

FEDERAL MARITIME COMMISSION

46 CFR Part 515

DOCKET NO. 13-05

RIN 3072-AC44

**Ocean Transportation Intermediary Licensing and Financial Responsibility
Requirements, and General Duties**

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules governing the licensing, financial responsibility requirements and duties of Ocean Transportation Intermediaries. The proposed rule is intended to adapt to changing industry conditions, improve regulatory effectiveness, improve transparency, streamline processes and reduce regulatory burdens.

DATES: Comments are due on or before December 12, 2014.

ADDRESSES: Address all comments concerning this proposed rule to:

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001
Phone: (202) 523-5725
Email: secretary@fmc.gov

FOR FURTHER INFORMATION CONTACT:

Vern W. Hill, Managing Director
Office of the Managing Director
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001
Phone: (202)523-5800
Email: OMD@fmc.gov

SUPPLEMENTARY INFORMATION:

Submit Comments: Include in the subject line: Docket No. 13-05, Comments on Ocean Transportation Intermediary Regulation Revisions. Non-confidential filings may be submitted in hard copy or as a Microsoft Word or PDF attachment addressed to secretary@fmc.gov. Confidential filings must be accompanied by a transmittal letter that identifies the filing as “confidential” and describes the nature and extent of the confidential treatment requested. Any comment that contains confidential information must consist of the complete filing and be marked by the filer as “Confidential-Restricted,” with the material claimed to be confidential clearly marked on each page. A public version must be submitted with the confidential version if applicable. The Commission will provide confidential treatment to the extent allowed by law for submissions, or parts of submissions, for which the filer requests confidentiality. Questions regarding filing or treatment of confidential responses to this notice should be directed to the Commission’s Secretary, Karen V. Gregory, at the telephone number or e-mail provided in this notice.

Background

In 1998, Congress passed the Ocean Shipping Reform Act (OSRA), Public Law 105-258, 112 Stat. 1902, amending the Shipping Act of 1984 in several respects relating to ocean freight forwarders (OFFs) and non-vessel-operating common carriers (NVOCCs), defining both as ocean transportation intermediaries (OTIs). The Commission thereafter adopted new regulations at 46 CFR Part 515 to implement changes effectuated by OSRA. Licensing, Financial Responsibility Requirements, and

General Duties for Ocean Transportation Intermediaries, 28 SRR 629 - 654 (March 8, 1999). (Docket No. 98-28 Final Rule).

On May 21, 2013 the Commission published an Advance Notice of Proposed Rulemaking (ANPR) proposing the first significant modifications to Part 515 in fourteen years. 78 FR 32946, May 31, 2013. The Commission received over eighty comments from the public within the extended comment closing date. Though OTIs submitted the largest number of comments, significant comments were also submitted by associations of OTIs, vessel operating common carriers (VOCCs), groups of VOCCs, individual financial responsibility providers and surety associations. After reviewing the comments and identifying provisions that had drawn strong views from a sizeable number of OTIs and others, the Commission determined to make the following changes in the modifications proposed in the ANPR:

- Drop all proposed financial responsibility increases. ANPR section 515.21. The current required levels will remain unchanged.
- Eliminate new potential qualifications specified for OTIs and their Qualifying Individuals (QIs). ANPR sections 515.2(p), 515.11(a)(1) - (2), (b), (c), (e). Also dropped the proposed shortened deadline for replacing a QI after the QI's death, retirement or resignation. ANPR section 515.20(c). The current 30-day requirement to replace a QI is retained.
- Remove the proposed additional bases specified for revocation or suspension of licenses (ANPR section 515.16) and termination or suspensions of registrations of foreign-based NVOCCs (ANPR section 515.19(g)).

- Delete the proposed tiered claim and claim processing system that would give shippers priority to the proceeds of an OTI's financial responsibility. ANPR section 515.23(c)-(d). The current rules covering claims and claim processing remain unchanged. The requirement in ANPR section 515.21(a)(4), that OTIs restore their financial responsibility to the full required amount within 60 days of a claim being paid against it, is also dropped.
- Eliminate draft requirements on common carriers and marine terminal operators to notify the Commission of their court or other transportation claims against OTIs, as well as the requirement that such notifications would be published on the Commission's website. ANPR section 515.23(e) – (f).
- Delete the proposed added documentation requirements for OTIs and agents (ANPR section 515.31(a) and (c)), including a requirement for agency agreements to be in writing (ANPR section 515.31(k)).
- Remove the potential provision establishing a rebuttable presumption that an agent acts on its own behalf if it does not include the name and license or registration number of an OTI on documents the agent issues. ANPR section 515.23(a).
- Drop the proposed new requirements on OTIs to include their license and registration numbers in their advertisements and to require their agents to include their principals' names and addresses in their advertising. ANPR section 515.31(j)(1).

- Remove a new requirement on OTIs and agents not to include false or misleading information in advertisements. ANPR section 515.31(j)(2).
- Remove proposed provision establishing a rebuttable presumption that an entity has performed the services it advertised. ANPR section 515.31(j)(3).
- Delete the term “Advertisement” in ANPR section 515.2(a), as a consequence of the elimination of ANPR section 515.31(j).
- Drop fees for renewals of OTI licenses and registrations.
- Drop the proposal for a Certificate of Good Standing to be submitted for renewals.

The Commission determined to drop from this proceeding further consideration of a new NVOCC license category for those operating only in the household goods trade. Features of such a license category would be a lower financial responsibility requirement, tailored standards for such OTIs, and the development of guidelines for such a separate license category. Such a license category was included as one of a number of recommendations adopted by the Commission with respect to its consideration of the Final Report for Fact Finding Investigation No. 27, Potentially Unlawful, Unfair or Deceptive Ocean Transportation Practices Related to the Movement of Household Goods or Personal Property in U.S.-Foreign Oceanborne Trades. Other suggestions deemed beyond the scope of the changes proposed for the Commission’s OTI regulations will not be considered for purposes of this NOPR.

The Notice of Proposed Rulemaking

The modifications in this NOPR address changes in industry conditions, streamline internal processes, improve transparency, and remove unwarranted regulatory burdens. The NOPR also reflects the Commission's experience in implementing the current regulations since 1999, and addresses issues and questions that have arisen over time.

The NOPR includes several issues first addressed in the ANPR:

- Carries forward requirements for renewal of licenses and registrations but the frequency is changed to every three years (from 2 years), and provides that renewal forms will be entirely on-line and user-friendly.
- Carries forward the requirement that common carriers verify OTI licenses and registrations, tariff publication and financial responsibility, provided such verifications can be made at a single location on the Commission's website.
- Carries forward a new expedited hearing procedure, subject to the following provisions: (1) the procedure will not result in summary revocations, terminations or suspensions; (2) a licensee must be given notice and a hearing for failure to renew; and, (3) appeals to the Commission remain available for adverse decisions.

Significant proposed changes are discussed below.

Subpart A – General

Section 515.2 - Definitions

The Commission proposes to remove several definitions that are no longer relevant to the Commission's regulatory activities, including "ocean freight broker" (§515.2(n)), "brokerage" (§515.2(d)) and "small shipment" (§515.2(u)).

In addition, the Commission proposes modifying the definition of "person" (§515.2(n)). The revised definition not only conforms to the definition of "person" in 1 U.S.C. 1, but also specifically includes "limited liability companies," while retaining the current language that entities covered are those "existing under or authorized by the laws of the United States or of a foreign country."

The definition of "principal" (§515.2(o)) is revised to make it more concise and is not intended to change its meaning or scope. This definition has been carried forward over the decades substantially unchanged but always limited in focus to principals of licensed ocean freight forwarders. It was first promulgated pursuant to the Shipping Act, 1916, as amended, and carried forward in regulations implementing the Shipping Act of 1984 and OSRA.

It is significant that the type of principal referred to in this definition is the person or entity to whom a licensed ocean freight forwarder owes a fiduciary duty. In contrast, the use of the word "principal" in these regulations is focused upon an OTI's status (whether an NVOCC or a licensed ocean freight forwarder) as the principal with respect to the various types of agents that the OTI may employ to carry on its business.

The absence of a definition for “principal” where it refers to an OTI acting as the principal is consistent with the Commission’s decision in 1999 not to define the term agent when implementing the OSRA amendments. There the Commission reasoned that defining “agent” was unnecessary “because the term is used . . . to reflect the large body of agency law. The Commission does not want to inappropriately alter that definition, thus limiting or conflicting with the law relied on by the shipping industry in applying these regulations.” Docket No. 98-28 Final Rule, *supra* at 28 SRR 651. The Commission adheres to its prior view that there is no need to further define the term “principal” in such contexts.

The definitions of “freight forwarding services” (§515.2(h)) and “non-vessel-operating common carrier services” (§515.2(k)) are also revised to better reflect OTIs’ current practices and terminology. For example, “freight forwarding services” are revised to include preparation of “export documents, including required ‘electronic export information,’” rather than being limited to preparation of paper-based export declarations (§515.2(h)(2)). OFF and NVOCC services are both revised to include preparation of ocean common carrier and NVOCC bills of lading “or other shipping documents” (§515.2(h)(5) and §515.2(k)(4)). The change ensures that the services cover preparation of the documents pursuant to which cargo is transported whether or not they are “equivalent” to ocean bills of lading, as provided in the current definition of “freight forwarding services.” 46 CFR §515.2(h)(5).

As indicated above, the ANPR definition of “advertisement” in section 515.2(a) is deleted as unnecessary, consistent with the deletion of ANPR section 515.31(j).

Proposed section 515.2(a) contains the definition of “Act or Shipping Act of 1984.” These alternative references to the Commission’s governing statute, as recodified into positive law in 2006, appear throughout Part 515.

The definition of “registered non-vessel-operating common carrier” is new. It identifies NVOCCs that are located outside of the United States and opt to register rather than to obtain a license.

The term “qualifying individual” is added and defines QI as an individual who meets the Shipping Act’s experience and character requirements. The QI must meet those requirements at the time a license is issued and must thereafter maintain the necessary character. The OTI must timely replace the QI, as provided by the Commission’s rules, when the designated QI ceases to act as the QI, whether by resignation, retirement or death.

Section 515.3 – License; when required

This section is modified to delete, as unneeded, a requirement that “separately incorporated branch offices” must be licensed when they serve as agent of a licensed OTI. All separately incorporated entities that perform OTI services, for which they assume responsibility for the transportation, are covered by the requirements that they be licensed and otherwise comply with the financial responsibility obligations of Part 515. The Commission also deletes the requirement that only licensed intermediaries in the United States may perform OTI services on behalf of “an unlicensed ocean transportation intermediary” (i.e., foreign-based NVOCC), substituting in its stead the requirement that

“registered NVOCC[s]” must use licensed OTIs as agents in the United States with respect to OTI services performed in the United States.

Section 515.4 – License; when not required

Section 515.4(b) - Branch Offices. The Commission proposes to eliminate the regulatory burden associated with procuring and maintaining additional financial responsibility to cover an OTI’s unincorporated branch offices by deleting the reference to obtaining additional financial responsibility currently set out in section 515.4(b)(ii). A corresponding change is made to section 515.21 by deleting the current text of paragraph 515.21(a)(4). The rule also proposes to delete section 515.4(d), which refers to ocean freight brokers, as it is no longer needed.

Section 515.5 – Forms and fees.

Section 515.5(b) is modified to provide that all license applications and registration forms must be filed with the Commission electronically unless a waiver request to file on paper is granted by the Director of the Bureau of Certification and Licensing. Electronic filing anticipates the implementation of on-line filing and processing of all applications and forms.

Section 515.5(c)(1) has been added and requires OTIs to pay applicable fees within ten (10) business days of the time of submission of such applications and forms. As the Commission has developed the ability to receive on-line payments by credit or debit cards via Pay.gov and the Automated Clearing House system, the payment of any applicable fees is simplified and facilitates the OTI’s ability to pay within the 10-day

window. Failure to make timely payment could cause an application or registration to be rejected.

Section 515.5(c)(2) is added to make it easier for OTI applicants and licensees to quickly find the fees that apply to filings they make, by setting out all fees applicable under Part 515 (e.g., fees for filing of license applications and registrations) in one place. Section 515.5(c)(2) directs OTIs to the substantive sections in Part 515 that give rise to the fees.

Subpart B – Eligibility and Procedure for Licensing; Procedure for Registration

Section 515.11 – Basic requirements for licensing; eligibility.

The revisions in ANPR section 515.11(a)(1) have been dropped from further consideration, and the paragraph as it appears in the Commission's current regulation will remain unchanged, except for the addition of a sentence clarifying the experience required of a foreign-based NVOCC that elects to become licensed. Such foreign-based NVOCCs must acquire the requisite experience with respect to shipments in the United States oceanborne foreign commerce, though the experience may be acquired in the U.S. or a foreign country. The added sentence reflects the standard that has been applied by the Commission since 1999.

The current content of section 515.11(a)(2) is modified by deleting its content as redundant. The requirements in section 515.21(a) (prohibiting all persons from operating as an OTI without having furnished the required financial responsibility) and §515.22 (requiring an OTI establish its financial responsibility prior to the date it commences

furnishing OTI services) clearly provide that an OTI must first obtain financial responsibility before it performs OTI services.

The new content inserted in section 515.11(a)(2), as proposed, makes it clear that the Commission may consider all information relevant to the determination of whether the applicant has the necessary character to render OTI services. Types of information that may be considered include, but are not limited to: violations of any shipping laws or statutes relating to the import, export or transport of merchandise in international trade; operating as an OTI without a license or registration; state and federal felonies and misdemeanors; voluntary and non-voluntary bankruptcies not discharged; tax liens; court and administrative judgments and proceedings; non-compliance with immigration status requirements; and denial, revocation, or suspension of a Transportation Worker Identification Credential or of a customs broker's license. The types of information that may be considered with respect to character, set out in NOPR section 515.11(a) (2), reflect the types of information that the Commission's Bureau of Certification and Licensing (BCL) has considered and applied during the 15 years since the current regulations went into effect. This section informs applicants of issues that should be addressed in filing their applications so as not to unnecessarily delay processing of their applications.

The current content of section 515.11(a)(3) is no longer needed. The paragraph is deleted, as it provided for NVOCCs that had tariffs and financial responsibility in place at the time the OSRA licensing requirements went into effect in 1999 to be temporarily grandfathered pending promulgation of regulations.

The existing requirement in section 515.11(b)(2) that all partners must execute an OTI's application is deleted. The current wording of 515.11(b)(3) as to corporations is retained.

Section 515.11(b)(4) is added to identify the positions within the management structure of an LLC that are eligible to be designated as QI. The QI may be an "officer" of an LLC if the LLC's operating agreement so provides. The Commission has applied this standard since the current regulations were promulgated in order to adapt to OTIs' frequent election to form their businesses as LLCs.

The Commission considers it desirable to revise section 515.11(e) to mirror the Commission's 1999 clarification that, in order for a foreign-based NVOCC to establish a presence in the United States for purposes of obtaining a license, it "must set up an unincorporated office that is resident in the United States." Docket No. 98-28, Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries (Confirmation of interim final rule and correction), 28 SRR 667, 668 (FMC 1999).

Section 515.12 – Application for license.

Section 515.12(a) is revised to clarify instructions on filing a license application, including the payment of fees. The Commission recently issued a direct final rule establishing that notices of application filings shall be made on the Commission's website. See, Docket 14-08, *Procedure for Public Notification of Ocean Transportation Intermediary Licensing Activity*, 79 FR 42986, July 24, 2014. The direct final rule similarly provides that Commission notices of license revocations and suspensions,

required by section 515.16(b), will be made on the Commission's website. As this rule has already become effective, there is no need to further address it in this rulemaking proceeding.

Section 515.12(b) is revised to provide for rejection of applications that are facially incomplete or where the applicant fails to meet the requirements of the Shipping Act or the Commission's regulations. The application fee is returned to the applicant along with a statement of reasons for the rejection.

A new section 515.12(c) establishes a process pursuant to which BCL shall close applications where applicants fail to timely provide information or documents needed for review. The date for submission of such information will be provided by BCL to the applicant. The Commission will apply section 515.12(c) reasonably and flexibly. Once the date has been established for a response by BCL, the applicant should keep BCL fully informed as to the reasons for any response delays in order to avoid closure of its application. Applicants whose applications are closed may reapply at any time.

With the addition of the new content inserted in section 515.5(c), the content of current section 515.12(c) (Investigation) is redesignated as section 515.12(d). Section 515.12(d) is redesignated as 515.12(e) and is revised to require that BCL be promptly advised only of changes in material facts relevant to an application. The Commission's current section 515.12(e) is superseded by the electronic filing requirement in section 515.5(b).

Section 515.14 – Issuance, renewal, and use of license.

Section 515.14(c) is new. The Commission's proposes to change license and registration renewal periods to every three (3) years, rather than two years as proposed in the ANPR. If adopted, OTI licenses will be issued for an initial three year period and renewed every three years thereafter.

Section 515.14(d)(1) is also new and requires licensees to renew their licenses 60 days prior to the renewal date of their license by up-dating an on-line form with any changes or corrections that they find in the information displayed on screen. This paragraph also provides that a new license bear a renewal date on the same day and month as the date on which the license was originally issued, with the renewal day and month remaining the same for successive renewals. The renewal date remains the same regardless of the date a renewal form is submitted or the date a renewed license is issued. This feature provides ongoing certainty to the licensee as to its status.

The proposed renewal process for OTIs is straightforward as their license will be issued with renewal dates by which renewal must be completed. The license renewal requirement is intended to ensure that information essential to the Commission's oversight of OTIs is verified periodically. Renewal will require licensed OTIs to verify on-line their QIs' identification and contact information, changes in business or organization, trade names, tariff publication information, physical address, and electronic contact data. OTIs would only update information that is no longer accurate.

Renewals by licensees will provide the Commission with updated information that the Commission currently requires in sections 515.12(d) and 515.18 (the content of

current section 515.18 is located in NOPR section 515.20). At any given time, BCL has 30 to 40 inquiries concerning the identity of a licensee's QI, officers, owners, or business affiliations, notwithstanding the fact that current sections 515.12(d) and 515.18 have long required OTIs to inform the Commission within 30 days of a change.

Furthermore, with respect to four specific categories of information required to be reported under current regulations (change of business address, retirement or resignation of a QI, failure to notify/increase the OTI's surety bond, failure to advise the Commission of operation under a new trade name), subsequent contacts made by Commission staff indicate a failure to timely report averaging 14.6 – 24.4% for 2012 – 2013. This experience includes NVOCCs and OFFs, both large and small.

The information required by the Commission in promulgating the current rules is no less necessary today. The NOPR renewal process reflects approximately 15 years of Commission experience and will help ensure that necessary information is kept up to date.

As indicated in §515.14(d)(3), this renewal process will not trigger a detailed Commission review or consideration of the character and eligibility of existing licensed OTIs, except, as provided in §515.14(d)(2), when an OTI supplies information that requires a separate review or approval pursuant to section 515.20. Responsive to numerous ANPR comments, the Commission intends that the renewal process will be entirely on-line and user friendly.

In proposing this change, the Commission is mindful that no renewal dates are included on the licenses of the approximately 4,700 OTIs that are currently licensed.

Accordingly, a process is needed to allow these OTIs to renew their licenses without unreasonable burden or processing delays that may occur if large numbers of renewal applications are submitted all at once. The Commission seeks comments from the public as to the process they consider would best achieve this goal. For example, would email notification by BCL to each such licensee of the renewal date assigned by BCL enable these OTIs to renew their licenses without confusion?

Section 515.15 – Denial of license.

The hearing provisions in section 515.15(c) are revised to refer to the new hearing procedures set forth in section 515.17. Such hearings are currently conducted pursuant to the more complex adjudicatory hearing procedures in Part 502 of the Commission's regulations.

Section 515.16 – Revocation or suspension of license.

As discussed above with respect to section 515.12(a)(1) (notices of the filing of license applications), section 515.16(b) was revised in Docket No. 14-08, *Procedure for Public Notification of Ocean Transportation Intermediary Licensing Activity*. 79 FR 42986, July 24, 2014, to authorize notices of revocations and suspensions of licenses to be made by publication on the Commission's website.

Section 515.17 – Hearing procedures governing: denial, revocation, or suspension of OTI licenses.

The proposal would streamline appeal procedures for denial of OTI license applications, and for revocation or suspension of OTI licenses. Currently, such appeals are conducted under the Commission's Rules of Practice and Procedure, published at 46

CFR Part 502, and provide for full evidentiary hearings, a process that is often lengthy and expensive. Rather than applying a formal full hearing process for such denials, revocations or suspensions, this section provides for a more efficient process for each type of delegated action.

Section 515.17(a) provides that requests for hearing under sections 515.15 (license denials) and 515.16 (license revocations and suspensions) are to be referred to the Commission's General Counsel, who will designate a hearing officer for review and decision. BCL will provide to the hearing officer a copy of the notice given to the applicant or licensee and BCL's materials supporting the notice, upon being advised by the hearing officer that a hearing request has been made. The hearing officer will provide a copy of BCL's material, not otherwise privileged, to the requesting party along with a notice advising the party of its right to submit written argument, affidavits of fact, other information, and documents within 30 days of the date of the notice. BCL will submit its response no later than 20 days after the submission by the requesting party. These records and submissions shall constitute the entire record for decision upon which the hearing officer's decision will be based. The hearing officer's decision is to be issued within 40 days of the record being closed.

After the hearing officer's decision is issued, an OTI may file a petition for Commission review of the hearing officer's decision pursuant to §501.21(f)(1). The section provides for Commission review of staff actions, such as that of the hearing officer, taken under delegated authority.

Section 515.17(c) has been added to clarify that where a revocation, termination or suspension also involves an enforcement action that, for example, involves the assessment of penalties, formal proceedings before an Administrative Law Judge are still required. The Commission's discovery rules remain available to licensees in such instances.

Section 515.19 – Registration of foreign-based non-vessel-operating common carriers.

Since the ANPR was issued, the Commission revised Part 515, effective July 19, 2013, as a necessary element to its determination in Docket No. 11-22, *Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements; Tariff Publication Exemption*, 78 FR 42886, July 18, 2013. The Commission added a new registration requirement for foreign-based unlicensed NVOCCs, the content of which is largely identical to that contained in ANPR section 515.19. Except as addressed below, the Commission will retain the adopted text of 515.19.

Existing section 515.19(g)(1) informs foreign-based registered NVOCCs of grounds upon which the Commission may base terminations or suspensions of the effectiveness of a registration. Proposed section 515.19(g)(2) provides that a registrant may request a hearing using the same procedures set out in §515.17 governing hearing requests for OTI licensees.

Section 515.20 – Changes in organization.

The content in this section (moved from §515.18) removes, as unneeded, the provision that specifically requires separately incorporated branch offices to obtain their own licenses. All separately incorporated entities that provide OTI services in their own name are required to be licensed, irrespective of whether they are related to another incorporated OTI.

Section 515.20(c) will continue to provide that OTIs operating as partnerships, corporations or LLCs must submit a report within 30 business days when their QI ceases to serve as a full-time employee of the OTI. New content is added to section 515.20(e) identifying changes to a licensee's organization that must also be reported to the Commission on an ongoing basis, such as changes in business address, criminal conviction or indictment of the licensee, QI or its officers, and changes of 5 percent or more in the common equity ownership or voting securities of the OTI. No fee will be charged for filings pursuant to section 515.20(e).

Subpart C – Financial Responsibility Requirements; Claims Against Ocean Transportation Intermediaries

Section 515.23 - Claims against an ocean transportation intermediary.

Section 515.23(c) has been modified to reflect the Commission's vote to require only financial responsibility providers to report the filing notices of claims to the Commission. Also, the Commission has dropped the ANPR requirement that notices of claims be published on the Commission's website. Section 515.23(c) now provides for notices of claims and claim payments to be submitted only to the Commission.

Section 515.25 - Filing of proof of financial responsibility.

Section 515.25(a)(1) is revised to clarify that an application for a license will become invalid, and approval rescinded, if the required proof of financial responsibility is not filed within 120 days of notification of license approval. The rule provides that applicants whose applications have become invalid may submit a new Form FMC-18, with the required fee, at any time. The section also provides that an NVOCC's registration will not be effective until the registrant has furnished proof of financial responsibility, filed a Form FMC-1, and published a tariff.

Section 515.26 - Termination of financial responsibility.

This section is revised to provide that registrations may be terminated, as well as licenses revoked, without hearing or other proceeding in the event that the required financial responsibility is terminated.

Section 515.27 - Proof of compliance – NVOCC.

Section 515.27(a) has been revised to restate the paragraph to make clear that no common carrier shall "knowingly and willfully" transport cargo for an NVOCC unless the common carrier has determined that the NVOCC has a license or registration, has published a tariff, and has provided proof of financial responsibility. Section 515.27(b)(2) has been revised to insert the Commission's web address as a location that common carriers can consult to verify an NVOCC's status. The Commission is working to ensure that common carriers can make the required verifications at a single, convenient, location on the Commission's website.

Subpart C Appendices.

Appendices A through F are removed from their current location between section 515.27 and section 515.31, and moved to the end of Part 515. The Commission believes that moving these forms to the end will make use of Part 515 less cumbersome.

Subpart D – Duties and Responsibilities of Ocean Transportation Intermediaries; Reports to Commission

Section 515.31 - General duties.

Section 515.31 has been revised throughout to apply to all OTIs, both licensed and registered. Without such a change, registrants would not be subject to, for example, the section 515.31(f) requirement prohibiting preparation of claims that the registrant has reason to believe are false or fraudulent.

Section 515.31(g) places an obligation on all OTIs to promptly respond to requests for all records and books of accounts made by authorized Commission representatives. In addition, section 515.31(g) now clarifies that OTI principals are responsible for requiring that their agents promptly respond to requests directed to such agents.

As a result of the deletion of ANPR sections 515.31(j) and (k), ANPR section 515.31(l) (prohibiting any entity from advertising or holding out to provide OTI services unless it has a valid OTI license or registration) is redesignated as section 515.31(j). Proposed section 515.31(j) is an outgrowth of the Commission's decision in Docket No. 06-01, *Worldwide Relocations, Inc., et. al - Possible Violations*, 32 SRR 495, 503 (FMC 2012), in which it analyzed factors to be considered when determining whether an entity has held itself out to the general public to provide NVOCC services. In *Worldwide*

Relocations, the Commission cited *Common Carriers by Water – Status of Express Companies, Truck Lines and Other Non-Vessel Carriers*, 1 SRR 292, 301 (FMC 1961), in which it found that persons or entities may hold themselves out “by the establishment and maintenance of tariffs, by advertisement and solicitation, and otherwise.” The Commission also cited *Activities, Tariff Filing Practices and Carrier Status of Containerships, Inc.*, 6 SRR 483, 489 n. 7 (FMC 1965), noting that the concept of holding out includes, among other things, advertisement and solicitation. Similarly, section 515.31(j) applies to OFFs, as they hold out to perform ocean freight forwarding services via advertising and solicitation.

Section 515.33 - Records required to be kept.

The introductory paragraph of Section 515.33 is revised to clarify that all OTIs shall maintain records pertaining to their OTI business, and that the records must be maintained in useable form and readily available to the Commission. This records retention requirement applies whether the records are kept in the United States or in foreign locations. The requirement to keep such records solely in the United States is deleted.

Subpart E – Freight Forwarding Fees and Compensation

Section 515.41- Forwarder and principal; fees.

The current content of section 515.41(c) (ocean freight forwarders shall not deny equal terms of special contracts to similarly situated shippers) is deleted. The Commission has determined it is no longer needed.

Section 515.42- Forwarder and carrier; compensation.

Section 515.42(c) is revised to specifically authorize electronic certifications by forwarders to carriers that forwarding services have been provided. Such electronic certifications (e.g., an automated forwarder database) must identify the shipments for which compensation is made and provide for the forwarder's confirmation that the services for which forwarder compensation is to be paid have been provided. This provision will ensure, for example, that the forwarder will confirm that the carrier's list of shipments is correct, and, if not, the forwarder will advise the carrier of shipments that should be added or deleted. Certifications must be retained for a period of 5 years by the common carrier. The Commission anticipates that such electronic certification will facilitate carrier payments through the banking system's automated clearinghouse (ACH) payment network, a lower cost and more convenient procedure for both carrier and forwarder.

**Regulatory Flexibility Act - Threshold Analysis
And Chairman's Certification of No Significant Economic Impact**

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" which will "describe the impact of the proposed rule on small entities." 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule directly affects all U.S. licensed OTIs, of which there are currently 4,648. The FMC estimates that approximately 97 percent of these OTIs are

small entities. Therefore, the Commission has determined that this proposed rule will have an impact on a substantial number of small entities.

However, the Commission has determined that the impact on entities affected by the proposed rule will not be significant. Most of the proposed changes have been found to have either no economic impact or beneficial economic impacts. Concerning the one change with the potential to generate economic disbenefit, i.e., the license renewal requirement, the dollar magnitude of the economic impact has been estimated to be less than one-tenth of one percent of average annual revenue for even the smallest entities.

Accordingly, the Chairman of the Federal Maritime Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Commission invites comment from members of the public who believe the rule will have a significant economic impact on the U.S.-based OTIs.

This rule is not a “major rule” under 5 U.S.C. 804(2).

List of Subjects in 46 CFR Part 515

Freight, Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons stated in the supplementary information, the Federal Maritime Commission proposes to amend 46 CFR Part 515 as follows:

**PART 515 – LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS,
AND GENERAL DUTIES FOR OCEAN TRANSPORTATION
INTERMEDIARIES**

1. The authority citation for part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 305, 40102, 40104, 40501-40503, 40901-40904. 41101-41109, 41301-41302, 41305-41307; Pub. L. 105-383, 112 Stat. 3411; 21 U.S.C. 862.

Subpart A – General

2-3. In §515.1, revise paragraph (b) to read as follows:

§515.1 Scope.

* * * * *

(b) Information obtained under this part is used to determine the qualifications of ocean transportation intermediaries and their compliance with shipping statutes and regulations. Failure to follow the provisions of this part may result in denial, revocation or suspension of an ocean transportation intermediary license or registration. Persons operating without the proper license or registration may be subject to civil penalties not to exceed \$9,000 for each such violation, unless the violation is willfully and knowingly committed, in which case the amount of the civil penalty may not exceed \$45,000 for each violation; for other violations of the provisions of this part, the civil penalties range from \$9,000 to \$45,000 for each violation (46 U.S.C. 41107-41109). Each day of a continuing violation shall constitute a separate violation.

4. Revise §515.2 to read as follows:

§ 515.2 Definitions.

The terms used in this part are defined as follows:

(a) *Act* or *Shipping Act* means the Shipping Act of 1984, as amended. 46 U.S.C. 40101-41309.

(b) *Beneficial interest* includes a lien or interest in or right to use, enjoy, profit,

benefit, or receive any advantage, either proprietary or financial, from the whole or any part of a shipment of cargo where such interest arises from the financing of the shipment or by operation of law, or by agreement, express or implied. The term "beneficial interest" shall not include any obligation in favor of an ocean transportation intermediary arising solely by reason of the advance of out-of-pocket expenses incurred in dispatching a shipment.

(c) *Branch office* means any office in the United States established by or maintained by or under the control of a licensee for the purpose of rendering intermediary services, which office is located at an address different from that of the licensee's designated home office.

(d) *Commission* means the Federal Maritime Commission.

(e) *Common carrier* means any person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly-owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities, and

(ii) Only with respect to those commodities.

(f) *Compensation* means payment by a common carrier to a freight forwarder for the performance of services as specified in §515.2(h).

(g) *Freight forwarding fee* means charges billed by an ocean freight forwarder to a shipper, consignee, seller, purchaser, or any agent thereof, for the performance of freight forwarding services.

(h) *Freight forwarding services* refers to the dispatching of shipments on behalf of others, in order to facilitate shipment by a common carrier, which may include, but are not limited to, the following:

- (1) Ordering cargo to port;
- (2) Preparing and/or processing export documents, including the required 'electronic export information';
- (3) Booking, arranging for or confirming cargo space;
- (4) Preparing or processing delivery orders or dock receipts;
- (5) Preparing and/or processing common carrier bills of lading or other shipping documents;
- (6) Preparing or processing consular documents or arranging for their certification;
- (7) Arranging for warehouse storage;

(8) Arranging for cargo insurance;

(9) Assisting with clearing shipments in accordance with United States Government export regulations;

(10) Preparing and/or sending advance notifications of shipments or other documents to banks, shippers, or consignees, as required;

(11) Handling freight or other monies advanced by shippers, or remitting or advancing freight or other monies or credit in connection with the dispatching of shipments;

(12) Coordinating the movement of shipments from origin to vessel; and

(13) Giving expert advice to exporters concerning letters of credit, other documents, licenses or inspections, or on problems germane to the cargoes' dispatch.

(i) *From the United States* means oceanborne export commerce from the United States, its territories, or possessions, to foreign countries.

(j) *Licensee* is any person licensed by the Federal Maritime Commission as an ocean transportation intermediary.

(k) *Non-vessel-operating common carrier services* refers to the provision of transportation by water of cargo between the United States and a foreign country for compensation without operating the vessels by which the transportation is provided, and may include, but are not limited to, the following:

(1) Purchasing transportation services from a common carrier and offering such services for resale to other persons;

(2) Payment of port-to-port or multimodal transportation charges;

- (3) Entering into affreightment agreements with underlying shippers;
- (4) Issuing bills of lading or other shipping documents;
- (5) Assisting with clearing shipments in accordance with U.S. government regulations;
- (6) Arranging for inland transportation and paying for inland freight charges on through transportation movements;
- (7) Paying lawful compensation to ocean freight forwarders;
- (8) Coordinating the movement of shipments between origin or destination and vessel;
- (9) Leasing containers;
- (10) Entering into arrangements with origin or destination agents;
- (11) Collecting freight monies from shippers and paying common carriers as a shipper on NVOCC's own behalf.

(l) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

(m) *Ocean transportation intermediary* (OTI) means an ocean freight forwarder or a non-vessel-operating common carrier. For the purposes of this part, the term

(1) *Ocean freight forwarder* (OFF) means a person that -

(i) In the United States, dispatches shipments from the United States

via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and

(ii) Processes the documentation or performs related activities incident to those shipments; and

(2) *Non-vessel-operating common carrier (NVOCC)* means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

(n) *Person* means individuals, corporations, companies, including limited liability companies, associations, firms, partnerships, societies and joint stock companies existing under or authorized by the laws of the United States or of a foreign country.

(o) *Principal*, with respect to a licensed ocean freight forwarder employed to facilitate ocean transportation of property, refers to the shipper, consignee, seller or purchaser of such property, and to anyone acting on behalf of such shipper, consignee, seller or purchaser.

(p) *Qualifying individual (QI)* means an individual who meets the experience and character requirements of section 19 of the Shipping Act (46 U.S.C. 40901-40904) and this part.

(q) *Reduced forwarding fees* means charges to a principal for forwarding services that are below the licensed ocean freight forwarder's usual charges for such services.

(r) *Registered non-vessel-operating common carrier (registered NVOCC)* means an NVOCC whose primary place of business is located outside the United States and who elects not to become licensed as an NVOCC, but to register with the Commission as

provided in §515.19, post a bond or other surety in the required amount, and publish a tariff as required by 46 CFR part 520.

(s) *Shipment* means all of the cargo carried under the terms of a single bill of lading.

(t) *Shipper* means:

(1) A cargo owner;

(2) The person for whose account the ocean transportation is provided;

(3) The person to whom delivery is to be made;

(4) A shippers' association; or

(5) A non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(u) *Special contract* is a contract for ocean freight forwarding services which provides for a periodic lump sum fee.

(v) *Transportation-related activities* which are covered by the financial responsibility obtained pursuant to this part include, to the extent involved in the foreign commerce of the United States, any activity performed by an ocean transportation intermediary that is necessary or customary in the provision of transportation services to a customer, but are not limited to the following:

(1) For an ocean transportation intermediary operating as an ocean freight forwarder, the freight forwarding services enumerated in §515.2(h), and

(2) For an ocean transportation intermediary operating as a non-vessel-operating common carrier, the non-vessel-operating common carrier services

enumerated in §515.2(k).

(w) *United States* includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

5. Revise §515.3 to read as follows:

§ 515.3 License; when required.

Except as otherwise provided in this part, no person in the United States may act as an ocean transportation intermediary unless that person holds a valid license issued by the Commission. For purposes of this part, a person is considered to be "in the United States" if such person is resident in, or incorporated or established under, the laws of the United States. Registered NVOCCs must utilize only licensed ocean transportation intermediaries to provide NVOCC services in the United States. In the United States, only licensed OTIs may act as agents to provide OTI services for registered NVOCCs.

6. Revise §515.4 to read as follows:

§ 515.4 License; when not required.

A license is not required in the following circumstances:

(a) *Shippers.* Any person whose primary business is the sale of merchandise may, without a license, dispatch and perform freight forwarding services on behalf of its own shipments, or on behalf of shipments or consolidated shipments of a parent, subsidiary, affiliate, or associated company. Such person shall not receive compensation from the common carrier for any services rendered in connection with such shipments.

(b) *Agents, employees, or branch offices of a licensed ocean transportation*

intermediary. An agent, individual employee, or branch office of a licensed ocean transportation intermediary is not required to be licensed in order to act on behalf of and in the name of such licensee; however, branch offices must be reported to the Commission in Form FMC-18 or pursuant to §515.20(e). 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.

(c) *Common carriers.* A common carrier, or agent thereof, may perform ocean freight forwarding services without a license only with respect to cargo carried under such carrier's own bill of lading. Charges for such forwarding services shall be assessed in conformance with the carrier's published tariffs.

(d) *Federal military and civilian household goods.* Any person which exclusively transports used household goods and personal effects for the account of the Department of Defense, or for the account of the federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration, or both, is not subject to the requirements of subpart B of this part, but may be subject to other requirements, such as alternative surety bonding, imposed by the Department of Defense, or the General Services Administration.

7. Revise §515.5 to read as follows:

§ 515.5 Forms and fees.

(a) *Forms.* License Application Form FMC-18 Rev., Application for Renewal of Ocean Transportation Intermediary License Form-___, and Foreign-based Unlicensed NVOCC Registration/Renewal Form FMC-65, are found at the Commission's website

www.fmc.gov for completion on-line by applicants, licensees, and registrants. Financial responsibility Forms FMC-48, FMC-67, FMC-68, FMC-69 may be obtained from the Commission's website at www.fmc.gov, from the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, or from any of the Commission's Area Representatives.

(b) *Filing of license applications and registration forms.* All applications and forms are to be filed electronically unless a waiver is granted to file in paper form. A waiver request must be submitted in writing to the Director, Bureau of Certification and Licensing, 800 North Capitol Street, N.W., Washington, DC 20573, and must demonstrate that electronic filing imposes an undue burden on the applicant or registrant. The director, or a designee, will render a decision on the request and notify the requestor within two (2) business days of receiving the request. If a waiver request is granted, the approval will provide instructions for submitting a paper application or registration. If the waiver request is denied, a statement of reasons for the denial will be provided.

(c) *Fees.* (1) All fees shall be paid by:

(i) Money order, certified, cashier's, or personal check payable to the order of the "Federal Maritime Commission;"

(ii) Pay.gov;

(iii) The Automated Clearing House system; or

(iv) By other means authorized by the Director of the Commission's Office of Budget and Finance.

(2) Applications or registrations shall be rejected unless the applicable fee and any bank

charges assessed against the Commission are received by the Commission within ten (10) business days after submission of the application or registration. In any instance where an application has been processed in whole or in part, the fee will not be refunded.

(3) Fees under this part 515 shall be as follows:

(i) Application for new OTI license as required by §515.12(a): automated filing \$250; paper filing pursuant to waiver \$825.

(ii) Application for change to OTI license or license transfer as required by §515.20(a) and (b): automated filing \$125; paper filing pursuant to waiver \$525.

(iii) A copy of the Regulated Persons Index may be purchased for \$108 as provided in §515.34.

8. Amend the heading for subpart B by adding at the end “and Registration” to read as follows:

Subpart B – Eligibility and Procedure for Licensing and Registration

9. Revise §515.11 to read as follows:

§ 515.11 Basic requirements for licensing; eligibility.

(a) *Necessary qualifications.* To be eligible for an ocean transportation intermediary license, the applicant must demonstrate to the Commission that:

(1) It possesses the necessary experience, that is, its qualifying individual has a minimum of three (3) years experience in ocean transportation intermediary activities in the United States, and the necessary character to render ocean transportation intermediary services. A foreign NVOCC seeking to be licensed under this part must demonstrate that

its qualifying individual has a minimum 3 years' experience in ocean transportation intermediary activities, and the necessary character to render ocean transportation intermediary services. The required OTI experience of the QI of a foreign based NVOCC seeking to become licensed under this part (foreign-based licensed NVOCC) may be experience acquired in the U.S. or a foreign country with respect to shipments in the United States oceanborne foreign commerce.

(2) In addition to information provided by the applicant and its references, the Commission may consider all information relevant to determining whether an applicant has the necessary character to render ocean transportation intermediary services, including but not limited to, information regarding: violations of any shipping laws, or statutes relating to the import, export, or transport of merchandise in international trade; operating as an OTI without a license or registration; state and federal felonies and misdemeanors; voluntary and non-voluntary bankruptcies not discharged; tax liens and other court and administrative judgments and proceedings; compliance with immigration status requirements described in 49 CFR 1572.105; denial, revocation, or suspension of a Transportation Worker Identification Credential under 49 CFR 1572; and the denial, revocation, or suspension of a customs broker's license under 19 CFR Subpart B, section 111. The required OTI experience of the QI of a foreign-based NVOCC seeking to become licensed under this part (foreign-based licensed NVOCC) may be experience acquired in the U.S. or a foreign country with respect to shipments in the United States oceanborne foreign commerce.

(b) *Qualifying individual.* The following individuals must qualify the applicant for

a license:

(1) *Sole proprietorship*. The applicant sole proprietor.

(2) *Partnership*. At least one of the active managing partners.

(3) *Corporation*. At least one of the active corporate officers

(4) *Limited liability company*. One of the members or managers, or an individual in an equivalent position in the LLC as expressly set forth in the LLC operating agreement.

(c) *Affiliates of intermediaries*. An independently qualified applicant may be granted a separate license to carry on the business of providing ocean transportation intermediary services even though it is associated with, under common control with, or otherwise related to another ocean transportation intermediary through stock ownership or common directors or officers, if such applicant submits: a separate application and fee, and a valid instrument of financial responsibility in the form and amount prescribed under §515.21. The qualifying individual of one active licensee shall not also be designated as the qualifying individual of an applicant for another ocean transportation intermediary license, unless both entities are commonly owned or where one directly controls the other.

(d) *Common carrier*. A common carrier or agent thereof which meets the requirements of this part may be licensed as an ocean freight forwarder to dispatch shipments moving on other than such carrier's own bills of lading subject to the provisions of §515.42(g).

(e) *Foreign-based licensed NVOCC*. A foreign-based NVOCC that elects to

obtain a license must establish a presence in the United States by opening an unincorporated office that is resident in the United States and is qualified to do business where it is located.

10. Revise §515.12 to read as follows:

§ 515.12 Application for license.

(a) *Application and forms.* (1) Any person who wishes to obtain a license to operate as an ocean transportation intermediary shall submit electronically (absent a waiver pursuant to §515.5(b)) a completed application Form FMC-18 Rev. (Application for a License as an Ocean Transportation Intermediary) in accordance with the automated FMC-18 filing system and corresponding instructions. A filing fee shall be paid, as required under §515.5(c). Notice of filing of each application shall be published on the Commission's website www.fmc.gov and shall state the name and address of the applicant and the name and address of the QI. If the applicant is a corporation or partnership, the names of the officers or partners thereof may be published. For an LLC, the names of the managers, members or officers, as applicable, may be published.

(2) An individual who is applying for a license as a sole proprietor must complete the following certification:

I, _____(Name)_____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or state offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to 21 U.S.C. 862.

(b) *Rejection.* Any application which appears upon its face to be incomplete or to

indicate that the applicant fails to meet the licensing requirements of the Act, or the Commission's regulations, may be rejected and a notice shall be sent to the applicant, together with an explanation of the reasons for rejection, and the filing fee shall be refunded in full. Persons who have had their applications rejected may submit a new Form FMC-18 at any time, together with the required filing fee.

(c) *Failure to provide necessary information and documents.* In the event an applicant fails to provide documents or information necessary to complete processing of its application, notice will be sent to the applicant identifying the necessary information and documents and establishing a date for submission by the applicant. Failure of the applicant to submit the identified materials by the established date will result in the closing of its application without further processing. In the event an application is closed as a result of the applicant's failure to provide information or documents necessary to complete processing, the filing fee will not be returned. Persons who have had their applications closed under this section may reapply at any time by submitting a new application with the required filing fee.

(d) *Investigation.* Each applicant shall be investigated in accordance with §515.13.

(e) *Changes in fact.* Each applicant shall promptly advise the Commission of any material changes in the facts submitted in the application. Any unreported change may delay the processing and investigation of the application and result in rejection, closing, or denial of the application.

11. In §515.14, revise the section heading and paragraph (b) and add paragraphs (c) and (d) to read as follows:

§ 515.14 Issuance, renewal, and use of license.

* * * * *

(b) *To whom issued.* The Commission will issue a license only in the name of the applicant, whether the applicant is a sole proprietorship, a partnership, a corporation, or limited liability company. A license issued to a sole proprietor doing business under a trade name shall be in the name of the sole proprietor, indicating the trade name under which the licensee will be conducting business. Only one license shall be issued to any applicant regardless of the number of names under which such applicant may be doing business, and except as otherwise provided in this part, such license is limited exclusively to use by the named licensee and shall not be transferred without prior Commission approval to another person.

(c) Licenses shall be issued for an initial period of three (3) years. Thereafter, licenses will be renewed for sequential three year periods upon successful completion of the renewal process in paragraph (d) of this section.

(d) *License renewal process.* (1) The licensee shall submit electronically to the Director of the Bureau of Certification and Licensing (BCL) a completed Form FMC-____ (Application for Renewal of Ocean Transportation Intermediary License) no later than sixty (60) days prior to the renewal date set forth on its license. Upon successful completion of the renewal process, the Commission shall issue a new license bearing a renewal date three (3) years later on the same day and month on which the license was originally issued. The renewal date will remain the same for subsequent renewals irrespective of the date on which the license renewal is submitted or when the renewed

license is issued by the Commission, unless another renewal date is assigned by the Commission.

(2) Where information provided in an OTI's renewal form, Form FMC-____, is changed from that set out in its current Form FMC-18 and requires Commission approval pursuant to §515.20, the licensee must promptly submit a request for such approval on Form FMC-18 together with the required filing fee. The licensee may continue to operate as an ocean transportation intermediary during the pendency of the Commission's approval process.

(3) Though the foregoing license renewal process is not intended to result in a re-evaluation of a licensee's character, the Commission may review a licensee's character at any time, including at the time of renewal, based upon information received from the licensee or other sources.

12. In §515.15, revise paragraph (c) to read as follows:

§ 515.15 Denial of license.

* * * * *

(c) Has made any materially false or misleading statement to the Commission in connection with its application; then, a notice of intent to deny the application shall be sent to the applicant stating the reason(s) why the Commission intends to deny the application. The notice of intent to deny the application will provide, in detail, a statement of the facts supporting denial. An applicant may request a hearing on the proposed denial by submitting to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within twenty (20) days of the date of the notice, a statement of

reasons why the application should not be denied. Such hearing shall be provided pursuant to the procedures contained in §515.17. Otherwise, the denial of the application will become effective and the applicant shall be so notified.

13. Revise §515.16 to read as follows:

§ 515.16 Revocation or suspension of license.

(a) *Grounds.* Except for the automatic revocation for termination of proof of financial responsibility under §515.26, a license may be revoked or suspended after notice and an opportunity for a hearing under the procedures of §515.17.

The notice of revocation or suspension will provide, in detail, a statement of the facts supporting the action. The licensee may request a hearing on the proposed revocation or suspension by submitting to the Commission's Secretary, within twenty (20) days of the date of the notice, a statement of reasons why the license should not be revoked or suspended. Such hearing shall be provided pursuant to the procedures contained in §515.17. Otherwise, the action regarding the license will become effective. A license may be revoked or suspended for any of the following reasons:

(1) Violation of any provision of the Act, or any other statute or Commission order or regulation related to carrying on the business of an ocean transportation intermediary;

(2) Failure to respond to any lawful order or inquiry by the Commission

(3) Making a materially false or misleading statement to the Commission in connection with an application for a license or an amendment to an existing license;

(4) A Commission determination that the licensee is not qualified to render

intermediary services; or

(5) Failure to honor the licensee's financial obligations to the Commission.

(b) *Notice.* The Commission shall publish on the Commission's website www.fmc.gov notice of each revocation and suspension.

§515.18 [Redesignated as §515.20]

14. Redesignate §515.18 as §515.20

§515.17 [Redesignated as §515.18]

15. Redesignate §515.17 as §515.18

16. Add new §515.17 to read as follows:

§ 515.17 Hearing procedures governing denial, revocation, or suspension of OTI license.

(a) *Hearing requests.* All hearing requests under §§ 515.15 and 515.16 shall be submitted to the Commission's Secretary. Such requests shall be referred to the General Counsel to designate a hearing officer for review and decision under the procedures established in this section. Upon receipt of a request for hearing, the hearing officer shall notify BCL, and BCL will provide to the hearing officer a copy of the notice given to the applicant or licensee and a copy of BCL materials supporting the notice. The hearing officer will then issue a notice advising the applicant or, in the case of a revocation or suspension of the license, the licensee of the right to submit information and documents, including affidavits of fact and written argument, in support of an OTI application or continuation of a current OTI license.

(b) *Notice.* The notice shall establish a date no later than thirty (30) days from the date of the notice for submission of all supporting materials by the applicant or licensee.

The notice shall also provide that the BCL may submit responsive materials no later than twenty (20) days from the date the applicant or licensee submitted its materials. BCL's notice and materials supporting its notice, the submission of the applicant or licensee, and the responsive submission of BCL shall constitute the entire record upon which the hearing officer's decision shall be based. The hearing officer's decision shall be issued within forty (40) days after the closing of the record.

(c) *Commission-initiated enforcement proceedings.* In proceedings for assessment of civil penalties for violations of the Shipping Act or Commission regulations, a license may be revoked or suspended after notice and an opportunity for hearing under Part 502 (Rules of Practice and Procedure).

17. In §515.19, add paragraph (g)(2) to read as follows:

§ 515.19 Registration of foreign-based non-vessel-operating common carriers.

(g) * * *

(2) *Hearing procedure.* Registrants may request a hearing for terminations or suspensions of the effectiveness of their registrations following the same procedures set forth in §515.17 (governing hearing requests for denials, revocations and suspensions of licenses).

* * * * *

18. Revise newly redesignated §515.20 to read as follows:

§ 515.20 Changes in organization.

(a) *Licenses.* The following changes in an existing licensee's organization require prior approval of the Commission, and application for such status change or license transfer shall be made on Form FMC-18, filed with the Commission's Bureau of Certification and Licensing, and accompanied by the fee required under §515.5(c):

(1) Transfer of a corporate license to another person;

(2) Change in ownership of a sole proprietorship;

(3) Any change in the business structure of a licensee from or to a sole proprietorship, partnership, limited liability company, or corporation, whether or not such change involves a change in ownership;

(4) Any change in a licensee's name; or

(5) Change in the identity or status of the designated QI, except as described in paragraphs (b) and (c) of this section.

(b) *Operation after death of sole proprietor.* In the event that the owner of a licensed sole proprietorship dies, the licensee's executor, administrator, heir(s), or assign(s) may continue operation of such proprietorship solely with respect to shipments for which the deceased sole proprietor had undertaken to act as an ocean transportation intermediary pursuant to the existing license, if the death is reported within 30 days to the Commission and to all principals and shippers for whom services on such shipments are to be rendered. The acceptance or solicitation of any other shipments is expressly prohibited until a new license has been issued. Applications for a new license by the executor, administrator, heir(s), or assign(s) shall be made on Form FMC-18, and shall be accompanied by the fee required under §515.5(c).

(c) *Operation after retirement, resignation, or death of QI.* When a partnership, LLC, or corporation has been licensed on the basis of the qualifications of one or more of the partners, members, managers or officers thereof, and the QI no longer serves as a full-time employee with the OTI or, is no longer responsible for the licensee's OTI activities, the licensee shall report such change to the Commission within thirty (30) business days. Within the same 30-day period, the licensee shall furnish to the Commission the name(s) and detailed intermediary experience of any other active partner(s), member(s), manager(s) or officer(s) who may qualify the licensee. Such QI(s) must meet the applicable requirements set forth in §515.11(a) through (c). The licensee may continue to operate as an ocean transportation intermediary while the Commission investigates the qualifications of the newly designated partner, member, manager, or officer.

(d) *Acquisition of one or more additional licensees.* In the event a licensee acquires one or more additional licensees, for the purpose of merger, consolidation, or control, the acquiring licensee shall advise the Commission of such acquisition, including any change in ownership, within 30 days after such change occurs by submitting an amended Form FMC-18. No application fee is required when reporting this change

(e) *Other changes.* Other changes in material fact of a licensee shall be reported within thirty (30) days of such changes, in writing by mail or email (bcl@fmc.gov) to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573. Material changes include, but are not limited to: changes in business address; any criminal indictment or conviction of a licensee, QI, or officer; any voluntary or involuntary bankruptcy filed by or naming a licensee, QI, or officer; changes

of five (5) percent or more of the common equity ownership or voting securities of the OTI; or, the addition or reduction of one or more partners of a licensed partnership, one or more members or managers of a Limited Liability Company, or one or more branch offices. No fee shall be charged for reporting such changes.

Subpart C – Financial Responsibility Requirements; Claims Against Ocean

Transportation Intermediaries

19. In §515.21, revise paragraphs (a)(1) through (3), remove paragraph (a)(4), and revise paragraph (b) to read as follows:

§ 515.21 Financial responsibility requirements.

(a) * * *

(1) Any person operating in the United States as an ocean freight forwarder as defined in §515.2(m)(1) shall furnish evidence of financial responsibility in the amount of \$50,000.

(2) Any person operating in the United States as an NVOCC as defined in §515.2(m)(2) shall furnish evidence of financial responsibility in the amount of \$75,000.

(3) Any registered NVOCC, as defined in § 515.2(r), shall furnish evidence of financial responsibility in the amount of \$150,000. Such registered NVOCC shall be strictly responsible for the acts and omissions of its employees and agents, wherever they are located.

(b) *Group financial responsibility.* When a group or association of ocean transportation intermediaries accepts liability for an ocean transportation

intermediary's financial responsibility for such ocean transportation intermediary's transportation-related activities under the Act, the group or association of ocean transportation intermediaries shall file a group bond form, insurance form or guaranty form, clearly identifying each ocean transportation intermediary covered, before a covered ocean transportation intermediary may provide ocean transportation intermediary services. In such cases, a group or association must establish financial responsibility in an amount equal to the lesser of the amount required by paragraph (a) of this section for each member, or \$3,000,000 in aggregate. A group or association of ocean transportation intermediaries may also file an optional bond rider as provided in §515.25(b).

* * * * *

20. Revise §515.23 to read as follows:

§ 515.23 Claims against an ocean transportation intermediary.

(a) *Payments.* Shippers, common carriers, and other affected persons may seek payment from the bond, insurance, or other surety maintained by an ocean transportation intermediary for damages arising out of its ocean transportation-related activities. The Commission may also seek payment of civil penalties assessed under section 13 of the Shipping Act (46 U.S.C. 41107 - 41109).

(b) *Payment pursuant to a claim.* (1) If a person does not file a complaint with the Commission pursuant to section 11 of the Shipping Act (46 U.S.C. 41301-41302, 41305-41307(a)), but otherwise seeks to pursue a claim against an

ocean transportation intermediary bond, insurance, or other surety for damages arising from its transportation-related activities, it shall attempt to resolve its claim with the financial responsibility provider prior to seeking payment on any judgment for damages obtained. When a claimant seeks payment under this section, it simultaneously shall notify both the financial responsibility provider and the ocean transportation intermediary of the claim by mail or courier service. The bond, insurance, or other surety may be available to pay such claim if:

(i) The ocean transportation intermediary consents to payment, subject to review by the financial responsibility provider; or

(ii) The ocean transportation intermediary fails to respond within forty-five (45) days from the date of the notice of the claim to address the validity of the claim, and the financial responsibility provider deems the claim valid.

(2) If the parties fail to reach an agreement in accordance with paragraph (b)(1) of this section within ninety (90) days of the date of the initial notification of the claim, the bond, insurance, or other surety shall be available to pay any final judgment for reparations ordered by the Commission or damages obtained from an appropriate court. The financial responsibility provider shall pay such judgment for damages only to the extent they arise from the transportation-related activities of the ocean transportation intermediary, ordinarily within thirty (30) days, without requiring further evidence related to the validity of the claim; it may, however, inquire into the extent to which the judgment for damages arises

from the ocean transportation intermediary's transportation-related activities.

(c) *Notices of court and other claims against OTIs by financial responsibility providers.* (1) As provided in each financial responsibility instrument between an OTI and its financial responsibility provider(s), the issuing financial responsibility provider shall submit a notice to the Commission of each claim, court action, or court judgment against the financial responsibility and each claim paid (including the amount) by the provider.

(2) Notices described in paragraph (1) of this section shall be promptly submitted in writing by mail or email (bcl@fmc.gov) to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573.

(3) Notices required by this section shall include the name of the claimant, name of the court and case number assigned, and the name and license number of the OTI involved. Such notices may include or attach other information relevant to the claim.

(d) *FMC not a depository.* The Federal Maritime Commission shall not serve as depository or distributor to third parties of bond, guaranty, or insurance funds in the event of any claim, judgment, or order for reparation.

(e) *Optional bond riders.* The Federal Maritime Commission shall not serve as a depository or distributor to third parties of funds payable pursuant to optional bond riders described in § 515.25(b).

21. Revise §515.25 to read as follows:

§ 515.25 Filing of proof of financial responsibility.

(a) *Filing of proof of financial responsibility*—(1) *Licenses.* Upon notification by the Commission that an applicant has been approved for licensing, the applicant shall file with the Director of the Commission's Bureau of Certification and Licensing, proof of financial responsibility in the form and amount prescribed in §515.21. No license will be issued until the Commission is in receipt of valid proof of financial responsibility from the applicant. If, within 120 days of notification of approval for licensing by the Commission, the applicant does not file proof that its financial responsibility is in effect, the application will be invalid. Applicants whose applications have become invalid may submit a new Form FMC-18, together with the required filing fee, at any time.

(2) *Registrations.* A registration shall not become effective until the applicant has furnished proof of financial responsibility pursuant to §515.21, has submitted a Form FMC-1, and its published tariff becomes effective pursuant to 46 CFR part 520.

(b) *Optional bond rider.* Any NVOCC as defined in §515.2(m)(2), in addition to a bond meeting the requirements of §515.21(a)(2) or (3), may obtain and file with the Commission proof of an optional bond rider, as provided in appendix E or appendix F of this part.

22. Revise §515.26 to read as follows:

§ 515.26 Termination of financial responsibility.

No license or registration shall remain in effect unless valid proof of a financial responsibility instrument is maintained on file with the Commission. Upon receipt of notice of termination of such financial responsibility, the Commission shall notify the concerned licensee, registrant, or registrant's legal agent in the United States, by mail, courier, or other method reasonably calculated to provide actual notice, at its last known address, that the Commission shall, without hearing or other proceeding, revoke the license or terminate the registration as of the termination date of the financial responsibility instrument, unless the licensee or registrant shall have submitted valid replacement proof of financial responsibility before such termination date. Replacement financial responsibility must bear an effective date no later than the termination date of the expiring financial responsibility instrument.

23. In §515.27, revise the section heading and paragraphs (a) through (c) to read as follows:

§ 515.27 Proof of compliance - NVOCC.

(a) No common carrier shall knowingly and willfully transport cargo for the account of an NVOCC unless the carrier has determined that the NVOCC has a license or registration, a tariff, and financial responsibility as required by sections 8 (46 U.S.C. 40501 - 40503) and 19 (46 U.S.C. 40901- 40904) of the Shipping Act and this part.

(b) A common carrier can obtain proof of an NVOCC's compliance with the OTI licensing, registration, tariff and financial responsibility requirements by:

(1) Consulting the Commission's website www.fmc.gov as provided in paragraph (d) of this section, to verify that the NVOCC has complied with the OTI licensing, registration, tariff, and financial responsibility requirements; or

(2) Any other appropriate procedure, provided that such procedure is set forth in the carrier's tariff.

(c) A common carrier that has employed the procedure prescribed in paragraph (b)(1) of this section shall be deemed to have met its obligations under section 10(b)(11) of the Act (46 U.S.C. 41104(11)), unless the common carrier knew that such NVOCC was not in compliance with the OTI licensing, registration, tariff, and financial responsibility requirements.

* * * * *

Appendices A through F to Subpart C [Removed]

24. Remove appendices A through F to subpart C.

Subpart D - Duties and Responsibilities of Ocean Transportation Intermediaries;

Reports to Commission

25. Revise §515.31 to read as follows:

§ 515.31 General duties.

(a) *Licensees and registrants; names and numbers.* Each licensee and registrant shall carry on its business only under the name in which it was licensed

or registered and only under its license or registration number as assigned by the Commission. When the licensee's or registrant's name appears on shipping documents, its Commission license or registration number shall also be included.

(b) *Stationery and billing forms.* The name and license or registration number of each OTI shall be permanently imprinted on the licensee's or registrant's office stationery and billing forms.

(c) *Use of license or registration by others; prohibition.* No OTI shall permit its name, license, license number, registration, or registration number to be used by any person who is not an employee or an agent of the OTI. An entity that also provides OTI services in its own name and not on behalf of a licensed or registered OTI must be separately licensed under this part and must provide proof of its own financial responsibility and publish a tariff, if applicable. A branch office of an OTI may use the license of the OTI, provided that the address of the branch office has been reported to the Commission in Form FMC-18 or pursuant to §515.20(e).

(d) *Arrangements with ocean transportation intermediaries whose licenses have been revoked.* Unless prior written approval from the Commission has been obtained, no OTI shall, directly or indirectly:

(1) Agree to perform ocean transportation intermediary services on shipments as an associate, correspondent, officer, employee, agent, or sub-agent of any person whose license has been revoked or suspended pursuant to §515.16, or registration terminated or suspended pursuant to §515.19(g);

(2) Assist in the furtherance of any ocean transportation intermediary business of an OTI whose license has been revoked;

(3) Share forwarding fees or freight compensation with any such person; or

(4) Permit any such person, directly or indirectly, to participate, through ownership or otherwise, in the control or direction of the ocean transportation intermediary business of the licensee or registrant.

(e) *False or fraudulent claims, false information.* No OTI shall prepare or file or assist in the preparation or filing of any claim, affidavit, letter of indemnity, or other paper or document concerning an ocean transportation intermediary transaction which it has reason to believe is false or fraudulent, nor shall any such OTI knowingly impart to a principal, shipper, common carrier or other person, false information relative to any ocean transportation intermediary transaction.

(f) *Errors and omissions of the principal or shipper.* An OTI who has reason to believe that its principal or shipper has not, with respect to a shipment to be handled by such OTI, complied with the laws of the United States, or has made any error or misrepresentation in, or omission from, any export declaration, bill of lading, affidavit, or other document which the principal or shipper executes in connection with such shipment, shall advise its principal or shipper promptly of the suspected noncompliance, error, misrepresentation or omission, and shall decline to participate in any transaction involving such document until the matter is properly and lawfully resolved.

(g) *Response to requests of Commission.* Upon the request of any authorized representative of the Commission, an OTI shall make available promptly for inspection or reproduction all records and books of account in connection with its ocean transportation intermediary business, and shall respond promptly to any lawful inquiries by such representative. All OTIs are responsible for requiring that, upon the request of any authorized Commission representative, their agents make available all records and books of account relating to ocean transportation intermediary service provided by or for their principals, and respond promptly to any lawful inquiries by such representative.

(h) *Express written authority.* No OTI shall endorse or negotiate any draft, check, or warrant drawn to the order of its OTI principal or shipper without the express written authority of such OTI principal or shipper.

(i) *Accounting to principal or shipper.* An OTI shall account to its principal(s) or shipper(s) for overpayments, adjustments of charges, reductions in rates, insurance refunds, insurance monies received for claims, proceeds of C.O.D. shipments, drafts, letters of credit, and any other sums due such principal(s) or shipper(s).

(j) *Prohibition.* No person may advertise or hold out to provide OTI services unless that person holds a valid OTI license or is registered under this part.

§ 515.32 [Amended]

26. In §515.32, in paragraph (b), in the first sentence, remove the word “sales”.

27. In §515.33, revise the section heading, introductory text and paragraph (d) to read as follows:

§ 515.33 Records to be kept.

Each licensed or registered NVOCC and each licensed ocean freight forwarder shall maintain in an orderly and systematic manner, and keep current and correct, all records and books of account in connection with its OTI business. The licensed or registered NVOCC and each licensed freight forwarder may maintain these records in either paper or electronic form, which shall be readily available in usable form to the Commission; the electronically maintained records shall be no less accessible than if they were maintained in paper form. These recordkeeping requirements are independent of the retention requirements of other federal agencies. In addition, each licensed freight forwarder must maintain the following records for a period of five years:

* * * * *

(d) *Special contracts.* A true copy, or if oral, a true and complete memorandum, of every special arrangement or contract between a licensed freight forwarder and a principal, or modification or cancellation thereof.

§ 515.34 [Amended]

28. Amend §515.34 by removing “\$108” and adding the phrase “the fee set forth in §515.5(c)” in its place.

Subpart E -- Freight Forwarding Fees and Compensation

29. Amend §515.41 by:

- a. Removing paragraph (c);
- b. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively; and
- c. Revising newly redesignated paragraph (d).

The revision reads as follows:

§ 515.41 Forwarder and principal; fees.

* * * * *

(d) *In-plant arrangements.* A licensed freight forwarder may place an employee or employees on the premises of its principal as part of the services rendered to such principal, provided:

(1) The in-plant forwarder arrangement is reduced to writing and identifies all services provided by either party (whether or not constituting a freight forwarding service); states the amount of compensation to be received by either party for such services; sets forth all details concerning the procurement, maintenance or sharing of office facilities, personnel, furnishings, equipment and supplies; describes all powers of supervision or oversight of the licensee's employee(s) to be exercised by the principal; and details all procedures for the administration or management of in-plant arrangements between the parties; and

(2) The arrangement is not an artifice for a payment or other unlawful benefit to the principal.

30. In §515.42, revise paragraphs (a), (b), (c), and (f) to read as follows:

§ 515.42 Forwarder and carrier compensation; fees.

(a) *Disclosure of principal.* The identity of the shipper must always be disclosed in the shipper identification box on the bill of lading. The licensed freight forwarder's name may appear with the name of the shipper, but the forwarder must be identified as the shipper's agent.

(b) *Certification required for compensation.* A common carrier may pay compensation to a licensed freight forwarder only pursuant to such common carrier's tariff provisions. When a common carrier's tariff provides for the payment of compensation, such compensation shall be paid on any shipment forwarded on behalf of others where the forwarder has provided a certification as prescribed in paragraph (c) of this section and the shipper has been disclosed on the bill of lading as provided for in paragraph (a) of this section. The common carrier shall be entitled to rely on such certification unless it knows that the certification is incorrect. The common carrier shall retain such certifications for a period of five (5) years.

(c) *Form of certification.* When a licensed freight forwarder is entitled to compensation, the forwarder shall provide the common carrier with a certification which indicates that the forwarder has performed the required services that entitle it to compensation. The required certification may be provided electronically by the forwarder or may be placed on one copy of the relevant bill of lading, a summary statement from the forwarder, the forwarder's compensation invoice, or as an endorsement on the carrier's compensation check. Electronic certification must contain confirmations by the forwarder and the carrier identifying the

shipments upon which forwarding compensation may be paid. Each forwarder shall retain evidence in its shipment files that the forwarder, in fact, has performed the required services enumerated on the certification. The certification shall read as follows:

The undersigned hereby certifies that neither it nor any holding company, subsidiary, affiliate, officer, director, agent or executive of the undersigned has a beneficial interest in this shipment; that it is the holder of valid FMC License No., issued by the Federal Maritime Commission and has performed the following services:

- (1) Engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space; and
- (2) Prepared and processed the ocean bill of lading, dock receipt, or other similar document with respect to the shipment.

* * * * *

(f) *Compensation; services performed by underlying carrier; exemptions.*

No licensed freight forwarder shall charge or collect compensation in the event the underlying common carrier, or its agent, has, at the request of such forwarder, performed any of the forwarding services set forth in §515.2(h), unless such carrier or agent is also a licensed freight forwarder, or unless no other licensed freight forwarder is willing and able to perform such services.

* * * * *

31. Add appendices A, B, C, D, E, and F to part 515 to read as follows:

**Appendix A to Part 515—Ocean Transportation Intermediary (OTI) Bond Form
[Form 48]**

Form FMC-48

Federal Maritime Commission

Ocean Transportation Intermediary (OTI) Bond (Section 19, Shipping Act of 1984 (46 U.S.C. 40901-40904)) _____ [indicate whether NVOCC or Freight Forwarder], as Principal (hereinafter "Principal"), and _____, as Surety (hereinafter "Surety") are held and firmly bound unto the United States of America in the sum of \$ _____ for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

Whereas, Principal operates as an OTI in the waterborne foreign commerce of the United States in accordance with the Shipping Act of 1984, 46 U.S.C. 40101-41309, and, if necessary, has a valid tariff published pursuant to 46 CFR part 515 and 520, and pursuant to section 19 of the Shipping Act (46 U.S.C. 40901-40904), files this bond with the Commission;

Whereas, this bond is written to ensure compliance by the Principal with section 19 of the Shipping Act (46 U.S.C. 40901-40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs (46 CFR Part 515), this bond shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Insured arising from the Insured's transportation-related activities under the Shipping Act, or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed against the Principal pursuant to section 13 of the Shipping Act (46 U.S.C. 41107-41109); provided, however, that the Surety's obligation for a group or association of OTIs shall extend only to such damages, reparations or penalties described herein as are not covered by another surety bond,

insurance policy or guaranty held by the OTI(s) against which a claim or final judgment has been brought and that Surety's total obligation hereunder shall not exceed the amount per OTI provided in 46 CFR 515.21 or the amount per group or association of OTIs provided for in 46 CFR 515.21 in aggregate.

Now, Therefore, The condition of this obligation is that the penalty amount of this bond shall be available to pay any judgment or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Principal arising from the Principal's transportation-related activities or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed against the Principal pursuant to section 13 of the Shipping Act (46 U.S.C. 41107-41109).

This bond shall inure to the benefit of any and all persons who have obtained a judgment or a settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Principal arising from its transportation-related activities or order of reparation issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301-41302, 41305-41307(a)), and to the benefit of the Federal Maritime Commission for any penalty assessed against the Principal pursuant to section 13 of the Shipping Act (46 U.S.C. 41107-41109). However, the bond shall not apply to shipments of used household goods and personal effects for the account of the Department of Defense or the account of federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration.

The liability of the Surety shall not be discharged by any payment or succession of

payments hereunder, unless and until such payment or payments shall aggregate the penalty amount of this bond, and in no event shall the Surety's total obligation hereunder exceed said penalty amount, regardless of the number of claims or claimants.

This bond is effective the ___ day of _____, ____ and shall continue in effect until discharged or terminated as herein provided. The Principal or the Surety may at any time terminate this bond by mail or email (bcl@fmc.gov) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Surety shall not be liable for any transportation-related activities of the Principal after the expiration of the 30-day period but such termination shall not affect the liability of the Principal and Surety for any event occurring prior to the date when said termination becomes effective.

The Surety consents to be sued directly in respect of any bona fide claim owed by Principal for damages, reparations or penalties arising from the transportation-related activities under the Shipping Act of Principal in the event that such legal liability has not been discharged by the Principal or Surety after a claimant has obtained a final judgment (after appeal, if any) against the Principal from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR 515.23, the Federal Maritime Commission, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Principal and/or Surety pursuant to 46 CFR 515.23,

whereby, upon payment of the agreed sum, the Surety is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant; provided, however, that Surety's total obligation hereunder shall not exceed the amount set forth in 46 CFR 515.21, as applicable.

The underwriting Surety will immediately notify the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573, in writing by mail or email (bcl@fmc.gov), of all claims made, lawsuits filed, judgments rendered, and payments made against this bond.

Signed and sealed this ___ day of _____, ____.

(Please type name of signer under each signature.)

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Trade Name, If Any

Corporate Principal

State of Incorporation

Trade Name, If Any

Business Address

By

Title

(Affix Corporate Seal)

Corporate Surety

Business Address

By

Title

(Affix Corporate Seal)

Appendix B to Part 515—Ocean Transportation Intermediary (OTI) Insurance

Form [Form 67]

Form FMC-67

Federal Maritime Commission

Ocean Transportation Intermediary (OTI) Insurance

Form Furnished as Evidence of Financial Responsibility

Under 46 U.S.C. 40901-40904

This is to certify, that the (Name of Insurance Company), (hereinafter “Insurer”) of (Home Office Address of Company) has issued to (OTI or Group or Association of OTIs [indicate whether NVOCC(s) or Freight Forwarder(s)]) (hereinafter “Insured”) of (Address of OTI or Group or Association of OTIs) a policy or policies of insurance for purposes of complying with the provisions of Section 19 of the Shipping Act of 1984 (46 U.S.C. 40901-40904) and the rules and regulations, as amended, of the Federal Maritime Commission, which provide compensation for damages, reparations or penalties arising from the transportation-related activities of Insured, and made pursuant to the Shipping Act of 1984 (46 U.S.C. 40101-41309) (Shipping Act).

Whereas, the Insured is or may become an OTI subject to the Shipping Act and the rules and regulations of the Federal Maritime Commission, or is or may become a group

or association of OTIs, and desires to establish financial responsibility in accordance with section 19 of the Shipping Act (46 U.S.C. 40901-40904), files with the Commission this Insurance Form as evidence of its financial responsibility and evidence of a financial rating for the Insurer of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization on such organization's letterhead or designated form, or, in the case of insurance provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's, or, in the case of surplus lines insurers, documentation verifying inclusion on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners.

Whereas, the Insurance is written to assure compliance by the Insured with section 19 of the Shipping Act (46 U.S.C. 40901-40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs, this Insurance shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Insured arising from the Insured's transportation-related activities under the Shipping Act, or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed against the Insured pursuant to section 13 of the Shipping Act (46 U.S.C. 41107-41109); provided, however, that Insurer's obligation for a group or association of OTIs shall extend only to such damages, reparations or penalties described herein as are not covered by another insurance policy, guaranty or surety bond held by the OTI(s) against which a claim or final judgment has been brought

and that Insurer's total obligation hereunder shall not exceed the amount per OTI set forth in 46 CFR 515.21 or the amount per group or association of OTIs set forth in 46 CFR 515.21 in aggregate.

Whereas, the Insurer certifies that it has sufficient and acceptable assets located in the United States to cover all liabilities of Insured herein described, this Insurance shall inure to the benefit of any and all persons who have a bona fide claim against the Insured pursuant to 46 CFR 515.23 arising from its transportation-related activities under the Shipping Act, or order of reparation issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301-41302, 41305-41307(a)), and to the benefit of the Federal Maritime Commission for any penalty assessed against the Insured pursuant to section 13 of the Shipping Act (46 U.S.C. 41107-41109).

The Insurer consents to be sued directly in respect of any bona fide claim owed by Insured for damages, reparations or penalties arising from the transportation-related activities under the Shipping Act, of Insured in the event that such legal liability has not been discharged by the Insured or Insurer after a claimant has obtained a final judgment (after appeal, if any) against the Insured from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR 515.23, the Federal Maritime Commission, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Insured and/or Insurer pursuant to 46 CFR 515.23, whereby, upon payment of the agreed sum, the Insurer is to be fully, irrevocably and

unconditionally discharged from all further liability to such claimant; provided, however, that Insurer's total obligation hereunder shall not exceed the amount per OTI set forth in 46 CFR 515.21 or the amount per group or association of OTIs set forth in 46 CFR 515.21.

The liability of the Insurer shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of the Insurance in the amount per member OTI set forth in 46 CFR 515.21, or the amount per group or association of OTIs set forth in 46 CFR 515.21, regardless of the financial responsibility or lack thereof, or the solvency or bankruptcy, of Insured.

The insurance evidenced by this undertaking shall be applicable only in relation to incidents occurring on or after the effective date and before the date termination of this undertaking becomes effective. The effective date of this undertaking shall be ___ day of _____, _____, and shall continue in effect until discharged or terminated as herein provided. The Insured or the Insurer may at any time terminate the Insurance by mail or email (bcl@fmc.gov) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Insurer shall not be liable for any transportation-related activities under the Shipping Act of the Insured after the expiration of the 30-day period but such termination shall not affect the liability of the Insured and Insurer for such activities occurring prior to the date when said termination becomes effective.

(Name of Agent) _____ domiciled in the United States, with offices located

in the United States, at _____ is hereby designated as the Insurer's agent for service of process for the purposes of enforcing the Insurance certified to herein.

If more than one insurer joins in executing this document, that action constitutes joint and several liability on the part of the insurers.

The Insurer will immediately notify the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573, in writing by mail or email (bcl@fmc.gov), of all claims made, lawsuits filed, judgments rendered, and payments made against the Insurance.

Signed and sealed this _____ day of _____, _____.

Signature of Official signing on behalf of Insurer

Type Name and Title of signer

This Insurance Form has been filed with the Federal Maritime Commission.

**Appendix C to Part 515—Ocean Transportation Intermediary (OTI) Guaranty
Form [Form 68]**

Form FMC-68

Federal Maritime Commission

Guaranty in Respect of Ocean Transportation Intermediary (OTI) Liability for

Damages, Reparations or Penalties Arising from Transportation-Related Activities Under the Shipping Act of 1984 (46 U.S.C. 40101-41309) (Shipping Act).

1. Whereas _____ (Name of Applicant [indicate whether NVOCC or Freight Forwarder]) (hereinafter "Applicant") is or may become an Ocean Transportation Intermediary ("OTI") subject to the Shipping Act of 1984 (46 U.S.C. 40101-41309) and the rules and regulations of the Federal Maritime Commission (FMC), or is or may become a group or association of OTIs, and desires to establish its financial responsibility in accordance with section 19 of the Shipping Act (46 U.S.C. 41107-41109), then, provided that the FMC shall have accepted, as sufficient for that purpose, the Applicant's application, supported by evidence of a financial rating for the Guarantor of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization on such rating organization's letterhead or designated form, or, in the case of Guaranty provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's, or, in the case of surplus lines insurers, documentation verifying inclusion on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners, the undersigned Guarantor certifies that it has sufficient and acceptable assets located in the United States to cover all damages arising from the transportation-related activities of the covered OTI as specified under the Shipping Act.

2. Whereas, this Guaranty is written to ensure compliance by the Applicant with section 19 of the Shipping Act (46 U.S.C. 40901-40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for

OTIs (46 CFR part 515), this guaranty shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Applicant arising from the Applicant's transportation-related activities under the Shipping Act, or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed against the Applicant pursuant to section 13 of the Shipping Act (46 U.S.C. 41107-41109); provided, however, that the Guarantor's obligation for a group or association of OTIs shall extend only to such damages, reparations or penalties described herein as are not covered by another surety bond, insurance policy, or guaranty held by the OTI(s) against which a claim or final judgment has been brought and that Guarantor's total obligation hereunder shall not exceed the amount per OTI provided for in 46 CFR 515.21, in aggregate.

3. Now, Therefore, The condition of this obligation is that the penalty amount of this Guaranty shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Applicant arising from the Applicant's transportation-related activities or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed against the Principal pursuant to section 13 of the Shipping Act (46 U.S.C. 41107-41109).

4. The undersigned Guarantor hereby consents to be sued directly in respect of any bona fide claim owed by Applicant for damages, reparations or penalties arising from Applicant's transportation-related activities under the Shipping Act, in the event that such legal liability has not been discharged by the Applicant after any such claimant has

obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR 515.23, the FMC, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant and/or Guarantor pursuant to 46 CFR 515.23, whereby, upon payment of the agreed sum, the Guarantor is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant. In the case of a guaranty covering the liability of a group or association of OTIs, Guarantor's obligation extends only to such damages, reparations or penalties described herein as are not covered by another insurance policy, guaranty or surety bond held by the OTI(s) against which a claim or final judgment has been brought.

5. The Guarantor's liability under this Guaranty in respect to any claimant shall not exceed the amount of the guaranty; and the aggregate amount of the Guarantor's liability under this Guaranty shall not exceed the amount per OTI set forth in 46 CFR 515.21, or the amount per group or association of OTIs set forth in 46 CFR 515.21 in aggregate.

6. The Guarantor's liability under this Guaranty shall attach only in respect of such activities giving rise to a cause of action against the Applicant, in respect of any of its transportation-related activities under the Shipping Act, occurring after the Guaranty has become effective, and before the expiration date of this Guaranty, which shall be the date thirty (30) days after the date of receipt of mail or email (bcl@fmc.gov) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission,

Washington, DC. 20573, that either Applicant or the Guarantor has elected to terminate this Guaranty. The Guarantor and/or Applicant specifically agree to file such written notice of cancellation.

7. Guarantor shall not be liable for payments of any of the damages, reparations or penalties hereinbefore described which arise as the result of any transportation-related activities of Applicant after the cancellation of the Guaranty, as herein provided, but such cancellation shall not affect the liability of the Guarantor for the payment of any such damages, reparations or penalties prior to the date such cancellation becomes effective.

8. Guarantor shall pay, subject to the limit of the amount per OTI set forth in 46 CFR 515.21, directly to a claimant any sum or sums which Guarantor, in good faith, determines that the Applicant has failed to pay and would be held legally liable by reason of Applicant's transportation-related activities, or its legal responsibilities under the Shipping Act and the rules and regulations of the FMC, made by Applicant while this agreement is in effect, regardless of the financial responsibility or lack thereof, or the solvency or bankruptcy, of Applicant.

9. The Applicant or Guarantor will immediately notify the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573, in writing by mail or email (bcl@fmc.gov), of all claims made, lawsuits filed, judgments rendered, and payments made under the Guaranty.

10. Applicant and Guarantor agree to handle the processing and adjudication of claims by claimants under the Guaranty established herein in the United States, unless by mutual consent of all parties and claimants another country is agreed upon. Guarantor

agrees to appoint an agent for service of process in the United States.

11. This Guaranty shall be governed by the laws in the State of ___ to the extent not inconsistent with the rules and regulations of the FMC.

12. This Guaranty is effective the day of ___, _____, _____ 12:01 a.m., standard time at the address of the Guarantor as stated herein and shall continue in force until terminated as herein provided.

13. The Guarantor hereby designates as the Guarantor's legal agent for service of process domiciled in the United States _____, with offices located in the United States at _____, for the purposes of enforcing the Guaranty described herein.

(Place and Date of Execution)

(Type Name of Guarantor)

(Type Address of Guarantor)

By

(Signature and Title)

**Appendix D to Part 515—Ocean Transportation Intermediary (OTI) Group Bond
Form [FMC-69]**

Form FMC-69

Federal Maritime Commission

Ocean Transportation Intermediary (OTI) Group Supplemental Coverage Bond
Form (Shipping Act of 1984 (46 U.S.C. 40101-41309)) (Shipping Act).

_____ [indicate whether NVOCC or Freight Forwarder], as Principal
(hereinafter "Principal"), and _____ as Surety (hereinafter "Surety")
are held and firmly bound unto the United States of America in the sum of
\$ _____ for the payment of which sum we bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally.

Whereas, (Principal) _____ operates as a group or association of OTIs in the
waterborne foreign commerce of the United States and pursuant to section 19 of the
Shipping Act of 1984 (46 U.S.C. 40901-40904), files this bond with the Federal Maritime
Commission;

Whereas, this group bond is written to ensure compliance by the OTIs, enumerated
in Appendix A of this bond, with section 19 of the Shipping Act (46 U.S.C. 40901-
40904), and the rules and regulations of the Federal Maritime Commission relating to
evidence of financial responsibility for OTIs (46 CFR Part 515), this group bond shall be
available to pay any judgment obtained or any settlement made pursuant to a claim under
46 CFR 515.23 for damages against such OTIs arising from OTI transportation-related
activities under the Shipping Act, or order for reparations issued pursuant to section 11 of

the Shipping Act (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed against one or more OTI members pursuant to section 13 of the Shipping Act (46 U.S.C. 41107-41109); provided, however, that the Surety's obligation for a group or association of OTIs shall extend only to such damages, reparations or penalties described herein as are not covered by another surety bond, insurance policy or guaranty held by the OTI(s) against which a claim or final judgment has been brought and that Surety's total obligation hereunder shall not exceed the amount per OTI provided for in 46 CFR 515.21 or the amount per group or association of OTIs provided for in 46 CFR 515.21 in aggregate.

Now, therefore, the conditions of this obligation are that the penalty amount of this bond shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 against the OTIs enumerated in Appendix A of this bond for damages arising from any or all of the identified OTIs' transportation-related activities under the Shipping Act (46 U.S.C. 40101-41309), or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed pursuant to section 13 of the Shipping Act (46 U.S.C. 41107-41109), that are not covered by the identified OTIs' individual insurance policy(ies), guaranty(ies) or surety bond(s).

This group bond shall inure to the benefit of any and all persons who have obtained a judgment or made a settlement pursuant to a claim under 46 CFR 515.23 for damages against any or all of the OTIs identified in Appendix A not covered by said OTIs' insurance policy(ies), guaranty(ies) or surety bond(s) arising from said OTIs'

transportation-related activities under the Shipping Act, or order for reparation issued pursuant to section 11 of the Shipping Act, and to the benefit of the Federal Maritime Commission for any penalty assessed against said OTIs pursuant to section 13 of the Shipping Act (46 U.S.C. 41107-41109). However, the bond shall not apply to shipments of used household goods and personal effects for the account of the Department of Defense or the account of federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration.

The Surety consents to be sued directly in respect of any bona fide claim owed by any or all of the OTIs identified in Appendix A for damages, reparations or penalties arising from the transportation-related activities under the Shipping Act of the OTIs in the event that such legal liability has not been discharged by the OTIs or Surety after a claimant has obtained a final judgment (after appeal, if any) against the OTIs from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR 515.23, the Federal Maritime Commission, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the OTI(s) and/or Surety pursuant to 46 CFR 515.23, whereby, upon payment of the agreed sum, the Surety is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant(s).

The liability of the Surety shall not be discharged by any payment or succession of

payments hereunder, unless and until such payment or payments shall aggregate the penalty of this bond, and in no event shall the Surety's total obligation hereunder exceed the amount per member OTI set forth in 46 CFR § 515.21, identified in Appendix A, or the amount per group or association of OTIs set forth in 46 CFR 515.21, regardless of the number of OTIs, claims or claimants.

This bond is effective the ___ day of _____, _____, and shall continue in effect until discharged or terminated as herein provided. The Principal or the Surety may at any time terminate this bond by mail or email (bcl@fmc.gov) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Surety shall not be liable for any transportation-related activities of the OTIs identified in Appendix A as covered by the Principal after the expiration of the 30-day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activities occurring prior to the date when said termination becomes effective.

The Principal or financial responsibility provider will promptly notify the underwriting Surety in writing and the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573, by mail or email (bcl@fmc.gov), of any additions, deletions or changes to the OTIs enumerated in Appendix A. In the event of additions to Appendix A, coverage will be effective upon receipt of such notice, in writing, by the Commission at its office in Washington, DC. In the event of deletions to Appendix A, termination of coverage for such OTI(s) shall

become effective 30 days after receipt of written notice by the Commission. Neither the Principal nor the Surety shall be liable for any transportation-related activities of the OTI(s) deleted from Appendix A that occur after the expiration of the 30-day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activities of said OTI(s) occurring prior to the date when said termination becomes effective.

The underwriting Surety will immediately notify the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573, in writing by mail or email (bcl@fmc.gov), of all claims made, lawsuits filed, judgments rendered, and payments made against this group bond.

Signed and sealed this ___ day of _____, _____,

(Please type name of signer under each signature).

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Trade Name, if Any

Corporate Principal

Place of Incorporation

Trade Name, if Any

Business Address (Affix Corporate Seal)

By

Title

Principal's Agent for Service of Process (Required if Principal is not a U.S.
Corporation)

Agent's Address

Corporate Surety

Business Address (Affix Corporate Seal)

By

Title

**Appendix E to Part 515—Optional Rider for Additional NVOCC Financial
Responsibility (Optional Rider to Form FMC-48) [FORM 48A]**

FMC-48A, OMB No. 3072-0018, (04/06/04)

Optional Rider for Additional NVOCC Financial Responsibility [Optional Rider to
Form FMC-48]

RIDER

The undersigned _____, as Principal and
_____, as Surety do hereby agree that the existing Bond No. _____
to the United States of America and filed with the Federal Maritime Commission
pursuant to section 19 of the Shipping Act of 1984 is modified as follows:

1. The following condition is added to this Bond:
 - a. An additional condition of this Bond is that \$ _____ (payable in
U.S. Dollars or Renminbi Yuan at the option of the Surety) shall be available to pay any

finances and penalties for activities in the U.S.-China trades imposed by the Ministry of Communications of the People's Republic of China ("MOC") or its authorized competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government or the State Administration of Industry and Commerce pursuant to the Regulations of the People's Republic of China on International Maritime Transportation and the Implementing Rules of the Regulations of the PRC on International Maritime Transportation promulgated by MOC Decree No. 1, January 20, 2003.

b. The liability of the Surety shall not be discharged by any payment or succession of payments pursuant to section 1 of this Rider, unless and until the payment or payments shall aggregate the amount set forth in section 1a of this Rider. In no event shall the Surety's obligation under this Rider exceed the amount set forth in section 1a regardless of the number of claims.

c. The total amount of coverage available under this Bond and all of its riders, available pursuant to the terms of section 1(a.) of this rider, equals \$ _____. The total amount of aggregate coverage equals or exceeds \$125,000.

d. This Rider is effective the ____ day of _____, 20____, and shall continue in effect until discharged, terminated as herein provided, or upon termination of the Bond in accordance with the sixth paragraph of the Bond. The Principal or the Surety may at any time terminate this Rider by mail or email (bcl@fmc.gov) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573, accompanied by proof of transmission of notice to MOC. Such

termination shall become effective thirty (30) days after receipt of said notice and proof of transmission by the Federal Maritime Commission. The Surety shall not be liable for fines or penalties imposed on the Principal after the expiration of the 30-day period but such termination shall not affect the liability of the Principal and Surety for any fine or penalty imposed prior to the date when said termination becomes effective.

2. This Bond remains in full force and effect according to its terms except as modified above.

In witness whereof we have hereunto set our hands and seals on this day of _____, 20____,

[Principal],

By: _____

[Surety],

By: _____

**Appendix F to Part 515—Optional Rider for Additional NVOCC Financial
Responsibility for Group Bonds [Optional Rider to Form FMC-69]**

FMC-69A, OMB No. 3072-0018 (04/06/04)

Optional Rider for Additional NVOCC Financial Responsibility for Group Bonds

[Optional Rider to Form FMC-69]

RIDER

The undersigned _____, as Principal and _____, as Surety do hereby agree that the existing Bond No. _____ to the United States of America and filed

with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 is modified as follows:

1. The following condition is added to this Bond:

a. An additional condition of this Bond is that \$ _____ (payable in U.S. Dollars or Renminbi Yuan at the option of the Surety) shall be available to any NVOCC enumerated in an Appendix to this Rider to pay any fines and penalties for activities in the U.S.-China trades imposed by the Ministry of Communications of the People's Republic of China ("MOC") or its authorized competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government or the State Administration of Industry and Commerce pursuant to the Regulations of the People's Republic of China on International Maritime Transportation and the Implementing Rules of the Regulations of the PRC on International Maritime Transportation promulgated by MOC Decree No. 1, January 20, 2003. Such amount is separate and distinct from the bond amount set forth in the first paragraph of this Bond. Payment under this Rider shall not reduce the bond amount in the first paragraph of this Bond or affect its availability. The Surety shall indicate that \$50,000 is available to pay such fines and penalties for each NVOCC listed on appendix A to this Rider wishing to exercise this option.

b. The liability of the Surety shall not be discharged by any payment or succession of payments pursuant to section 1 of this Rider, unless and until the payment or payments shall aggregate the amount set forth in section 1a of this Rider. In no event shall the Surety's obligation under this Rider exceed the amount set forth in section 1a

regardless of the number of claims.

c. This Rider is effective the _____ day of _____, 20__ , and shall continue in effect until discharged, terminated as herein provided, or upon termination of the Bond in accordance with the sixth paragraph of the Bond. The Principal or the Surety may at any time terminate this Rider by mail or email (bcl@fmc.gov) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573, accompanied by proof of transmission of notice to MOC. Such termination shall become effective thirty (30) days after receipt of said notice and proof of transmission by the Federal Maritime Commission. The Surety shall not be liable for fines or penalties imposed on the Principal after the expiration of the 30-day period but such termination shall not affect the liability of the Principal and Surety for any fine or penalty imposed prior to the date when said termination becomes effective.

2. This Bond remains in full force and effect according to its terms except as modified above.

In witness whereof we have hereunto set our hands and seals on this _____ day of _____, 20__ .

[Principal],

By: _____

[Surety],

By: _____

Privacy Act and Paperwork Reduction Act Notice

The collection of this information is authorized generally by Section 19 of the Shipping Act of 1984 (46 U.S.C. 40901-40904). This is an optional form. Submission is completely voluntary. *Failure to submit this form will in no way impact the Federal Maritime Commission's assessment of your firm's financial responsibility.*

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Copies of this form will be maintained until the corresponding license has been revoked.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: Recordkeeping, 20 minutes; Learning about the form, 20 minutes; Preparing and sending the form to the FMC, 20 minutes.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001 or email: secretary@fmc.gov.

By the Commission.

Karen V. Gregory
Secretary