclusively by means of mobile land-based cranes not affixed to a pier or terminal with capacity of at least 20 tons, or exclusively by means of floating mechanical equipment; or

(3) by any person who furnishes such equipment as set forth in paragraph (2) of this subdivision to move waterborne freight to a carrier of freight by water or stevedore by lease, rental or otherwise; or

(4) by any person who is not engaged to handle freight within 1000 yards of a pier that is in regular use for the movement of waterborne freight between vessel and shore.

~~(c)~~ (h) A carrier of freight by water shall not require a stevedore license even though it may perform all or part of the services for which a stevedore license would be required when performed by any other person, provided that such services are performed on its own account, or on account of a parent corporation or a subsidiary corporation of such carrier, or as accommodation, not in the regular course of its business, at its own pier for another carrier of freight by water, or as part of its services for another carrier of freight by water for which it is a general agent.

(i) For purposes of this Part, the distance from a pier to other waterfront terminals shall not exceed 1000 yards from the currently established boundaries (i.e., fence line) of a pier, inclusive of cargo handling facilities and storage yards in which containers and other waterborne freight (i.e., non-bulk cargo) are placed while awaiting removal from the pier to another location. Such boundaries shall be identified and published by the Commission within 90 days of the effective date of this amendment.

Section 3.3 Freight excluded from definitions of waterborne freight.

For the purposes of article VI of the Act and this Part, waterborne freight shall not include:

(a) freight loaded within the Port of New York District upon motor vessels not in excess of 115 foot length; or

(b) freight that is not handled within 1000 yards of a pier that is in regular use for the movement of waterborne freight between vessel and shore.

Section 4.2 Persons required to be registered as longshoremen; Persons not required to be registered as longshoremen.

(a) Inclusion in the longshoremen's register as a longshoreman is required for any person:

(1) who is employed to handle waterborne freight by a carrier of freight by water or by a stevedore at a pier or other waterfront terminal, including, without being limited to, gang foremen, dock gang foremen, headers, gangwaymen, winchmen, dockmen, holdmen, terminal labor operators of mechanical equipment, sorters and baggage porters; or

(2) who is employed by a carrier of freight by water or by a stevedore, physically to perform labor or services incidental to the movement of waterborne freight on vessels berthed at piers, on piers or at other waterfront terminals (including marine terminals within the meaning of the Act), including, without being limited to, cargo storagemen and warehousemen, cargo repairmen, marine carpenters, container loaders and strippers, lashers, chockers, coopers, weighers, scalers, cargo inspectors and samplers, trailer interchange inspectors, maintenance, mechanical, container or equipment repairmen, crane maintenance men and repairmen, tire repairmen, vehicle preparers, export packers, labelers, cleaning and maintenance personnel, horse and cattle fitters and grain ceilers; or

(3) who is indirectly employed by a carrier of freight by water or by a stevedore, through a subsidiary or parent corporation of, or a contractor with, either of them, physically to perform the labor or services described in paragraph (2) of this subdivision; or

(4) who is employed by any person for work at a pier or other waterfront terminal physically to move waterborne freight to or from a barge, lighter or railroad car for transfer to or from a vessel of a carrier of freight by water which is, shall be, or shall have been berthed at the same pier or other waterfront terminal; or

(5) who is employed by any person, other than by a carrier of freight by water or by a stevedore, to perform labor or services involving or incidental to the movement of freight at a location in a marine terminal within the meaning of the Act.

(b) Inclusion in the longshoremen's register as a longshoreman is not required for:

(1) jobs limited to the handling of liquid cargoes in bulk in tanks (such as, but not limited to, fuel oils, petroleum or orange juice), or carriage by barge of bulk cargoes consisting of a single commodity (such as, but not limited to, cement, gravel, coal, grain or ore) loaded or carried without wrappers or containers or limited to the handling of cargoes transported from one point to another point within the Port of New York District; or

(2) jobs limited the handling of waterborne freight within 1000 yards of a pier that is not in regular use for the movement of waterborne freight between vessel and shore; or

~~(2)~~ (3) any person who is regularly engaged in the performance of labor or services not covered by subdivision (a) of this section and who is only incidentally engaged in the performance of labor or services covered by said subdivision (a) where permission therefor has been previously obtained from the commission; or

~~(3)~~ (4) persons who are regularly employed to perform labor or services not covered by subdivision (a) of this section and who are assigned by such employer to the performance of labor or services covered by said subdivision (a) only to meet special or emergency needs for the protection of the public health or safety where approval therefor has been previously obtained from the commission; or

(5) persons who are employed by any person who, pursuant to Section 3.2(b) of this Title, has been granted a conditional stevedore license upon submission of an annual certification of compliance.

Section 5.2 Requirement for license.

(a) No person shall act as a security officer, supervisory security officer or management security officer within the Port of New York District without first having obtained a license or temporary permit from the commission. No person shall employ a security officer, supervisory security officer, or management security officer who has not obtained such license or temporary permit.

(b) Licensure under this Part shall not be required by persons who are employed by any person who, pursuant to Section 3.2(b) of this Title, has been granted a conditional stevedore license upon submission of an annual certification of compliance.