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Part IV

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46 CFR Part 515

Amendments to Regulations Governing Ocean Transportation Intermediary Licensing and Financial Responsibility Requirements, and General Duties; Proposed Rule

**FEDERAL MARITIME COMMISSION****46 CFR Part 515**

[Docket No. 13–05]

RIN 3072–AC44

**Amendments to Regulations Governing Ocean Transportation Intermediary Licensing and Financial Responsibility Requirements, and General Duties****AGENCY:** Federal Maritime Commission.**ACTION:** Advanced 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 July 31, 2013.

**ADDRESSES:** Address all comments concerning this proposed rule to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Phone: (202) 523–5725, Email: [secretary@fmc.gov](mailto:secretary@fmc.gov).

**FOR FURTHER INFORMATION CONTACT:** Vern W. Hill, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Tel.: (202) 523–5800, Email: [OMD@fmc.gov](mailto:OMD@fmc.gov).

**SUPPLEMENTARY INFORMATION:****Submit Comments**

*Non-confidential Comments and Information.* For non-confidential comments submit an original and five (5) paper copies, and if possible, send a PDF of the document by email to [secretary@fmc.gov](mailto:secretary@fmc.gov). Include in the subject line: Docket No. 13–05, Comments on Ocean Transportation Intermediary Regulation Revisions.

*Confidential Comments and Information.* Confidential filings must be submitted in the traditional manner on paper, rather than by email. Comments and information that are submitted for confidential treatment must be submitted by 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. Responses to this request that contain

confidential information must consist of (1) the complete filing and (2) 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.” The Federal Maritime Commission (FMC or Commission) will provide confidential treatment to the extent allowed by law for those submissions, or parts of submissions, for which the parties request confidentiality.

Questions regarding filing or treatment of confidential responses to this Advance Notice of Proposed Rulemaking (ANPR) should be directed to the Commission’s Secretary, Karen V. Gregory, at the telephone number or email provided above.

**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).

The Commission now proposes significant modifications to Part 515 for a variety of purposes, including addressing changes in industry conditions, streamlining internal processes, improving transparency, and removing unwarranted regulatory burdens. These changes reflect the Commission’s experience in implementing the current regulations and address issues and questions that have arisen over time. The proposed rules also reflect recommendations adopted by the Commission in 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*,<sup>1</sup> (Fact Finding 27 or Fact Finding 27

Final Report) and the Commission’s grant of the petition for a declaratory order in Docket No. 06–08, *In the Matter of the Lawfulness of Unlicensed Persons Acting as Agents for Licensed Ocean Transportation Intermediaries*, 31 SRR 1058 (2009). 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)). The definition of “Shipping Act” (§ 515.2(u)) is substituted for the definition of “Act” (§ 515.2(a)) in light of the provisions of the Ocean Shipping Reform Act and the Coast Guard Authorization Act of 1998 having been superseded by the codification of those statutes into positive law.

In addition, the Commission proposes modifying the definition of “person” (§ 515.2(n)). The revised definition not only conforms with the definition of “person” in 1 U.S.C. 1, but also specifically includes “limited liability companies” within its ambit 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

<sup>1</sup> <http://www.fmc.gov/assets/1/Documents/Fact%20Finding%2027%20Report.pdf>.

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 define further 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 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)). These definitions currently refer to preparation of bills of lading “or equivalent documents.” 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).

The definition of “advertisement” is new along with a related new provision in section 515.31(j). Section 515.31(j) provides that OTIs and their agents (at the direction of their OTI principals) must include the OTI’s name, license or registration number on all advertisements; are prohibited from including false or misleading information in ads and creates a rebuttable presumption that an entity that advertises OTI services has performed those services.

Also new is the definition of “registered non-vessel-operating common carrier,” which identifies NVOCCs that are located outside of the United States and opt to register rather than to obtain a license. The term “qualifying individual” (QI) is added and defines QI as an individual that is an employee of a licensed OTI who is age 21, or older, is responsible for general supervision of the licensee’s OTI operations and meets the Shipping Act’s experience and character requirements. The definition reflects the intention that a licensee’s QI cannot be someone that is nominally responsible for OTI

operations while not actively involved in assuring that OTI functions are properly carried out. Hence, the QI must be responsible for “general supervision” of OTI operations. The QI must have that responsibility at the time a license is issued and must thereafter continue to exercise that responsibility. The OTI must timely replace the QI, as provided by the Commission’s rules, when the designated QI ceases to exercise such supervision on behalf of the licensee.

#### *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 NVOCCs), substituting in its stead the requirement that “registered NVOCC[s]” must use licensed OTI agents in the United States with respect to OTI services performed in the U.S.

#### *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. A corresponding change is made to section 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 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 eventual implementation of on-line filing and processing of applications and forms. Section 515.5(c)(1) has been added and requires OTIs to pay any applicable fees within ten (10) business days of the time of submission of such applications and forms. This may be

modified, however, should the Commission develop the ability to receive on-line payments by credit or debit cards. Failure to make timely payment will cause an application or registration to be rejected. Section 515.5(c)(2) is added and will set out all fees applicable under Part 515 (e.g., fees for filing of license applications and registrations).

#### **Subpart B—Eligibility and Procedure for Licensing; Procedure for Registration**

##### *Section 515.11—Basic Requirements for Licensing; Eligibility*

The Commission proposes to clarify, in section 515.11(a), that the licensing requirements in section 19 of the Shipping Act, 46 U.S.C. 41107–41109, apply to the applicant as a whole and, for that reason, require the Commission to consider the character of the principal owners and officers of applicants, as well as that of the QI. This reflects the Commission’s current practice.

Section 515.11(a)(1) is modified to require that the licensee’s QI must have three years of “relevant and diverse experience” in performing OTI activities. The description of the types of experience required is intended to assure that a QI has experience handling virtually every aspect of an OTI’s operations so that those under the QI’s direction can be guided through complex shipments and problems as they arise. This requirement complements the definition of QI contained in section 515.2(p) that provides that the QI is “responsible for general supervision” of the applicant’s OTI operations. This paragraph also defines “principal shareholder” as one who owns directly, indirectly or constructively 5 percent or more of the total combined voting power or 5 percent or more of the combined value of all classes of the OTI’s shares. This threshold does not apply to equity owners such as mutual funds and exchange traded funds as it is not likely that such shareholders will have a direct role in operation of the OTI.

The current content of section 515.11(a)(2) is deleted as unnecessary in view of § 515.21 and § 515.22. Section 515.11(a)(2), as proposed, now provides that the three years of OTI experience required for a license may not be met by working for an unlicensed, unbonded or unregistered OTI. In other words, to qualify, relevant and diverse OTI experience must be obtained working for: Licensed or registered OTIs; foreign-based OTIs bonded under the Commission’s current rules; a vessel

operating common carrier; or, as an employee of a cargo owner.

The current content of section 515.11(a)(3) is no longer needed, and is deleted, as it provided for NVOCCs that had tariffs and financial responsibility in place at the time the OSRA licensing requirements came into effect to be temporarily grandfathered pending promulgation of regulations. The replacement paragraph, as proposed, makes clear 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. It will be noted that the requirements in section 515.11(a)(2) (prohibiting reliance upon experience acquired with an unlicensed, unregistered, or unbonded OTI), along with section 515.11(a)(3), changes the Commission's current practice, in certain circumstances, of allowing use of unlicensed experience to qualify an individual to become licensed or become a QI when an applicant has sufficient qualifying experience.

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. An "officer" of an LLC may be the QI if the LLC's operating agreement so provides.

Section 515.11(b)(2)–(4) also indicate that the QI for partnerships, corporations and LLCs are responsible for the "general supervision" of the licensee's OTI operations. This reinforces the identical requirement in the definition of QI.

A new section 515.11(e) is added to provide that a foreign-based NVOCC that opts to obtain a license rather than register is required to establish a presence in the United States by opening an unincorporated office that is operated by a *bona fide* employee and qualifies to do business where it becomes resident. This provision reflects the Commission's 1999 clarification that in order for a foreign-based NVOCC to obtain 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*, 28 SRR 667, 668 (FMC 1999). Failure to establish and maintain such an office may result in termination or revocation of a license pursuant to section 515.16(a)(9).

#### *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, and to provide that the Commission shall publish notice of filings of applications on its Web site, [www.fmc.gov](http://www.fmc.gov). **Federal Register** publication of applications will be discontinued. 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 the Bureau of Certification and Licensing (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. Applicants whose applications are closed may reapply at any time.

Section 515.12(e) is superseded by the electronic filing requirement in section 515.5(b). Section 515.12(e) currently provides for an optional method for OTIs to electronically file these forms and pay lower fees than for filing paper forms. The fees for a license application will be set out in section 515.5(c)(2).

#### *Section 515.14—Issuance, Renewal, and Use of License*

Section 515.14(c) is new. It requires that OTI licenses be issued for an initial two year period and renewed every two (2) years. Section 515.4(d) is also new and requires licensees to submit a license renewal application form 60 days prior to the expiration date of their license. This paragraph also provides that a new license bear an expiration date on the same day and month as the date on which the license is originally issued, with the expiration day and month remaining the same for successive renewals 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 expiration 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 update their QIs' identification and contact information, changes in business or organization, trade names, tariff publication information, physical address, and electronic contact data.

In proposing this change, the Commission is mindful that no expiration dates are included on the licenses of the approximately 4,500 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 expiration date assigned by BCL enable these OTIs to renew their licenses without confusion?

Failure to renew a license by providing the required information and fee may result in revocation or suspension of the license pursuant to section 515.16. This renewal process, however, will not trigger a detailed Commission review or consideration of the character and eligibility of existing licensed OTIs except when an OTI supplies information that requires such review or approval pursuant to section 515.20. A copy of the license renewal form is included at the end of this Supplementary Information. Public comments on this form are also requested.

#### *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 adjudicatory hearing procedures in Part 502 of the Commission's regulations.

#### *Section 515.16—Revocation or Suspension of License*

Section 515.16(a) is revised to also refer to the new hearing procedures set forth in section 515.17. The grounds for revocation or suspension of a license listed in this paragraph are reordered and section 515.16(a)(2) is revised to provide for a license revocation or suspension when an OTI fails to respond to a lawful order or request of

the Commission or an authorized Commission representative. Section 515.16(a)(3) provides that a license may be revoked or suspended when an OTI makes a materially false or misleading statement to the Commission in connection with an application for, amendment to, or renewal of, a license. Section 515.16(a)(6) is added to provide for revocation or suspension of an NVOCC's license for failure to (1) file a Form FMC-1 within 120 days of being notified that its license application had been approved or (2) maintain a Form FMC-1 and a published tariff. Section 515.16(a)(10) is added to provide that a license may be revoked or suspended for any act, omission or matter upon which a new license application may be denied pursuant to section 515.15.

A new § 515.16(a)(7) provides that an NVOCC's license may be revoked or suspended if it knowingly and willfully accepts cargo from, processes, books, or transports cargo for an OTI that does not have an OTI license or has not registered, or fails to provide proof of financial responsibility. 46 U.S.C. 41104(11). Section 515.16(a)(9) is added to provide that a foreign-based NVOCC that elects to become licensed may have that license terminated or suspended for failure to establish or maintain an unincorporated office operated as required by section 515.11(e).

Section 515.16(b) is revised to provide for publication of notices of revocation and suspension on the Commission's Web site.

#### *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 regarding licenses 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.

After the hearing officer's decision is rendered, an OTI may seek review of the decision by the Commission pursuant to § 501.21(f)(1), which provides for review of an action taken under delegated authority upon the filing of a petition. Specifically, 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, which 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.

#### *Section 515.19—Registration of Foreign-Based Non-vessel-Operating Common Carriers*

This section establishes new requirements applicable to NVOCCs located outside the United States that wish to provide NVOCC services in the U.S. foreign trade. Foreign-based NVOCCs that choose to operate as registered NVOCCs, rather than obtaining a license, must submit a registration form, the required fee and evidence of financial responsibility pursuant to section 515.21(a)(3). New and renewal registrations will be issued for periods of two years. Registrations will be renewed by submission of an updated registration form and required fee.

There are currently approximately 1,200 NVOCCs not located in the U.S. that have provided proof of financial responsibility and published a tariff covering their services in the U.S. trades. The Commission currently has no formal process for identifying these foreign-based NVOCCs. The Commission intends that they be registered in a methodical, but expeditious, manner. The Commission requests the public to comment on a process to be used by the Commission to best accomplish the goal of registering such foreign-based NVOCCs with a minimum of burden or processing delays.

This registration is not an OTI license. In addition to the current requirements to provide proof of financial responsibility, publish a tariff, and file a Form FMC-1, registrants would be required to submit limited additional information on a registration form. No

inquiry by the Commission is made into the experience or character of these registrants. Completed registrations become effective upon receipt by the Commission, provided they meet the other requirements for foreign-based NVOCCs.

The registration form submitted by foreign-based NVOCCs will provide a concise source of information, including the registrant's legal name, trade names under which it operates, principal business address, telephone and fax numbers, contact person with email address, and U.S. resident legal agent contact and address information. A copy of the new registration form is included at the end of this Supplementary Information. Public comment is also requested on this form.

The registration form will allow the Commission to become better informed about the identity of foreign-based NVOCCs operating in the U.S. trades without a license and, consequently, to better protect the public under the Shipping Act. The increased transparency provided by this section is furthered by the provision in section 515.3 clarifying that foreign-based NVOCCs must use only licensed OTIs as agents to perform NVOCC services in the United States. This provision is in furtherance of section 10(b)(11) of the Shipping Act, 46 U.S.C. 41104(11), which prohibits common carriers from knowingly or willfully accepting cargo from or transporting cargo for NVOCCs that do not have financial responsibility in place or have not published a tariff. Moreover, the Commission has strongly signaled that it desires the shipping public, vessel operating common carriers, and NVOCCs to deal only with licensed or registered NVOCCs. Docket No. 06-01, *Worldwide Relocations, Inc., et. al., Possible Violations of Sections 8, 10, and 19 of the Shipping Act of 1984 as Well as the Commission's Regulations at 46 CFR 515.13, 515.21, and 520.3*, 32 SRR 495, 505 (2012). (*Worldwide Relocations*). Section 515.19(f) requires registered NVOCCs to report changes to their legal and trade names, address and contact information for their principal place of business and contact person. Section 515.19(g) informs registered NVOCCs of grounds upon which the Commission may base terminations or suspensions of the effectiveness of a registration. Section 515.19(g) also provides that a registrant may request a hearing using the procedural steps set out in § 515.17 governing hearing requests.

*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 right are required to be licensed, irrespective of whether they are related to another incorporated OTI.

Section 515.20(c) is modified to provide that OTIs operating as partnerships, corporations or LLCs must submit a report within 15 business days when their QI ceases to serve as a full-time employee of the OTI or when the QI is no longer responsible for the general supervision of the licensee's OTI activities. 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 515.21—Financial Responsibility Requirements*

The Commission proposes increasing OTI financial responsibility levels in section 515.21 to reflect inflation and the fact that, in recent years, these levels have proven inadequate to provide security sufficient to cover claims against OTI bonds. For example, the bonds of Global Ocean Freight, Inc. (Organization No. 018485) (license revoked April 4, 2009) and Pacific Atlantic Lines, Inc. (Organization No. 018407) (license revoked November 19, 2011) proved inadequate to cover claims of shippers and others.

With respect to Global Ocean Freight, Inc., the OTI's surety received and paid a single shipper claim for \$36,170.12 before it had knowledge of any of the numerous other claims. As a result, only \$38,829.88 of the \$75,000 bond then remained available to divide among sixty-nine (69) subsequent claimants. Those 69 claims totaled \$636,203.46. Hence, as a group those claimants received 6.1 percent of the total amount claimed. With respect to Pacific Atlantic Lines, Inc., the claims made against the bond totaled \$549,192.59 by nineteen claimants. Hence, the \$75,000 bond covered approximately 13.7 percent of

the total claimed. Two vessel operating common carrier claimants received almost \$52,000 of the \$75,000 bond.

The adequacy of bonds or other forms of financial responsibility to compensate those injured by OTIs is specifically addressed by the requirements of the Shipping Act (46 U.S.C. 40902). In light of its experience, the Commission is concerned that the current financial responsibility levels are inadequate. Accordingly, to improve protection to claimants, the Commission proposes to increase the ocean freight forwarder financial responsibility amount from \$50,000 to \$75,000; the NVOCC amount from \$75,000 to \$100,000; and \$200,000 for registered NVOCCs (an increase from \$150,000, which is currently applicable pursuant to section 515.21(a)(3) to "unlicensed foreign-based entities" providing NVOCC services). Section 515.21(a)(3) is also revised to clarify that registered OTIs are strictly responsible for the acts or omissions of their employees and agents, wherever they are located. Proposed section 515.21(b) requires group financial responsibility to be increased from \$3,000,000 to \$4,000,000 in aggregate.

In addition, the Commission proposes, in section 515.21(a)(4), to require OTIs to restore their bond, insurance or surety to the required amounts when claims have been paid. OTIs must restore the applicable financial responsibility amount within 60 days of a claim being paid. It is estimated that 60 days is sufficient time for financial responsibility to be restored to the required amount or, if a financial responsibility provider is inclined to terminate the financial responsibility, for the instrument to be terminated. The proposal would prohibit OTIs from accepting new business until the OTI furnishes proof that the financial responsibility amount has been restored to the amount required by the Commission's regulations. Failure to restore the financial responsibility will result in immediate license or registration revocation.

The Commission understands that a requirement that financial responsibility amount be replenished would not result in increased cost to OTIs at the time the financial responsibility is first issued. The replenishment requirement thus does not appear to be a barrier to entry by small OTIs. However, the Commission also understands that where substantial claims are later made against a bond, the surety may question the credit worthiness of the OTI and may demand a higher premium or increased collateral before it will

replenish the bond or, as they may do now, the provider may decide to terminate the OTI's bond. Because this is a new element that changes how financial responsibility instruments operate, comments from surety companies, financial responsibility providers or other interested parties, as well as the affected OTIs, are especially requested.

Because the approximately 5,900 licensed OTIs and foreign-based NVOCCs that have existing financial responsibility in place will need to conform to the increased amounts, the Commission includes a new section 515.21(e) permitting individual OTIs, groups or associations to increase their financial responsibility by bond rider or by arranging for a new instrument of financial responsibility. OTIs that implement the increase by rider must assure that any instrument of financial responsibility that supersedes the one amended by rider meets the increased levels. This approach closely tracks the process previously adopted by the Commission. Docket No. 98–28 Final Rule, *supra* at 28 SRR 646.

*Section 515.23—Claims Against an Ocean Transportation Intermediary*

The Commission proposes to amend this section by establishing priorities for claims made against OTI bonds whereby claims of shippers and consignees are given precedence over common carriers and commercial creditors. The Commission understands that financial responsibility providers currently do not prioritize among claims against an OTI bond. In one instance, a claimant was paid in full because its claim preceded other claims by a number of months. The remainder of the bond was shared among a large number of claimants proportionate to their claimed losses. The Commission has also observed that carriers may continue to extend credit to NVOCCs until the amounts owed them are excessively high, notwithstanding that they are in a much better position than others to limit their losses to such NVOCCs. It is in this context that the Commission considers it necessary to establish a priority system to provide more protection for shippers. In order to provide better and more accurate information as to claims being made on OTIs' financial responsibility, additional reporting has been incorporated into the financial responsibility forms required by the Commission's regulations and which are included at the end of the draft rule.

Section 515.23(c) and (d) create three tiers of payment priorities for claims the financial responsibility provider finds valid: (1) Shipper and consignee claims;

(2) claims by common carriers, ports, terminals, and other third party creditors with respect to claims arising out of OTI activities; and (3) claims by the Commission under the Shipping Act. Claims in tier (1) must be satisfied before claims in tier (2) are paid, with tier (3) being paid only after claims in tiers (1) and (2) are satisfied.

Section 515.23(e) establishes requirements for common carriers, marine terminal operators and financial responsibility providers (pursuant to the terms of the financial instrument forms contained in the ANPR) to submit notice to BCL of court actions or claims filed or claims received (in the case of the providers). Those notices of court actions and claims will be published on the Commission's Web site for information purposes only. The notices would not be intended to indicate the merits or outcome of such actions or to indicate violations of the Shipping Act, the Commission's regulations or any other statute or regulation. For example, the general notices will provide shippers with timely information relevant to other parties' commercial experience with a particular OTI, whether or not a shipper pursues a claim of its own in court or with the financial responsibility provider.

Section 515.23(f) sets forth a mechanism for engaging the priority system established in sections 515.23(c) and (d). Financial responsibility providers must consult the notices of court actions and claims published on the Commission's Web site when they receive a claim. See, section 515.23(f)(1). If the provider finds a notice on the Web site involving the same OTI, section 515.23(f)(2) provides that the provider must defer payment of claims for a period of 5 months in order to allow any other claimants to file. Section 515.23(f)(3) provides that payment of a claim for an amount that is more than 20 percent of the face amount of the instrument of financial responsibility must not be made for 5 months after the date the claim is received. This section addresses the situation presented by Global Ocean Freight, Inc., where the priority system would be undermined if such a large claim was paid without a delay to allow other shipper claimants, if any, to file claims and obtain the benefit of the priority system.

All common carriers, marine terminal operators and financial responsibility providers are requested to provide comments on all aspects of the priority system established in section 515.23(c)–(f).

The process provided in section 515.23(b)(2) to address situations where

the OTI and the person seeking payment from the available financial responsibility are unable to agree on the amount of a claim, is shortened overall by thirty days in order to speed resolution of claims that do not involve the filing of a complaint with the Commission.

Financial responsibility providers are also requested to respond as to their company's experience to the following questions, but without disclosing the identities of OTIs:

(1) How many claims and their total dollar amount were made during the period 2009 through 2012 against OTI financial responsibility instruments provided by you?

(2) How many claims (and their total dollar amount) did you pay?

(3) How many individual claims were paid that exhausted the entire financial responsibility amount for the instrument; and as to these claims, what was the total amount of the claims sought by claimants (as opposed to the amount that you paid out)?

(4) How many claims received only a fraction of the amount sought due to other claims exhausting the bond's value?

#### *Section 515.24—Agent for Service of Process*

Section 515.24(b) is revised to provide for service of process by regular mail or courier service on the legal agents of NVOCCs that are not “in the United States.” See, 46 U.S.C. 40901. The current rule requires such service to be made using certified mail, return receipt requested.

As a general matter, section 515.24(c) in the draft rule is revised to help ensure that consumers and other claimants can perfect service of process on such NVOCCs for as long as such NVOCC's financial responsibility remains available to cover valid claims. Strict interpretations of section 515.24 may lead to situations where no service can be made on such a foreign-based NVOCC via a legal agent in the United States and the Commission's Secretary likewise would not be authorized to act as the alternate legal agent for the NVOCC because the agent was not dead, disabled or unavailable as required by the current rule.

In at least one instance known to the Commission, a licensed foreign-based NVOCC surrendered its license and terminated its tariff (and, hence, becoming an NVOCC not in the U.S.) thereby frustrating all efforts for it to be served under the current rules. This result appears to defeat Congress' intent behind the resident agent requirement

when, in 1990, it first required NVOCCs to provide financial responsibility:

The requirement that foreign NVOCCs designate a resident agent in the United States for receipt of judicial or administrative process will permit the FMC and private parties to initiate and conduct proceedings against foreign-based NVOCCs without the difficulties inherent in effecting service of process overseas. This should significantly assist the FMC in its regulation of the NVOCC industry and its enforcement of the 1984 Act.

H.R. Rep. No. 101–785, at 3 (1990).

Section 515.24(c) is revised to clarify that the Commission's Secretary shall be deemed to be the legal agent for service of process when U.S. legal agents of NVOCCs that are not “in the United States” are unable to be served because of death, disability, or unavailability but also in situations where such designations are terminated or expired. Also, authority is added for the Secretary to act as legal agent where such an NVOCC does not publish its legal agent's name and contact information in its tariff as required by the Commission's regulations. These changes help ensure that the Secretary can serve as alternate legal agent in circumstances that do not fit within the current rule's reasons triggering the Secretary's authority.

A complementary addition is made to section 515.24(c) to provide that the designation of the Secretary as legal agent shall survive the entire period during which claims may be made against the financial responsibility instrument, including when a foreign-based NVOCC's license (*i.e.*, where such foreign-based NVOCC elected to become licensed) or tariff are surrendered, cancelled or terminated. This addition also makes it clear that the continuation of the designation is unaffected by the ineffectiveness of such NVOCC's license or tariff. Taken together, these changes will help protect consumers and other claimants from actions to avoid service.

#### *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 be 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 licenses and registrations may be 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.

*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 making all of the substantive sections appear uninterrupted by 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*

As referenced above, this section reflects the Commission grant of the petition for a declaratory order in Docket No. 06–08, *In the Matter of the Lawfulness of Unlicensed Persons Acting as Agents for Licensed Ocean Transportation Intermediaries*, 31 SRR 1058 (2009),<sup>2</sup> by ensuring that the agency relationship is disclosed in all documents that are related to the transportation provided by the OTI principal or on its behalf. In its order granting the petition, the Commission ordered “that it is lawful for a licensed OTI to engage an unlicensed person to act as its agent to perform OTI services on behalf of the disclosed licensed OTI.” In keeping with the court’s decision in *Landstar Express*, this section imposes requirements on OTI principals.

Section 515.31(a) and (b) are amended to clarify that OTIs must include their

<sup>2</sup> The Commission granted the petition to the extent consistent with the court’s decision in *Landstar Express America, Inc. v. Federal Maritime Commission*, 569 F.3d 493 (D.C. Cir. 2009) (*Landstar Express*).

names and license or registration numbers on all shipping documents and communications (including written, printed and electronic communications), and require their agents to include the OTI principal’s name, license or registration number on all shipping documents issued on behalf of the OTI. Consistent with the common law of agency, this section is also amended to provide that an entity that issues shipping documents in its own name is presumed to be operating in its own name and not on behalf of a licensed or registered OTI. Restatement Third, Agency §§ 1.02 and 1.04 (2006).

Section 515.31(c) is revised to provide that an OTI is not permitted to allow its name, license, license number, or registration number to be used by anyone that is not its employee or agent. This paragraph clarifies that an OTI that provides OTI services in its own name, in addition to acting as an agent for another licensed OTI, must itself be licensed as an OTI. OTIs are prohibited from using an agent to provide OTI services in the United States unless the agent includes the required information regarding its OTI principal in all shipping documents issued on its principal’s behalf.

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

Section 515.31(j) is added and requires OTIs to include the OTI’s name, license or registration number in all advertisements. OTIs are also prohibited from including false or misleading information in such advertisements. Additionally, OTIs must require (1) that their agents include this information (the OTI principal’s name, license or registration number) on shipping documents covering the principal’s shipments and (2) that agents do not include false or misleading information in advertisements.

These advertisement provisions incorporate the core of two recommendations adopted by the Commission in Fact Finding 27. One recommendation calls for a rulemaking “to develop a more general and comprehensive definition of the matters, items and actions” which give rise to acting as an OTI in the household goods

area.<sup>3</sup> The Fact Finding 27 (“FF 27”) report elucidated:

The record developed in FF 27 demonstrates that unlicensed OTIs, operating without the protection of a bond or other surety, and without publishing a tariff, routinely advertise their ocean transportation intermediary services in the electronic and print media. Further, many unlicensed OTIs advertise and promote their services on their own Web sites and through industry data bases and Web sites targeting household goods shippers. It is common for these unlicensed operators to advertise that they are “FMC Approved.” Consumers, particularly inexperienced international shippers, are easily deceived by these advertisements into using the services of unlicensed, unbonded operators.

Fact Finding 27 Final Report at 37.

The second recommendation in Fact Finding 27 advocates a rulemaking to require that OTIs ensure that “their bona fide agents to include the OTI/principal’s name and license number on all stationery, billing forms, and all papers and invoices. . . .”<sup>4</sup> Though these recommendations addressed problems with respect to the manner in which household goods OTIs hold out their services to the public, these problems are common with respect to OTIs transporting general cargo and consolidated shipments that may include household goods. Therefore, the proposed rule would apply this requirement to all OTIs.

Section 515.31(j)(3) further provides that where an entity advertises OTI services, with no indication that it is acting as an agent for its OTI principal, a presumption arises that the entity has performed the services offered in the advertisement as a principal. Fact Finding 27 Final Report urged such a presumption be adopted:

The Commission should also adopt a legal presumption that the failure to disclose the agent/principal relationship and the principal’s FMC license number on the shipping document will give rise to a presumption that the issuer of the document is engaged in unlicensed OTI activity, unless otherwise licensed and bonded.

Fact Finding 27 Report at 38. In adopting Motion #20 in Fact Finding 27, the Commission approved “appropriate presumptions that would apply where such disclosure is not made.” Final Report, Attachment: Motions for Commission Meeting May 11, 2011, Motion #20 at page 4.

The presumptions in proposed section 515.31(a) (that an entity is

<sup>3</sup> Fact Finding 27 Final Report, Attachment: Motions for Commission Meeting May 11, 2011, Motion #19 at 4.

<sup>4</sup> Fact Finding 27 Final Report, Attachment: Motions for Commission Meeting May 11, 2011, Motion #20 at 4.



presumed to be operating in its own name when it issues shipping documents without including the name and license or registration number of an OTI), and in 515.31(j)(3) (the entity advertising OTI services is presumed to have actually performed them) also follow the Commission's recent decision in *Worldwide Relocations*. Relevant to the presumption in section 515.31(a), the Commission affirmed its own case law in *Activities, Tariff Filing Practices and Carrier Status of Containerships, Inc.*, 9 F.M.C. 56, 62 n.7 (1965) (*Containerships*), stating "that advertising and solicitations to the public are important factors in determining the issue of 'holding out' by an entity." *Worldwide Relocations, supra* at 503. Further, in *Containerships*, the Commission stated that a presumption of holding out as a common carrier can arise by course of conduct, including issuing shipping documents that indicate an entity is acting on its own behalf.

*Containerships, supra* at 9 F.M.C. 63. As to the presumption in section 515.31(j)(3), the Commission stated in *Worldwide Relocations*: "[W]hen it is proven an entity has advertised something to the shipping public, it is permissible to infer or presume that the entity does what it advertises." *Worldwide Relocations, supra* at 505.

Section 515.31(k) is added and would provide that the agency agreements between an OTI and its agents must be in writing, signed by the parties and made available to the Commission. Also, a new § 515.31(l) would provide that no person may advertise or hold out to provide OTI services without first being licensed or registered and providing proof of financial responsibility.

#### *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 permit electronic certifications by forwarders to carriers that forwarding services have been provided. Such electronic certifications (e.g., exchanges of emails) must identify the shipments for which compensation is made and contain confirmations between the forwarder and the common carrier 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 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.

#### **Request for Comments Relating Particularly to Fact Finding No. 27 Recommendation To Establish a New "Small Package/Barrel" NVOCC License**

On May 11, 2011, the Federal Maritime Commission unanimously approved for action a series of recommendations contained in 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*. The Fact Finding 27 Final Report was the culmination of a non-adjudicatory investigation initiated on June 23, 2010, to develop a record on the nature, scope, and frequency of potentially unfair, unlawful, or deceptive practices in the shipping of household goods or personal property within the Commission's jurisdiction.

One of the recommendations adopted was that the Commission initiate a rulemaking to establish a new NVOCC license category for those operating only in the so called "barrel trade." Significant 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. See, Fact Finding 27 Final Report, Attachment: Motions for Commission Meeting May 11, 2011, Motion #17 at 4.

The Fact Finding 27 Final Report described the "barrel trade" as one "where individuals—primarily from various local ethnic/immigrant

communities—send small shipments of personal goods to relatives or friends in their home countries [such as] in the Philippines, Latin America and the Caribbean Basin on a semi-regular basis." Fact Finding 27 Final Report, at 4. The Report also observes that the cost of complying with the Commission's OTI regulations appears to discourage these small unlicensed OTIs from obtaining an OTI license, publishing a tariff, and securing an appropriate OTI bond for the protection of the public. The Fact Finding 27 Final Report listed a number of standards that could be applied to a small package/barrel trade license category:

- A minimum of one year of OTI experience with household goods;
- "Character" standards the same as a regular licensee;
- Interview by an Area Representative;
- A detailed reference statement to accompany application that is signed "under penalty of perjury;"
- CADRS to be used for consumer disputes as first mediation option;
- A lower bond amount for this type of license;
- Surety company pre-approval of a bond to accompany application; and
- All other conditions that apply to a regular NVOCC license.

The Commission requests the public to provide comments and suggestions as to the usefulness of applying all, or some, of these standards in creating a new category of OTI license.

The Commission also requests the public to address the following questions that relate to how to differentiate between OTIs that should qualify for a small package/barrel trade license and those that should not; what cargo types and volumes fall within or limit the license; and the contours and effects of a lower financial responsibility requirement. The Commission understands that some information requested may be business confidential in nature and will treat responses confidentially to the extent requested and allowed by law. Such confidential information, however, must be submitted in the manner described above at the beginning of this Supplementary Information. The questions are as follows:

1. Are you currently a licensed OTI?
2. What was your volume of household goods and personal automobiles transported in the U.S. oceanborne commerce, for calendar year 2012? Please provide the volume of household goods in TEUs and the number of personal autos carried.
3. What was your total volume of cargo, including household goods, if

any, in the U.S. oceanborne commerce for calendar year 2012? What types of cargo (e.g., electrical goods, automobiles), other than household goods, did you carry during calendar year 2012?

4. Does your company transport cargo in the barrel trade, as described above, between the United States and the Philippines, Latin America or the Caribbean Basin? If so, what was your barrel cargo volume for calendar year 2012?

5. If you transported cargo in the barrel trade in calendar year 2012, what types of cargo, other than barrel cargo, did you carry (e.g., electrical goods, automobiles)?

6. Does your company transport "balikbayan" box cargo by water in the trade between the U.S. and the Philippines? If so, what was your balikbayan box volume for calendar year 2012?

7. With reference to the description of the barrel trades above, would this description also accurately describe transportation of balikbayan boxes? If not, describe the balikbayan trade.

8. If you transport balikbayan boxes or barrel trade cargo, are such shipments consolidated in containers with general cargo that is not household goods cargo?

9. Are there other types of small package or household goods transported in the U.S. ocean-borne trades that should be included within the coverage of a new OTI license? What types of cargo should be excluded?

10. Should there be annual cargo volume limits for OTIs to operate under a small package/barrel trade license? If so, what volume cap would be appropriate?

11. In the event that a small package/barrel trade licensed OTI exceeds the limits of its license (e.g., an annual cargo volume limit or cargo type limitation), what rules might be promulgated to ensure that licensees operate within the authority of the license?

12. What dollar amount would be appropriate as the financial responsibility requirement for a small package/barrel trade OTI license? Explain why this amount is adequate.

13. Would your company pursue a small package/barrel trade license if the Commission creates such a category? If so, please identify what you anticipate would be the most important benefits to your firm/business. Also identify benefits to your customers.

14. If your firm/business would not likely pursue a small package/barrel trade license, in your estimation would OTIs with such a license gain

competitive advantage over your firm/business? Please explain.

15. Does your firm/business favor a small package/barrel license that requires a lower financial responsibility amount than that for other OTIs?

16. If you are a licensed OTI and would pursue a small package/barrel trade license, do you anticipate changing the type of financial responsibility you currently have?

17. If you are a financial responsibility provider (e.g., insurance company, surety bond provider), do you have suggestions or concerns with respect to providing pre-approval of financial responsibility to small package/barrel trade OTIs?

18. If you are a financial responsibility provider, do you anticipate that a bond for a small package/barrel trade licensed OTI would nonetheless cover claims for the transportation of cargo that fits neither the description of small package or barrel trade?

#### **Regulatory Flexibility Act—Information Request Regarding Impact on Small Entities**

The Commission requests public comment on this Advance Notice of Proposed Rulemaking regarding the economic impacts of such a proposed rule on small entities as required by the Regulatory Flexibility Act (RFA),<sup>5</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA).<sup>6</sup> The RFA requires Federal agencies to consider the impact of regulatory proposals on small entities and determine, in good faith, whether there were equally effective alternatives that would make the regulatory burden on small business more equitable.<sup>7</sup>

The industry regulated under Part 515 of the CFR consists of "persons" operating as ocean transportation intermediaries.<sup>8</sup> An ocean transportation intermediary means an ocean freight forwarder or a non-vessel-operating common carrier. For the purposes of FMC regulations, ocean freight forwarder means a person that— (i) in the United States, dispatches

<sup>5</sup> Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164 (codified at 5 U.S.C. 601 et seq.).

<sup>6</sup> Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 857.

<sup>7</sup> The term "small entities" comprises small business and not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

<sup>8</sup> The FMC OTI rules define "person" to include individuals, corporations, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country. (See 46 CFR 515.2 (p)).

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. A 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.

The North American Industry Classification System (NAICS) code applicable to the OTI industry is 488510—Freight Transportation Arrangement. Using this code, the Small Business Administration (SBA) size standard for a small business in the OTI industry is average annual receipts<sup>9</sup> of \$14 million or less. However, there is an exception for NVOCCs and Household Goods Forwarders. For those entities, the size standard is \$25.5 million or less in annual revenue.

The questions below seek information related to each OTI's type of business, firm size, and estimated cost of compliance with the proposed rule. Responses to these questions may be submitted confidentially.

#### **Questions Regarding the Proposed Rule's Economic Impact on Regulated Entities**

In responding to the questions below, OTIs are asked to provide the data requested in terms of all of its domestic and foreign affiliates. If, as an OTI, you are separately incorporated as an NVOCC and an OFF, you are requested to provide information for both parties combined.

1. What is your line of business? Check all that apply: OFF, NVOCC, or other (please specify)?

2. What was your company's total revenue in 2012? These figures should reflect revenues from all sources, including affiliated companies and business obtained through agency relationships.

3. How much do you currently pay annually for your financial responsibility coverage? What are your current annual premiums and/or collateral requirements required by your financial responsibility provider? What other costs are associated with your financial responsibility coverage?

<sup>9</sup> As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue. Source: SBA's Table of Small Business Standards matched to the North American Industry Classification System Codes. [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table\(1\).pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table(1).pdf)

4. Estimate the number of staff hours required to comply with the existing rule's financial responsibility requirements.

5. Estimate the number of staff hours that would be required to comply with the proposed rule.

6. How much do you estimate you will have to pay for your new financial responsibility coverage as required in

the proposed rule? Please provide other costs associated with such coverage.

7. Will the requirements in the proposed rule change your type of coverage? If so, explain how.

8. Please detail your estimated annual cost of compliance with the proposed rule's new financial responsibility requirements.

9. How will the proposed rules affect your continuing operations?

As some of the information requested may be business confidential in nature, the Commission will treat such responses confidentially, if requested, to the extent provided by law. Such confidential information, however, must be submitted in the manner described above at the beginning of this

**SUPPLEMENTARY INFORMATION.**

**BILLING CODE 6730-01-P**

**Comments are requested on new forms resulting from the Proposed Rule:  
OTI License Renewal Form (Section 515.14(d)), Registration/Renewal Form for  
Foreign-based NVOCCs (Section 515.19(a))**

**FORM FMC-[XXX] Application for Renewal of Ocean Transportation  
Intermediary License**

Form FMC-\_\_\_\_

OMB No. 3072-\_\_\_\_ (Expires \_\_\_\_\_)

**APPLICATION FOR RENEWAL OF AN  
OCEAN TRANSPORTATION INTERMEDIARY LICENSE**

Please verify the following information submitted in your previous Form FMC-18 filing and revise any information which has changed. Some revisions may require the filing of a change request prior to license renewal (for instance, if a new trade name is added).

1. Legal Name of Licensee: License No.:  
If no change, check here.

---

2. Trade Name(s):  
If no change, check here.

---

3. Principal Place of Business Address - number, street, and room or suite number:  
If no change, check here.

---

City or town, and country (include applicable postal codes):

4. Telephone Number Fax Number  
(include country code): (include country code):

If no change, check here.

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5. Name of Contact Person: Email Address of Contact Person:  
If no change, check here.

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Page 2

Form FMC-\_\_\_\_

OMB No. 3072-\_\_\_\_ (Expires \_\_\_\_\_)

6. Mailing Address if different from principal place of business (P.O. Boxes may be used):

If no change, check here.

Number, street, and room or suite number:

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City or town, and country (include applicable postal codes):

---

7. Name of Qualifying Individual:

Title of Qualifying Individual:

If no change, check here.

---

Email Address of Qualifying Individual:

---

8. Evidence of Good Standing:

Attach a Certificate of Good Standing or equivalent document for the licensee dated within the last six months.

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9. Licensee's Ownership, Officers, Partners, Members, Directors, Stockholders, Parent or Holding Company:

If no change, check here.



Page 3

Form FMC-\_\_\_\_

OMB No. 3072-\_\_\_\_ (Expires \_\_\_\_\_)

## CERTIFICATIONS

## SOLE PROPRIETORSHIPS ONLY

I, \_\_\_\_\_, certify under penalty of  
(NAME OF SOLE PROPRIETOR)

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.

\_\_\_\_\_  
Signature of Sole Proprietor\_\_\_\_\_  
Date\_\_\_\_\_  
Name\_\_\_\_\_  
Title-----  
ALL APPLICANTS INCLUDING SOLE PROPRIETORS

I certify that I have read a copy of the Federal Maritime Commission's ocean transportation intermediary regulations, 46 CFR Part 515, and pertinent sections of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998 (46 U.S.C. 40101 et seq.), governing the licensing of ocean transportation intermediaries, and that I will abide by all the provisions thereof.

I further certify that I have specifically reviewed 46 CFR 515.42(h) (concerning the compensation with respect to licensees which are licensed as both an NVOCC and an ocean freight forwarder or which are related to NVOCCs) and 46 CFR 515.42(i) (concerning the compensation with respect to ocean freight forwarders of licensees which have a beneficial interest in merchandise exported from the United States by water or which are related to persons with a beneficial interest in merchandise exported from the United States by water).

I further certify that I shall not act as an ocean transportation intermediary as defined in section 3 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998, or perform ocean transportation intermediary services as defined in 46 CFR Part 515, without a valid ocean transportation intermediary license issued by the Federal Maritime Commission.

Under penalties of perjury, I declare that I have examined this application and to the best of my knowledge and belief, it is true, correct and complete.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



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**Form FMC-[YYY] Foreign-based NVOCC Registration/Renewal**

**Page 1**

**Form FMC-\_\_**

**OMB No. 3072-\_\_ (Expires \_\_\_\_)**

**FOREIGN-BASED NVOCC REGISTRATION/RENEWAL**

1. Legal Name of Registrant:

\_\_\_\_\_  
Name listed above must match legal name on official documentation exactly, including punctuation.

2. Trade Name(s):

\_\_\_\_\_

3. Principal Place of Business Address - number, street, and room or suite number:

\_\_\_\_\_

City or town, and Country (include applicable postal codes):

4. Telephone Number  
(include country code)

Fax Number  
(include country code)

\_\_\_\_\_

5. Name of Contact Person

Email Address of Contact Person:

\_\_\_\_\_

6. Legal Agent for Service of Process in the U.S.:

Name of Agent:

\_\_\_\_\_

Address - number, street, and room or suite number:

\_\_\_\_\_

City or town, and state:

\_\_\_\_\_

Telephone Number:

Fax Number:

---

Name of Contact Person:

Email Address of Contact Person:

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Page 2

Form FMC-\_\_

OMB No. 3072-\_\_\_\_ (Expires \_\_\_\_\_)

CERTIFICATION

I certify that I have read a copy of the Federal Maritime Commission's ocean transportation intermediary regulations, 46 CFR Part 515, and pertinent sections of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998 (46 U.S.C. 40101 et seq.), governing ocean transportation intermediaries, and that I will abide by all the provisions thereof from this date forward.

I further certify that I shall use a licensed ocean transportation intermediary for any ocean transportation intermediary activities performed on my behalf in the United States.

Under penalties of perjury, I declare that I have examined this registration and to the best of my knowledge and belief, it is true, correct and complete.

Note: Certification must be executed by the sole proprietor if registrant is a sole proprietorship, by all partners if registrant is a partnership, by a corporate officer if registrant is a corporation, or by a member if registrant is a limited liability company.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**BILLING CODE 6730-01-C**

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 preamble, 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.

■ 2. Revise the section contents of Part 515 to read as follows:

**PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES****Subpart A—General**

Sec.

- 515.1 Scope.
- 515.2 Definitions.
- 515.3 License; when required.
- 515.4 License; when not required.
- 515.5 Forms and fees.

**Subpart B—Eligibility and Procedure for Licensing and Registration**

- 515.11 Basic requirements for licensing; eligibility.
- 515.12 Application for license.
- 515.13 Investigation of applicants.
- 515.14 Issuance, renewal, and use of license.
- 515.15 Denial of license.
- 515.16 Revocation or suspension of license or registration.
- 515.17 Hearing procedures governing denial and revocation or suspension of OTI license or registration.
- 515.18 Application after revocation or denial.
- 515.19 Registration of foreign-based non-vessel-operating common carriers.
- 515.20 Changes in organization.

**Subpart C—Financial Responsibility Requirements; Claims Against Ocean Transportation Intermediaries**

- 515.21 Financial responsibility requirements.
- 515.22 Proof of financial responsibility.
- 515.23 Claims against an ocean transportation intermediary.
- 515.24 Agent for service of process.
- 515.25 Filing of proof of financial responsibility.
- 515.26 Termination of financial responsibility.

515.27 Proof of compliance—NVOCC.

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

- 515.31 General duties.
- 515.32 Freight forwarder duties.
- 515.33 Records required to be kept.
- 515.34 Regulated Persons Index.

**Subpart E—Freight Forwarding Fees and Compensation**

- 515.41 Forwarder and principal; fees.
- 515.42 Forwarder and carrier; compensation.
- 515.91 OMB control number assigned pursuant to the Paperwork Reduction Act.
- Appendix A to Part 515—Ocean Transportation Intermediary (OTI) Bond Form [Form-48]
- Appendix B to Part 515—Ocean Transportation Intermediary (OTI) Insurance Form [Form-67]
- Appendix C to Part 515—Ocean Transportation Intermediary (OTI) Guaranty Form [Form-68]
- Appendix D to Part 515—Ocean Transportation Intermediary (OTI) Group Bond Form [FMC-69]
- Appendix E to Part 515—Optional Rider for Additional NVOCC Financial Responsibility (Optional Rider to Form FMC-48) [FORM 48A]
- Appendix F to Part 515—Optional Rider for Additional NVOCC Financial Responsibility for Group Bonds (Optional Rider to Form FMC-69)

**Subpart A—General**

■ 3. Revise § 515.1(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 \$8,000 for each such violation unless the violation is willfully and knowingly committed, in which case the amount of the civil penalty may not exceed \$40,000 for each violation; for other violations of the provisions of this part, the civil penalties range from \$8,000 to \$40,000 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) *Advertisement* means any written or electronic communication to the public, or a portion thereof, to provide, perform or conduct ocean transportation services in connection with a direct or indirect offer or sale of ocean transportation intermediary services. *Advertisement* includes publication of a Web site, posting on the Internet or listing in an electronic database.

(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 (1) is an employee of a licensed OTI, (2) is at least twenty-one

(21) years of age, (3) is responsible for general supervision of the licensee's OTI operations, and (4) 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) *Shipping Act* means the Shipping Act of 1984, as amended. 46 U.S.C. 40101–41309.

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

(w) *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 carriers services enumerated in § 515.2(k).

(x) *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 located in the United States 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 FMC-\_\_\_\_\_, Foreign Unlicensed Registration Form FMC-\_\_\_\_\_, and financial responsibility Forms FMC-48, FMC-67, FMC-68, FMC-69 may be obtained from the Commission's Web site at <http://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 NW., 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 money order, certified, cashier's, or personal check payable to the order of the “Federal Maritime Commission,” or by other means authorized by the Director of the Commission's Office of Budget and Finance. 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.

(2) Fees under this Part 515 shall be as follows:

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

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

(iii) Application for renewal of OTI license as required by § 515.14(d): automated filing \$\_\_\_\_\_; paper filing pursuant to waiver \$\_\_\_\_\_.

(iv) New and updated foreign NVOCC registration as required by § 515.19(a): automated filing \$\_\_\_\_\_; paper filing pursuant to waiver \$\_\_\_\_\_.

(v) Regulated Persons Index as provided in § 515.34: Purchase of a copy of the Index \$\_\_\_\_\_.

■ 8. Revise 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, that its QI has a minimum of three (3) years of relevant and diverse experience in ocean transportation intermediary activities in the United States, and that, through the officers, directors, and principal shareholders of a corporation, the members, managers, or officers of an LLC, or the partners of a partnership, and through the qualified individual, the applicant has the necessary character to render ocean transportation intermediary services. A principal shareholder is defined as a shareholder who owns directly, indirectly, or constructively 5 percent or more of the total combined voting power of all classes of stock entitled to vote or who owns directly, indirectly, or constructively 5 percent or more of the total value of all classes of stock.

(2) The three years of OTI experience required by this section may not be met by OTI experience acquired while working for an unlicensed, unbonded or unregistered OTI.

(3) 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 Part 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.* One of the partners responsible for the general supervision of the partnership's OTI operations.

(3) *Corporation.* One of the corporate officers responsible for the general supervision of the corporation's OTI operations.

(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, who is responsible for the general supervision of the LLC's OTI operations. If permitted by the operating agreement, an officer of an LLC who is responsible for the general supervision of the LLC's OTI operations may serve as the QI.

(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 QI of one active licensee shall not also be designated as the QI of another ocean transportation intermediary licensee, 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, is qualified to do business where it is located and is staffed and operated by a full-time *bona fide* employee.

■ 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 Web site, [www.fmc.gov](http://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 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, revise paragraph (b), and add paragraphs (c) and (d):

**§ 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 two (2) years. Thereafter, licenses will be renewed for sequential two year periods upon successful completion of the renewal process in paragraph (d) of this section.

(d) *License renewal process.* (1) The licensee shall submit to the Director of the Bureau of Certification and Licensing (BCL) a completed Form FMC-\_\_\_\_\_ (Application for Renewal of Ocean Transportation Intermediary License) and the required license

renewal fee no later than sixty (60) days prior to the expiration date set forth on its license. Upon successful completion of the renewal process, the Commission shall issue a new license bearing an expiration date two (2) years later on the same day and month on which the license was originally issued. The expiration 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 expiration 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 Commission's Secretary, 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 or an authorized Commission representative;

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

(4) Failure to honor financial obligations to the Commission;

(5) Failure to timely renew a license;

(6) In the case of an NVOCC, failure to file, within 120 days of the notification that its license application has been approved, or failure to maintain a Form FMC-1 and a tariff in compliance with 46 CFR Part 520;

(7) Knowingly and willfully processing, booking, or accepting cargo from, or transporting cargo for the account of an NVOCC that is not licensed or registered, or has not provided proof of financial responsibility or published an effective tariff;

(8) Additionally, a license may be suspended or revoked where the Commission determines the licensee is not qualified to render OTI services.

(9) In the case of a foreign-based licensed NVOCC, failure to establish or maintain an unincorporated office that is resident in the United States, is qualified to do business where it is located and is operated by a *bona fide* employee pursuant to section 515.11(e).

(10) Any act, omission or matter that would provide the basis for denial of a license to a new applicant pursuant to § 515.15.

(b) *Notice.* The Commission shall publish on the Commission's Web site, [www.fmc.gov](http://www.fmc.gov), a notice of each revocation and suspension.

■ 14. Redesignate § 515.17 as § 515.18.

■ 15. 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 Office of 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, 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 Bureau of Certification and Licensing 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.

■ 16. Add new § 515.19 to read as follows:

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

(a) Any person whose primary place of business is located outside the United States that elects to operate as a registered NVOCC in the United States foreign trade shall register with the Commission by submitting to the Director of the Bureau of Certification and Licensing a completed registration form, Form FMC-\_\_\_\_\_, (Foreign-based NVOCC Registration/Renewal), accompanied by the fee required by § 515.5(c). A notice of each registration shall be published on the Commission's Web site [www.fmc.gov](http://www.fmc.gov). It is a violation of the Commission's regulations implementing the Shipping Act for a foreign-based unlicensed non-vessel-



operating common carrier to provide NVOCC services in the U.S. foreign trade without a valid registration and an effective tariff.

(b) A registration form which appears, upon submission, to be substantially incomplete may be rejected. If rejected, a notice, together with the reasons therefore, shall be sent to the foreign-based NVOCC and the filing fee shall be refunded. Persons who have had a registration rejected may submit a new registration at any time together with the applicable fee.

(c) Registrations are complete upon receipt of a registration form which meets the requirements of this section and upon evidence of financial responsibility being furnished pursuant to § 515.21.

(d) Registrations shall be effective for a period of two (2) years. Thereafter, registrations will be renewed for sequential two year periods upon submission of an updated registration form.

(e) A tariff shall not be published and NVOCC service shall not commence until the Commission receives valid proof of financial responsibility from the registrant and a Form FMC-1 has been filed.

(f) Registered NVOCCs must report in writing to BCL any changes to: Legal name(s) or trade name(s); principal place of business address (including telephone number, facsimile number); contact person and email address (including physical address if different from principal place of business); name of resident agent(s) (including physical address, mailing address, email address, telephone and facsimile number(s), and contact person) in the United States for receipt of service of judicial and administrative process (including subpoenas).

(g) *Termination or suspension of the registration of a registered NVOCC.*

(1) *Grounds.* Except when, under § 515.26, a registration becomes automatically ineffective for a failure of a registered NVOCC to maintain proof of financial responsibility on file with the Commission, the effectiveness of such a registration may be terminated or suspended, after notice and the opportunity for a hearing, pursuant to the procedure set forth in paragraph (g)(2) of this section, for any of the following reasons:

(i) 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;

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

an authorized Commission representative;

(iii) Making a materially false or misleading statement to the Commission in connection with a registration or renewal thereof;

(iv) Failure to honor financial obligations to the Commission;

(v) Failure to timely renew a registration;

(vi) Failure to maintain a Form FMC-1 and a tariff in compliance with 46 CFR Part 520.

(vii) Knowingly and willfully processing, booking, or accepting cargo from, or transporting cargo for the account of, an NVOCC that is not licensed or registered, or has not provided proof of financial responsibility or published an effective tariff.

(viii) Failure to designate and maintain a person in the United States as legal agent for the receipt of judicial and administrative process, including subpoenas, as required by § 515.24.

(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).

(3) *Notice.* The Commission shall publish on the Commission's Web site, [www.fmc.gov](http://www.fmc.gov), a notice of each termination or suspension.

■ 17. Re-designate § 515.18 as § 515.20 and revise 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 such QI(s) (1) no longer serves as a full-time employee with the OTI or, (2) is no longer responsible for the general supervision of the licensee's OTI activities, the licensee shall report such change to the Commission within fifteen (15) business days. Within the same 15-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)-(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 to the Commission within 30 days. 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

■ 18. In § 515.21, revise paragraphs (a)(1)–(4) and (b), and add a new paragraph (e) 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 \$75,000.

(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 \$100,000.

(3) Any registered NVOCC, as defined in section 515.2(r), shall furnish evidence of financial responsibility in the amount of \$200,000. Such registered NVOCC shall be strictly responsible for the acts and omissions of its employees and agents, wherever they are located.

(4) In the event the amount of the required bond, insurance or other surety, as described in (a)(1)–(a)(3) of this section, is drawn down pursuant to payment of a claim under § 515.23, an OTI shall furnish to the Commission proof that the bond, insurance or other surety has been restored to the full required amount within sixty (60) days. No new OTI business shall be accepted until such time as the full amount of the financial responsibility has been restored. Failure to restore the value of the financial responsibility within sixty (60) days shall result in automatic license revocation or registration termination.

(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 \$4,000,000 in aggregate. A group or association of ocean transportation intermediaries may also file an optional bond rider as provided in § 515.25(b).

\* \* \* \* \*

(e) *Compliance with increased financial responsibility amounts.* Individual OTIs and groups or associations must increase their financial responsibility coverage as provided in this section on or before [Insert number of days/or a date after increases become effective]. Such bond, proof of insurance or other surety may be increased by rider to their existing instruments of financial responsibility or by issuance of a new instrument of financial responsibility. OTIs that implement the increase by rider must ensure that their financial responsibility providers issue new instruments of financial responsibility at the amounts required by this section when such OTIs would otherwise renew with the provider their instruments of financial responsibility.

■ 19. Revise § 515.23 to read as follows:

#### § 515.23 Claims against an ocean transportation intermediary.

(a) 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 forty-five (45) 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 forty-five (45) 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) *Priority of claims.* Claims against ocean transportation intermediary bonds, insurance or surety are prioritized in the following order:

(1) Claims by shippers and consignees;

(2) Claims by common carriers, ports, terminals, and other third party creditors; and

(3) Claims for civil penalties by the Commission pursuant to its authority under the Shipping Act.

(d) *Payment of claims.* The claims in paragraph (c)(1) deemed valid by the financial responsibility provider shall be paid in full, to the extent funds are available, before any claim in paragraphs (c)(2) or (c)(3) is paid. After the claims in paragraph (c)(1) have been paid, the claims in paragraph (c)(2) deemed valid by the financial responsibility provider shall be paid in full, to the extent funds are available, before any claim in paragraph (c)(3) is paid. After claims in paragraphs (c)(1) and (c)(2) have been paid, the claims in paragraph (c)(3) deemed valid by the financial responsibility provider shall be paid in full up to the remaining value of the bond, insurance or other surety.

(e) *Notices of court and other claims against OTIs.*

(1) Common carriers and marine terminal operators shall submit notices to the Commission of court and other transportation claims made by them that may result in payment of proceeds from such financial responsibility.

(2) 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 of each claim, court action, or court judgment against the financial responsibility and each claim paid (including the amount) by the provider.

(3) Notices described in paragraphs (1) and (2) of this section shall be promptly submitted to the BCL.

(4) 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.

(5) Notices submitted shall be forwarded by BCL to the Commission's Secretary for publication on the Commission's Web site, *www.fmc.gov*.

(6) Such notices are for public information only and should not be taken as an indication of the merits or outcome of any claim or as an indication of a violation of the Shipping Act, the Commission's regulations, or any other statute or regulation.

(f) *Initiation of priority claim mechanism.* In order to provide reasonable time for multiple claims to be filed and paid applying the priorities established by this section:

(1) Upon receipt of a claim against a financial responsibility instrument, the issuing financial responsibility provider shall refer to the notices listed on the Commission Web site pursuant to paragraph (e)(6) of this section to determine whether there are other claims against the instrument.

(2) When two or more claims are made or noticed, the financial responsibility provider shall not pay any claim within the five (5) month period from the date it received the claim, pending receipt of other claims, if any.

(3) When a financial responsibility provider receives a claim in an amount more than twenty (20) percent of the face value of the instrument and there are no additional claims noticed on the Commission's Web site, the issuing financial responsibility provider shall not make payment for a period of five (5) months from the date of the claim, pending receipt of other claims, if any.

(4) When there are no additional claims noticed on the Commission's Web site at the time a claim is received by the issuing financial responsibility provider and after the issuing provider gives notice to BCL of the claim for posting on the Commission's Web site, the procedures contained in paragraph (b) of this section shall be followed.

Provided, however, that, if during the time for processing the first claim under paragraph (b), an additional claim(s) is made to the issuing provider or notice of another claim is posted on the Commission's Web site, the issuing provider shall not make payment for a period of five (5) months after the date it receives the claim or notice of a claim is posted, whichever is later.

(5) Payments made after the elapse of time provided in paragraphs (f)(1) through (4) shall be made applying the priorities established in this section.

(g) 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.

(h) *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).

■ 20. In § 515.24, revise paragraphs (b)–(d) to read as follows:

**§ 515.24 Agent for service of process.**

\* \* \* \* \*

(b) Service of administrative process, other than subpoenas, may be effected upon the legal agent by dispatching a copy of the document to be served by mail or courier service. Administrative subpoenas shall be served in accordance with § 502.134 of this chapter.

(c) If the designated legal agent cannot be served because of death, disability, unavailability, termination or expiration of the designation, or if a legal agent authorized to receive such service is not designated in compliance with this section, the Secretary of the Federal Maritime Commission will be deemed to be the legal agent for service of process. Any person serving the Secretary must also send to the ocean transportation intermediary, or group or association of ocean transportation intermediaries which provide financial coverage for the financial responsibilities of a member ocean transportation intermediary, by mail or courier service at the ocean transportation intermediary's, or group's, address published in its tariff, a copy of each document served upon the Secretary, and shall attest to that service at the time service is made upon the Secretary. For purposes of this paragraph, it is sufficient that a person seeking to serve process on an ocean transportation intermediary, or group of such intermediaries, affirm to the Commission's Secretary that: they have contacted, or attempted to contact, the designated agent to confirm whether it

remained authorized to accept service of process; or, if no legal agent is designated in the tariff, that it has no knowledge of the identity of the ocean transportation intermediary's legal agent. Designation of the Commission's Secretary as the legal agent shall survive any cancellation of the OTI's license or tariff and shall continue for the entire period during which claims may be made under the OTI's financial responsibility instrument.

(d) Designations of legal agent under paragraphs (a) and (b) of this section and provisions relating to service of process under paragraph (c) of this section shall be published in the ocean transportation intermediary's tariff, when required, in accordance with Part 520 of this chapter.

\* \* \* \* \*

■ 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 pursuant to 46 CFR part 520, becomes effective.

(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 or any reduction in available financial responsibility coverage under § 515.21(a)(4), the Commission shall notify the concerned licensee, registrant, or registrant's legal agent in the United States, by mail or courier, at its last known address, that the Commission shall, without hearing or other proceeding, revoke the license or 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. Revise § 515.27 (a) and (b) 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 tariff and financial responsibility requirements by:

(1) Reviewing a copy of the tariff published by the NVOCC and in effect under part 520 of this chapter;

(2) Consulting the Commission's Web site, *www.fmc.gov*, as provided in paragraph (d) below, to verify that the NVOCC has filed evidence of its financial responsibility; or

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

\* \* \* \* \*

■ 24. Remove Appendices A, B, C, D, E, and F to Part 515 (each of which will be inserted at the end of part 515).

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

■ 25. In § 515.31, revise paragraphs (a)–(c) and (g)–(i), and add new paragraphs (j)–(l) to read as follows:

**§ 515.31 General duties.**

(a) *Licensees and registrants; names and numbers.* An OTI shall carry on its business only under the name in which the license or the registration is issued, and only under its license or registration number as assigned by the Commission.

An OTI shall include its name and license or registration number on all shipping documents and in all communications (including all written, printed and electronic communications). An OTI shall require that its agents include the OTI's name, and the OTI's license or registration number on all shipping documents issued by an agent on behalf of the OTI. When an entity issues shipping documents without including the name and license or registration number of a licensed or registered OTI principal, a rebuttable presumption arises that the entity is operating in its own name and not on behalf of a licensed or registered OTI principal.

(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. An OTI may not utilize an agent to provide OTI services in the United States unless the agent includes the OTI's name and license or registration number on all shipping documents issued by the agent on behalf of the OTI. 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).

\* \* \* \* \*

(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) *Advertisements.* (1) An OTI shall include its name and license or registration number on all advertisements, as defined in § 515.2(a), and shall require that its agents include the name and license or registration number of the OTI principal on all such advertisements.

(2) An OTI shall not include false or misleading information in its advertisements and shall require that the advertisements of its agents similarly shall not include false or misleading information.

(3) Evidence that an entity has offered, through advertisement in any medium, to provide, perform or conduct ocean transportation services gives rise to a rebuttable presumption that the entity has actually performed the services offered.

(k) *OTI agency agreements.* Agency agreements between the OTI principal and its agent must be in writing, signed by the parties, and available to the Commission.

(l) *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.

■ 26. Amend § 515.32(b) by removing the reference "sales."

■ 27. In § 515.33(d), revise the 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.

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

#### Subpart E—Freight Forwarding Fees and Compensation

■ 29. Amend § 515.41 as follows:

■ a. Remove paragraph (c);

■ b. Redesignate paragraph (d) as paragraph (c);

■ c. Revise and redesignate paragraph (e) as paragraph (d) to read 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.* In order for a forwarder to receive compensation, 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. Redesignate § 515.91 as § 515.43 and revise it to read as follows:

#### § 515.43 OMB control number assigned pursuant to the Paperwork Reduction Act.

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is [Insert Control Number].

■ 32. 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 1984 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, as may be restored pursuant to 46 CFR 515.21, 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 written notice to the Federal Maritime Commission at its office in Washington, DC. 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, 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, as may be restored pursuant thereto, or the amount per group or association of OTIs set forth in 46 CFR 515.21, as may be restored pursuant thereto, 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 filing a notice in writing with the Federal Maritime Commission at its office in Washington, DC. 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.

Insurer or Insured shall immediately give notice to the Federal Maritime Commission of all lawsuits filed, judgments rendered, and payments made against the insurance policy.

(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, 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 Subpart C of 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, as may be restored pursuant thereto, or the amount per group or association of OTIs provided for in 46 CFR 515.21, as may be restored pursuant thereto, 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, as may be restored pursuant thereto, or the amount per group or association of OTIs set forth in 46 CFR 515.21 in aggregate, as may be restored pursuant thereto.

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 by FMC of notice in writing 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, as may be restored pursuant thereto, 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, 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, as may be restored pursuant to 46 CFR 515.21, 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, as may be restored pursuant to 46 CFR 515.21, and in no event shall the Surety's total obligation hereunder exceed the amount per member OTI set forth in 46 CFR § 515.21, as may be restored pursuant thereto, identified in Appendix A, or the amount per group or association of OTIs set forth in 46 CFR 515.21, as may be restored pursuant thereto, 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 written notice to the Federal Maritime Commission at its office in Washington, DC. 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 and the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, 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, 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 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.

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 written notice to the Federal Maritime Commission at its offices in Washington, DC, 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 written notice to the Federal Maritime Commission at its offices in Washington, D. C., 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.*

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