

(S E R V E D)  
( MARCH 10, 2006 )  
(FEDERAL MARITIME COMMISSION)

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 06- 04**

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**REVOCATION OF LICENSES  
FOR FAILURE TO COMPLY WITH THE  
FINANCIAL RESPONSIBILITY REQUIREMENTS OF  
THE SHIPPING ACT OF 1984**

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**ORDER TO SHOW CAUSE**

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Since enactment of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. §§ 1701-1721, section 19<sup>1</sup> of the statute set forth the licensing and bonding requirements applicable to ocean freight forwarders, while section 23 of the 1984 Act established separate bonding requirements for non-vessel-operating common carriers ("NVOCCs"). Effective May 1, 1999, the 1984 Act was modified and updated by the passage of the Ocean Shipping Reform Act of 1998 ("OSRA"), Pub. L. 105-258, 112 Stat. 1902. OSRA delineated a new category of regulated entity called an ocean transportation intermediary ("OTI"), defined to include both freight forwarders and NVOCCs. While continuing the statutory requirements of the 1984 Act that all OTIs submit a surety bond as proof of financial responsibility, a revised section 19 for the first time required that NVOCCs

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<sup>1</sup> 46 U.S.C. app. § 1718 (1984).

operating in the United States be licensed by the Federal Maritime Commission (“Commission”).

Concurrent with the effective date of OSRA, the Commission prescribed new regulations at 46 C.F.R. Part 515 (*Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries*), implementing those revisions to the 1984 Act with respect to OTI licensing and financial responsibility (64 FR 11156, March 8, 1999). The Commission’s OTI regulations specify that each OTI must establish its financial responsibility by furnishing the Commission a surety bond, evidence of insurance or evidence of guaranty to provide coverage for damages, reparations or penalties arising from the OTI’s transportation-related activities. See 46 C.F.R. § 515.22. In the case of surety bonds, the regulations specify that such bonds must be issued by a surety company found acceptable by the Secretary of the Treasury. 46 C.F.R. § 515.22 (a).<sup>2</sup>

By notice issued June 23, 2003, the Department of Treasury terminated the Certificate of Authority issued to American Motorists Insurance Company, which had qualified that company as an acceptable surety on Federal bonds. Under the Treasury program, bonds that are continuous in nature remain valid and effective for the purposes issued, but may no longer be renewed. Commencing with the anniversary date of such termination, OTIs holding surety bonds issued by American Motorists Insurance Company were obligated to replace their OTI bond with a valid bond issued by a surety company currently certified by Treasury.

Contacts by Commission staff over an extended period have resulted in licensees

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<sup>2</sup>The Department of Treasury maintains an extensive list of approved surety bonding companies, known as Circular 570. Circular 570 is published on Treasury’s website at: [www.fms.treas.gov/c570/index.html](http://www.fms.treas.gov/c570/index.html).

voluntarily furnishing replacement evidence of financial responsibility with respect to all but 21 of the licensees previously covered by American Motorists Insurance Company bonds. In October and November 2005, the Commission contacted the licensees by phone and by formal letter, notifying each remaining licensee that continued failure to comply with bonding requirements placed them at risk of license revocation or other action to suspend such OTI's right to continue operations in the U.S. trades. Following direct notice to the affected parties and an extended period to bring themselves into compliance, it appears that the 8 OTIs listed in the attached Schedule A no longer meet the requirements for demonstrating financial responsibility imposed by section 19 of the 1984 Act.

NOW THEREFORE, IT IS ORDERED That pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. §1710, the entities listed in Schedule A to this Order are directed to show cause why the Commission should not revoke their licenses for failure to comply with section 19 of the Shipping Act of 1984, 46 U.S.C. app. §1718, as amended, and 46 C.F.R. § 515.22 (a).

IT IS FURTHER ORDERED That pursuant to section 11 of the Shipping Act of 1984, the entities listed in Schedule A to this Order are directed to show cause why the Commission should not order each of them to cease and desist from operating as an ocean transportation intermediary in the foreign trade of the United States, for failure to comply with section 19 of the Shipping Act of 1984, as amended, and 46 C.F.R. Part 515;

IT IS FURTHER ORDERED That this proceeding is limited to the submission of affidavits of facts and memoranda of law;

IT IS FURTHER ORDERED That any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.72. Such petition shall be accompanied by the petitioner's memorandum of law and affidavits of fact, if any, and shall be filed no later than the day fixed below;

IT IS FURTHER ORDERED That the entities listed in Schedule A to this Order are named as Respondents in this proceeding. Affidavits of fact and memoranda of law shall be filed by Respondents and any intervenors in support of Respondents no later than April 17, 2006;

IT IS FURTHER ORDERED That the Commission's Bureau of Enforcement be made a party to this proceeding;

IT IS FURTHER ORDERED That reply affidavits and memoranda of law shall be filed by the Bureau of Enforcement and any intervenors in opposition to Respondents no later than May 17, 2006;

IT IS FURTHER ORDERED That rebuttal affidavits and memoranda of law shall be filed by Respondents and intervenors in support no later than June 1, 2006;

IT IS FURTHER ORDERED That:

(a) Should any party believe that an evidentiary hearing is required, that party must submit a request for such hearing together with a statement setting forth in detail the facts to be proved, the relevance of those facts to the issues in this proceeding, a description of the evidence which would be adduced, and why such evidence cannot be submitted by affidavit;

(b) Should any party believe that an oral argument is required, that party must submit a request specifying the reasons therefore and why argument by memorandum is inadequate to present the party's case; and

(c) Any request for evidentiary hearing or oral argument shall be filed no later than May 17, 2006;

IT IS FURTHER ORDERED That notice of this Order to Show Cause be published in the *Federal Register*, and that a copy thereof be served upon each respondent at its last known address;

IT IS FURTHER ORDERED That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.118, and be mailed directly to all parties of record;

FINALLY, IT IS ORDERED That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.61, the final decision of the Commission in this proceeding shall be issued by October 31, 2006.

By the Commission.



Bryant L. VanBrakle  
Secretary

**Schedule A – Licensees in the United States**

<b>Organization No.</b>	<b>Name</b>
004278	Cambell & Gardiner, Inc.
008727	Ken Lehat & Associates, Inc.
015494	Ocean Transportation Services, LLC
011405	Interfreight, Inc.
016391	Caribbean American Shipping Corp.
008751	Ford International Forwarding, Inc.
016817	Independence Shipping Lines, Ltd.
017387	S & B International Freight Forwarders, Inc.