

FEDERAL MARITIME COMMISSION

46 C.F.R PART 515

DOCKET NO. 11-09

NOTICE OF INQUIRY

Solicitation of Views on Proposal of The Ministry of Transport of The People’s Republic of China for Adjustment of the Amount for the FMC Optional Bond Rider

AGENCY: Federal Maritime Commission

ACTION: Notice of Inquiry

SUMMARY: The Federal Maritime Commission (“FMC” or “Commission”) is issuing this Notice of Inquiry (“NOI”) to solicit public comment on the Ministry of Transport of the People’s Republic of China’s proposal to the Commission to amend the financial responsibility requirements of regulations set forth in Appendix E to Subpart C of Part 515 – Optional Rider for Additional NVOCC Financial Responsibility (Optional Rider to Form FMC 48) [Form 48A] (China Bond Rider).

DATES: Responses are due on or before July 15, 2011.

ADDRESSES: Submit comments to:

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W. Room 1046
Washington, D.C. 20573-0001

Or e-mail non-confidential comments to: Secretary@fmc.gov
(E-mail comments as attachments in Microsoft Word or PDF)

FOR FURTHER INFORMATION CONTACT:

Rebecca A. Fenneman, General Counsel
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Washington, D.C. 20573-0001
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E-mail: RFenneman@fmc.gov

SUPPLEMENTARY INFORMATION:

Submit Comments: Non-confidential filings may be submitted in hard copy or by e-mail as an attachment (in Microsoft Word or PDF) addressed to Secretary@fmc.gov on or before July 15, 2011. Include in the subject line: "Docket No. 11-09 - FMC Optional Bond Rider." To help assure that all potential respondents will provide usefully detailed information in their submissions, the Commission will provide confidential treatment to the extent allowed by law for those submissions, or parts of submissions, for which the parties request confidentiality. Responses to this inquiry that seek confidential treatment must be submitted in hard copy by U.S. mail or courier. 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. When submitting documents in response to the NOI that contain confidential information, the confidential copy of the filing must consist of the complete filing and be marked by the filer as "Confidential-Restricted," with the confidential material clearly marked on each page. When a confidential filing is submitted, an original and one additional copy of the public version of the filing must be submitted. The public version of the filing should exclude confidential materials, and be clearly marked on each affected page, "confidential materials excluded." Questions regarding filing or treatment of confidential responses to this inquiry should be directed to the Commission's Secretary, Karen V. Gregory, at the telephone number or e-mail provided above.

BACKGROUND:

On April 15, 2011, the Federal Maritime Commission (FMC or Commission) received a [communication from the Maritime Administration](#), U.S. Department of Transportation, transmitting a request from the Ministry of Transport (MOT) of the People's Republic of China (China or PRC) to revise the Commission's regulations at Appendix E to Subpart C of Part 515 – Optional Rider for Additional NVOCC Financial Responsibility (Optional Rider to Form FMC 48) [Form 48A] (China Bond Rider). These documents are available to the public on the Commission's website at www.fmc.gov.

Pursuant to an Annex to the 2003 bilateral Maritime Agreement between the United States and the People's Republic of China, the PRC does not require U.S. Non-Vessel-Operating Common Carriers (NVOCCs) to make a cash deposit in a Chinese bank as would otherwise be required by Chinese regulations, as long as the NVOCC:

- (1) is a legal person registered by U.S. authorities;
- (2) obtains an FMC license as an NVOCC; and
- (3) provides evidence of financial responsibility in the total amount of Chinese Renminbi (RMB) 800,000 or U.S. \$96,000.

An FMC-licensed U.S. NVOCC that voluntarily provides an additional surety bond in the amount of \$21,000 (denominated in USD or RMB), which by its conditions is available for potential claims of the MOT (as well as other Chinese agencies) for violations of the Chinese Regulations on International Maritime Transportation, would be able to register in the PRC without paying the cash deposit otherwise required by Chinese law and regulation.

In 2004, the Commission issued a Notice of Proposed Rulemaking (NPR) to explore mechanisms for NVOCCs to file proof of such additional financial responsibility. 69 Fed. Reg. 4271 (January 29, 2004). The Commission received comments in response to the NPR from the

National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA), American Surety Association (ASA), and the Surety Association of America (SAA). The NPR arose from a Commission order issued January 22, 2004 granting in part and denying in part a petition for rulemaking from NCBFAA. *See* Petition No. P10-03, *Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Rulemaking*, 30 S.R.R. 76 (FMC 2004). The proposed rule granted NCBFAA's petition in most substantive respects. On April 1, 2004, the Commission issued a final rule which amended its regulations governing proof of financial responsibility for ocean transportation intermediaries to allow an optional rider to be filed with a licensed NVOCC's proof of financial responsibility to provide additional proof of financial responsibility for such carriers serving the U.S. oceanborne trade with the PRC. Docket No. 04-02, *Optional Rider for Proof of Additional NVOCC Financial Responsibility*, 30 S.R.R. 179 (FMC 2004).

MOT has now requested that the Commission review its financial responsibility regulations set forth in 46 C.F.R. § 515.21 *et seq.* MOT asserts that the exchange rate between the USD and the RMB has risen from 1:8.276 in 2003 to 1:6.536 at present, an increase of approximately 21.02%. Consequently, MOT asserts, the amount of 96,000 USD is inadequate to meet 800,000 RMB at the current exchange rate. Specifically, MOT requests that the regulation be revised to include a provision that would allow for adjustments to the USD amount required in a NVOCC optional bond rider covering transportation activities in the U.S./China trades when the USD and the RMB exchange rate fluctuates 20% higher or lower than that of the last adjustment. MOT also proposes that the adjustment be jointly approved by the U.S. and the PRC at the bilateral maritime consultative meeting of the same year. Finally, if this proposal is adopted, the MOT also proposes that the existing total required bond amount of 96,000 USD, be increased to 122,000 USD, which, MOT asserts, is the equivalent amount of 800,000 RMB at the present exchange rate.

The questions below seek to solicit comments on how the amendment of the financial responsibility requirement would affect business operations. Commenters may address any or all of the questions and/or submit any comments on the optional bond rider generally as well as the effects of an adjustment to the optional bond rider not addressed by any of these questions. Please identify the specific question you are responding to when providing comments.

Questions

1. Describe how, and to what extent, the optional rider to the required NVOCC bond has impacted your company's business operations? Does this make for more certainty in your business operation? Has the optional rider to the required NVOCC bond impacted your overall business costs? If so, how?
2. What do you see as the advantages and disadvantages of an adjustment to the current optional rider to the required NVOCC bond?
3. Please explain whether, and if so, how significantly your business costs/operations would be affected by a provision that allows for adjustments to the U.S. Dollar amount required in a NVOCC optional China bond rider when the USD (U.S. Dollar) and the RMB (Renminbi) exchange rate fluctuates 20% higher or lower.

Along with comments, respondents should provide their name, their title/position, contact information (e.g., telephone number and/or e-mail address), name and address of company or other entity and type of company or entity (e.g., carrier, exporter, importer, trade association, etc.).

Responses to this Notice of Inquiry will help the Commission ascertain more precisely how the impact of potentially changing the financial responsibility requirement of the optional rider to the required NVOCC bond would affect U.S. ocean liner commerce, the ocean liner industry, and the economy with a view to determining whether additional analyses or action by the Commission may be necessary.

To promote maximum participation, the NOI questions will be published in the Federal Register and on the Commission's web-site at www.fmc.gov in a downloadable text or pdf file.

They can also be obtained by contacting the Commission's Secretary, Karen V. Gregory, by telephone at (202) 523-5725 or by e-mail at secretary@fmc.gov. Please indicate whether you would prefer a hard copy or an e-mail copy of the NOI questions. Non-confidential comments may be sent to secretary@fmc.gov as an attachment to an e-mail submission. Such attachments should be submitted in Microsoft Word or text-searchable PDF.

The Commission anticipates that filed comments will be made publicly available on its website. Public availability of comments will likely improve public awareness of the MOT request, and generate input that the Commission can consider in analyzing the potential impact on the industry of adjustments in the current regulations and requirements concerning the optional rider to the required NVOCC bond. Nevertheless, some commenting parties may wish to include commercially sensitive information as relevant or necessary in their responses by way of explaining their liner shipping experiences or detailing their responses in practical terms. To help assure that all potential respondents will provide usefully detailed information in their submissions, the Commission will provide confidential treatment to the extent allowed by law for those submissions, or parts of submissions, for which the parties request confidentiality.

By the Commission.

Rachel E. Dickon
Assistant Secretary