

FEDERAL MARITIME COMMISSION**46 CFR Parts 510, 515, and 583**

[Docket No. 98-28]

Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to add new regulations establishing licensing and financial responsibility requirements for ocean transportation intermediaries in accordance with the Shipping Act of 1984, as modified by the Ocean Shipping Reform Act of 1998 (the Coast Guard Authorization Act of 1998).

DATES: Submit comments on or before January 21, 1999.

ADDRESSES: Address all comments concerning this proposed rule to: Joseph C. Polking, Federal Maritime Commission, 800 North Capitol St., NW, Room 1046, Washington, DC. 20573-0001.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The Ocean Shipping Reform Act of 1998 ("OSRA"), Public Law 105-258, 112 Stat. 1902, amends the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701 *et seq.*, in several respects relating to ocean freight forwarders and non-vessel-operating common carriers ("NVOCCs"). The Federal Maritime Commission ("FMC" or "Commission") proposes new regulations, at 46 CFR part 515, to implement changes effectuated by OSRA. In addition, the proposal seeks to remove existing parts 510 and 583. Finally, under the Commission's restructuring of its rules, the new part 515 will be included in subchapter B of chapter IV, 46 CFR.

Licensing Requirements

OSRA applies the requirements of section 19 of the 1984 Act to all "ocean transportation intermediaries" ("OTIs") in the United States. An OTI means an ocean freight forwarder or an NVOCC as those terms are defined by the 1984 Act. OSRA requires that all OTIs in the United States be licensed by the Commission.

Proposed § 515.3 seeks to license those OTIs who are performing in the United States the services, or holding out to perform the services, associated with the transportation of cargo to or from the United States. The Commission has ruled that a freight forwarder must perform "traditional value added services" as defined in §§ 515.2(i) and (n)(1) to be considered a freight forwarder. *See In Re: The Impact of Modern Technology on the Customs and Practices of the Freight Forwarding Industry—Petition for Rulemaking; Order Denying Petition for Rulemaking or Declaratory Order*, 28 S.R.R. 418, 425 (1998). In addition, in determining whether a person is acting as a common carrier, and thus as an NVOCC, as defined by section 3(6) of the 1984 Act, the Commission has consistently held that no single factor determines a common carrier's status, but an essential characteristic to be evaluated is "whether he holds himself out to carry goods from whomever offered to the extent of his ability to carry." *Activities, Filing Practices and Carrier Status of Containerships, Inc.*, 9 F.M.C. 56, 62 (1965).

The legislative history of OSRA directs the Commission to determine "when foreign-based entities conducting business in the United States are to be considered persons in the United States" for purposes of the licensing requirements of section 19 of the 1984 Act. S. Rep. No. 105-61, 105th Cong., 1st Sess., at 31 (1997) ("Report"). Moreover, the Commission is directed to consider that certain foreign-based OTIs would not be licensed when establishing financial responsibility requirements for OTIs. *Id.* Thus, the language clearly contemplates that certain foreign-based OTIs engaged in the transportation of cargo to or from the United States would not be licensed but would instead be required to establish a higher amount of financial responsibility than those OTIs who are 'in the United States' for purposes of the 1984 Act.

One approach which the Commission considered and rejected would have provided: "For purposes of this part, a person is considered to be 'in the United States' if such person is incorporated in the United States or maintains a physical presence in the United States through another person, including a subsidiary, affiliate, agent or office whether such subsidiary, affiliate, agent or office is incorporated or unincorporated. Indicia of physical presence in the United States include, but are not limited to, whether the person holds a taxpayer identification number, or a state or local business

license, or maintains a mailing address in the United States. For purposes of this part, the term 'agent' does not include an agent for service of process designated in accordance with § 515.24."

This definition would have required any foreign-based OTI providing OTI services to or from the United States through an agent who is physically present in the United States, regardless of the amount of service that agent is providing to the foreign-based OTI, to be licensed. Under this option, the Commission believes it would have been imposing licensing requirements to a greater degree than envisioned by OSRA (although the foreign-based OTIs who would have been licensed by the Commission under this definition would not have been required to obtain financial responsibility in the higher amount required under § 515.21(a)(4)). Because this approach would have given minimal significance to the "in the United States" limitation, it is not being proposed as a feasible option.

Rather, the proposed rule offers for comment two alternative definitions of "in the United States" for purposes of the licensing requirements of this part. The Commission recognizes that the first proposed definition is relatively broad, and the second relatively narrow. The Commission specifically requests comment on these proposed definitions, suggestions for modifications, or additional approaches which commenters may wish to offer.

Proposed definition number one provides: "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. Only persons licensed under this part may furnish or contract to furnish ocean transportation intermediary services in the United States on behalf of an unlicensed ocean transportation intermediary."

This definition would require all unlicensed foreign-based OTIs who use an agent in the United States to provide OTI services to or from the United States to use only licensed OTIs as their agents. Therefore, an agent used by the unlicensed foreign-based OTI would have to be providing OTI services in its own right and obtain its own OTI license and financial responsibility. This would not, however, be a substitute for the unlicensed foreign-based OTI's financial responsibility. All unlicensed foreign-based OTIs would need to obtain financial responsibility as required under proposed § 515.21(a)(4).

The Commission recognizes that currently, many unlicensed foreign-

based OTIs use agents in the United States who provide only minimal service, such as processing bills of lading. Providing this level of service alone may not rise to the level of operating as an OTI. Therefore, under this option, these agents would need to obtain an OTI license or would be precluded from providing such services on behalf of foreign-based OTIs.

The second proposed definition of "in the United States" provides: "For purposes of this part, a person is considered to be 'in the United States' if such person is incorporated in, resident in, or established under the laws of the United States, or otherwise maintains a physical presence in the United States. Such indicia of physical presence may include, but are not limited to, whether the person holds a taxpayer identification number, a state or local business license, or maintains a mailing address in the United States."

This second option would license only those entities who are freight forwarders or NVOCCs under proposed § 515.2(n). It does not contemplate licensing those entities in the United States who are acting solely as agents for unlicensed foreign-based OTIs who provide OTI services to or from the United States. For example, entities that simply process bills of lading for an unlicensed foreign-based OTI would not be required to be licensed. In those instances where an unlicensed foreign-based OTI uses the limited services of such an agent, the unlicensed foreign-based OTI would be required to furnish the financial responsibility under proposed § 515.21(a)(4). Similarly, when a licensed OTI performs fewer services than would qualify it as an OTI under § 515.2(n) for an unlicensed foreign-based OTI, then the unlicensed foreign-based OTI would furnish the financial responsibility required under proposed § 515.21(a)(4).

In order to better assess the impact of the proposed definition, the Commission is particularly interested in receiving comment regarding entities who are operating as agents in the United States and the range of services they provide, specifically whether they are performing minimal services, such as processing bills of lading, or whether they are engaged in a full spectrum of OTI services, such as booking vessel space, preparing documentation, and soliciting cargo.

The Commission is required to issue a license to any person that it determines is qualified by experience and character to act as an OTI, including all entities in the United States formerly known as NVOCCs. The licensing requirements in 46 CFR part 510 mandate that freight forwarders possess

a minimum three years of experience in freight forwarder duties in the United States, plus the necessary character to render freight forwarder services. NVOCCs are currently not required to be licensed. The proposed rule applies those licensing requirements from part 510 to proposed part 515. As a result, all OTIs must possess three years of experience providing OTI duties to be eligible for a license. To effectuate this change, the Commission offers the following guidance: all freight forwarders who have a valid license and proof of financial responsibility in effect on May 1, 1999, will continue to be licensed while the Commission issues those freight forwarders new licenses as OTIs, provided that they increase their financial responsibility as required by proposed subpart C by May 1, 1999.

NVOCCs must submit an application for a license and provide proof of their increased financial responsibility as required by proposed subpart C by April 30, 1999. Provided that such applicants have a valid tariff and proof of financial responsibility in effect on May 1, 1999, these NVOCCs will be provisionally licensed while the Commission reviews their applications to determine if they meet the character and experience requirements.

Because the new rules require that all OTIs possess three years of experience in order to qualify for a license, and because some existing NVOCCs may have less than the requisite three years, the Commission has determined that any NVOCC with a tariff and evidence of its financial responsibility in effect as of the date of publication of the proposed part 515 in the **Federal Register** will be permitted to continue operating as an NVOCC without the necessary experience. However, a person operating under this arrangement may not act as a qualifying individual for another ocean transportation intermediary until he or she has obtained the necessary three years of experience in ocean transportation intermediary services in the United States.

Exemption From Licensing Requirement

The Commission is proposing to exempt from its licensing requirements any person which exclusively transports used household goods and personal effects for the account of the Department of Defense ("DOD") or under the International Household Goods Program administered by the General Services Administration ("GSA"). These persons are currently exempt from the Commission's NVOCC financial responsibility requirements of 46 CFR part 583 and that exemption is being

carried over into the proposed subpart C of part 515. These carriers are exempt from the Commission's tariff and financial responsibility requirements because they are subject to GSA requirements that they post a bond and file their rates with GSA. In addition, DOD requires that participants in its Personal Property Program be licensed by that agency. These same reasons would appear to permit the Commission to exempt these entities from the licensing requirements of proposed part 515.

Financial Responsibility Requirements

All OTIs will be required to establish their financial responsibility before performing any intermediary services in the United States. Proposed subpart C of part 515 addresses issues arising under this section. First, the bond, surety or other insurance obtained pursuant to this requirement shall be available to pay for damages suffered by ocean common carriers, shippers, and others, arising from the transportation-related activities of the covered OTI. Report at 31. As instructed by the Report, the Commission has defined transportation-related activities at proposed § 515.2(v) to include all of the freight forwarding activities enumerated in proposed § 515.2(i), as well as other specified activities. The Report specifically indicates that the bonds, or other instruments of financial responsibility, are intended to cover liabilities related to service contract obligations, as well as damages resulting from loss or conversion of cargo, from the negligence or complicity of the insured entity, or from nonperformance of services. Report at 31. The Commission's definition of transportation-related activities is not meant to be inclusive, but rather to indicate the broad spectrum of activities which OTIs may engage in, and which shall be covered by the OTIs' instruments of financial responsibility. To the extent, however, that someone who operates as an OTI also provides non-OTI services, those services would not be covered by the bond, surety or other insurance. This position is consistent with the Commission's determination in Docket No. 91-1, *Bonding of Non-vessel-operating Common Carriers*, 25 S.R.R. 1679, 1685 (1991), *modified on other grounds*, 26 S.R.R. 137 (1992), wherein the Commission stated:

As Congress has indicated, the bond is intended to " * * * be available to pay any judgment for damages arising out of an NVOCC's activities as an ocean common carrier providing ocean transportation services." (citation omitted). To the extent

that someone who operates as an NVOCC also provides non-NVOCC services, those services would not be covered by the bond. 25 S.R.R. at 1685.

The Commission also establishes new procedures, at proposed § 515.23, for pursuing claims against OTIs. Any party may seek an order for reparation at the Commission pursuant to sections 11 or 14 of the 1984 Act. Alternatively, where a claimant seeks relief in an appropriate court, the claimant shall attempt to resolve its claim with the financial responsibility provider prior to seeking payment on any judgment it has or will obtain. The Commission believes that it does not have the authority to limit or prevent a claimant from seeking judicial access prior to pursuing a settlement with the financial responsibility provider, particularly where such restrictions could prevent claimants from filing their actions within a statute of limitations. However, in light of the Report language directing the Commission to establish an alternative process for resolving claims against the OTI's instrument of financial responsibility, the Commission believes that it may require the claimant to seek a settlement prior to enforcing any judgment it has or will obtain. Therefore, the rules provide that upon notification of the complaint, the financial responsibility provider and claimant can settle the claim with the OTI's consent, or, if the OTI fails to respond to the notice of the claim within 45 days, the financial responsibility provider and claimant can settle the claim on their own. If, however, the parties fail to reach agreement within 90 days, then the bond, surety or other insurance shall be available to pay any judgment for damages to the extent they arise from the transportation-related activities of the OTI.

Proposed § 515.23 provides that ordinarily, the financial responsibility provider shall pay the judgment within 10 days; within that time, the financial responsibility provider may inquire into the subject matter of the judgment to ensure that it is for damages covered by the instrument of financial responsibility—i.e. that it arises from transportation-related activities. Report at 31. However, the Commission is aware that there may be instances where the financial responsibility provider has a legitimate challenge to a judgment. For example, in the event that a claimant obtains a default judgment as a result of invalid service of process, or some other *procedural* defect, the financial responsibility provider may seek to vacate the judgment. To that limited

extent, the Commission recognizes that the financial responsibility provider may have a genuine basis for inquiring into the validity of the judgment as well.

In proposed § 515.21, the Commission proposes to establish a range of financial responsibility requirements commensurate with the scope of the activities conducted by the different OTIs and the past fitness of OTIs in the performance of intermediary services. Report at 31–32. Thus, OTIs operating as freight forwarders in the United States will be required to establish financial responsibility in the amount of \$50,000; OTIs operating as NVOCCs in the United States in the amount of \$75,000; and OTIs operating as both freight forwarders and NVOCCs in the United States will be required to establish financial responsibility in the amount of \$100,000. Unlicensed foreign-based entities that provide OTI services for transportation to or from the United States but are not operating “in the United States” as defined in proposed § 515.3 will be required to establish financial responsibility in the amount of \$150,000. Groups or associations of OTIs will be able to provide financial responsibility for their members with the maximum aggregate amount of \$3,000,000.

Proposed § 515.21 seeks to increase the amount of financial responsibility required to be provided by OTIs to more accurately reflect the diversity of activities engaged in by OTIs. The current NVOCC financial responsibility amount of \$50,000 was established by the Non-Vessel-Operating Common Carrier Amendments of 1990, Pub. L. 101–595. At that time, House Merchant Marine and Fisheries Chairman Walter B. Jones commented that the \$50,000 was a minimum amount, which the Commission would “have the continuing flexibility to adjust * * * as changing circumstances warrant.” 136 Cong. Rec. E2210–2211 (June 28, 1990). Thus far, the Commission has not increased the amount of financial responsibility required by an NVOCC, but current circumstances warrant the increased amounts proposed here. The FMC has faced an increasing number of NVOCCs who have gone bankrupt or changed company names to avoid their responsibilities arising from transportation-related activities, thereby augmenting the importance of an adequate bond, surety or other insurance. Increasingly, injured shippers have not been made whole when seeking reparation from the instrument of financial responsibility. We note as well the diverse activities engaged in by OTIs due to the innovations and technological advances

made by the shipping industry. The increased amounts proposed here will better protect the shipping public.

In addition, the Report directs the FMC to consider, when establishing the amount of financial responsibility necessary for foreign-based OTIs, that such OTIs are not “in the United States” as defined by proposed § 515.3, and, therefore, are not subject to the Commission's licensing requirements, but nonetheless provide ocean transportation intermediary services for transportation to or from the United States. Report at 31. Accordingly, the Commission has established different levels of financial responsibility requirements, increasing the amount of financial responsibility required by foreign entities, based on the high volume of judgments obtained against foreign-based NVOCCs and the extent of financial injuries to shippers that have resulted.

Proposed § 515.27 amends the means by which a common carrier can obtain proof of an NVOCC's compliance with the tariff and financial responsibility requirements of the 1984 Act. Currently, part 583 provides that a common carrier can consult a list provided by the Commission of bonded and tarified NVOCCs. Because tariffs will no longer be filed with the Commission, the proposal provides that carriers may review a copy of the NVOCC's tariff published in accordance with part 520 of this chapter, either through the NVOCC's website or by other means established by the NVOCC. Carriers also will be able to contact the Commission to verify that an NVOCC has filed evidence of its financial responsibility. Additionally, the Commission proposes in § 515.27(d) that it will publish at its website a list of the locations of all carrier and conference tariffs, as well as a list of all OTIs who have furnished the Commission with evidence of their financial responsibility. The Commission seeks comments on this proposal. Carriers may adopt other appropriate procedures for purposes of this section, so long as such procedures are set forth in the carrier's tariff.

Duties and Responsibilities of OTIs

OSRA requires all NVOCCs to be licensed as OTIs under section 19 of the 1984 Act, and thus, as licensees, NVOCCs are subjected to the same responsibilities as ocean freight forwarders. Proposed § 515.31 incorporates many of the duties of freight forwarders from 46 CFR 510.21 and 46 CFR 510.22 and applies them to all licensees. Those duties include a freight forwarder's responsibility to its principal, as defined in proposed

§ 515.2(p); an NVOCC's responsibility to its shipper, as defined in proposed § 515.2(s); and a licensed OTI's responsibility to the Commission generally. In addition, the recordkeeping requirements of licensed freight forwarders under 46 CFR 510.24 would now be applicable to all licensees. This is reflected in proposed § 515.32.

Proposed subpart E incorporates most of the regulations of 46 CFR 510.22 and 510.23 relating to the fees and compensation paid in exchange for freight forwarding services, and adds two sections regarding in-plant arrangements and electronic data interchange. Proposed § 515.41(e) provides for the placement of a licensed freight forwarder's employee(s) on the premises of its principal as part of a package of freight forwarding services rendered to that principal. However, in order to prevent such an arrangement from being an artifice for an unlawful payment to the principal, it is required that the forwarder and principal document their in-plant arrangement by executing a special contract (not filed with the Commission) under proposed § 515.32(d). (Under current regulations at 46 CFR 510.24(d), a licensee is required to maintain a true and complete copy, or if oral, a true and complete memorandum, of every special arrangement or contract with a principal, or modification or cancellation thereof, to which it may be a party). The special contract shall identify all the details of the arrangement, including the freight forwarding services to be performed by the employee(s). This section is not intended to reach incidental visits to the principal's premises by a forwarder employee or meetings between forwarders and principals, but rather seeks to reach the forwarder employee placed on the principal's premises to perform freight forwarding services on a recurring or continuing basis or for a fixed period of time.

Further, proposed § 515.42(e) provides that a licensed freight forwarder may operate an electronic data interchange computer-based system in its forwarding business. In order to collect carrier compensation, however, the forwarder must also perform the traditional value-added services of booking, securing, or confirming space for cargo and preparing and processing shipping documents, and certify the performance of those services to the carrier.

The reporting, recordkeeping and disclosure requirements contained in this proposed rule have been submitted to the Office of Management and Budget

(OMB). Public burden for this collection of information is estimated at 5,164 man-hours for 4,600 OTIs. This estimate includes, as applicable, the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information, search existing data sources, gather and maintain the data needed, and complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments regarding the burden estimates to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Federal Maritime Commission, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503 within 30 days of publication in the **Federal Register**.

The FMC would also like to solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) evaluate the accuracy of the Commission's burden estimates for the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this proposed rulemaking will be summarized and/or included in the final rule and will become a matter of public record.

Initial Regulatory Flexibility Analysis

Why the Commission is Considering the New Rule

The Commission proposes to add new regulations establishing licensing and financial responsibility requirements for OTIs in accordance with the 1984 Act, as modified by OSRA and part 424 of Pub. L. 105-383 (The Coast Guard Authorization Act of 1998).

Objectives and Legal Basis for the New Rule

OSRA amends the 1984 Act in several respects relating to ocean freight forwarders and NVOCCs. The Commission proposes new regulations,

at 46 CFR part 515, to implement changes effectuated by OSRA.

OSRA requires that all OTIs in the United States be licensed by the Commission. Further, all OTIs will be required to establish their financial responsibility before performing any intermediary services in the United States. The bond, surety or other insurance obtained pursuant to this requirement shall be available to pay for damages suffered by ocean common carriers, shippers, and others, arising from the transportation-related activities of the covered OTIs. Report at 31.

The Report specifically indicates that the bonds, or other instruments of financial responsibility, are intended to cover liabilities related to service contract obligations, as well as damages resulting from loss or conversion of cargo, from the negligence or complicity of the insured entity, or from nonperformance of services. The new rule proposes to establish a range of financial responsibility requirements commensurate with the scope of the activities conducted by the different OTIs and the past fitness of OTIs in the performance of intermediary duties.

Description of and Estimate of the Number of Small Entities to Which the New Rule Will Apply

To determine whether a business should be considered a small entity, the Small Business Administration ("SBA") has established statutory definitions of small businesses (13 CFR part 121, FR January 31, 1996). Businesses classified in the Standard Industrial Classification code 4731, including ocean freight forwarders and NVOCCs, are evaluated by their annual receipts (gross annual revenues). Ocean freight forwarders and NVOCCs with less than \$18.5 million in annual receipts are considered small businesses by SBA. The Commission does not have OTI revenue data readily available, but in general, is aware that a handful of OTIs handle the bulk of the intermediary cargo in the U.S. trades, while most OTIs are small operators. Without specific OTI revenue data, however, the Commission assumes that most if not all OTIs have revenues of less than \$18.5 million, and are considered to be small businesses.

Projected Reporting, Record Keeping and Other Compliance Requirements of the New Rule

It is estimated that the new rule will impose, in varying degrees, a reporting burden on the entire OTI universe. The burden is calculated on the estimated amount of cost and time necessary to comply with various requirements of 46

CFR part 510. Calculated below are the estimated costs resulting from the new rule.

Cost to the Government

The additional burden to the government, *i.e.*, the Commission, as a result of the new rule is expected to be minimal. The Commission does not anticipate hiring any additional staff to administer changes occurring from the new rule, but is expected to handle the anticipated additional workload with existing Commission staff.

Cost of Filing Time

The new rule proposes changing the Commission's rules by requiring U.S.-based NVOCCs and ocean freight forwarders also operating as NVOCCs to be licensed with the FMC. It also requires foreign-based NVOCCs to establish financial responsibility. It could also involve the licensing of agents of foreign-based NVOCCs. Ocean freight forwarders operating solely as ocean freight forwarders in the U.S. export trade are already required to be licensed with the Commission under the current rules, and would therefore be unaffected by this change.

Based on a survey conducted by the Commission, it is estimated that the average hourly labor cost to file evidence of financial responsibility or complete a new license application is \$41. Further, it is estimated to currently take individual ocean freight forwarders 3.5 hours to file evidence of financial responsibility and complete a new license application at an average labor cost to the respondent of \$144. This cost takes into account time to gather information and complete the application form, as well as time to comply with the requirements of the rules. Since the licensing application form and financial responsibility procedures will remain substantively unchanged under the new rule, it is estimated that the additional labor cost of the new rule to each U.S.-based NVOCC will be \$144 in the first year.

Based on the Commission's survey, it is estimated that it would take each foreign-based NVOCC 1.5 hours of staff time to file evidence of financial responsibility at an average labor cost to the respondent of \$62 in the first year. Each ocean freight forwarder also operating as an NVOCC would require 0.5 hours per year to amend their applications and their financial responsibility at an average labor cost to the respondent of \$21 in the first year.

The total additional labor cost of the new rule is expected to reach almost \$255,000 in the first year. In subsequent years, since all operating NVOCCs and

ocean freight forwarders also operating as NVOCCs will have financial responsibility and/or be licensed, the total labor cost for filing time is expected to decrease substantially.

Cost of Licensing Fee

The Commission's current user fees for processing a new application is \$778, and \$362 for an amendment. The new rule changes the current requirements by requiring U.S.-based NVOCCs to file a new application to become licensed. Further, ocean freight forwarders also operating as NVOCCs will be required to amend their licenses. However, since licensing fees do not change under the new rule, ocean freight forwarders in the U.S. export trade that are already required to be licensed with the Commission will not be affected in this regard. Further, foreign-based NVOCCs are not required to be licensed under the new rule. U.S.-based agents of foreign-based NVOCCs might be required to be licensed. Since it is presumed that most would already be licensed, the impact is expected to be *de minimis*. The total additional licensing cost to OTIs to comply with the new rule is estimated to be \$1.3 million.

Cost of Increasing the Financial Responsibility Requirement

The new rule proposes raising the financial responsibility requirement for: Ocean freight forwarders operating solely as ocean freight forwarders in the U.S. export trade from \$30,000 to \$50,000, with \$10,000 in additional coverage for each unincorporated branch office; U.S.-based NVOCCs will be required to increase their financial responsibility from \$50,000 to \$75,000 with \$10,000 in additional coverage for each unincorporated branch office that is not already covered under an ocean freight forwarder's financial responsibility; and foreign-based NVOCCs will be required to increase their financial responsibility from \$50,000 to \$150,000. Entities that operate as both ocean freight forwarders and NVOCCs are presently required to have separate financial responsibility, financial responsibility in the amount of \$30,000 covering their freight forwarding activity and financial responsibility in the amount of \$50,000 covering their NVOCC activity. The new rule will increase their financial responsibility coverage from two totaling \$80,000 to one totaling \$100,000. The new rule would further require ocean freight forwarders also operating as NVOCCs to have \$10,000 in additional coverage for each unincorporated branch office that is not

already covered under an ocean freight forwarder's financial responsibility.

The new rule also proposes broadening the option for group financial responsibility to include ocean freight forwarders as well as NVOCCs, while raising the group financial responsibility requirement from \$1 million to \$3 million. There are currently three group proofs of financial responsibility on file with the Commission with a total of 166 NVOCC members. By posting group financial responsibility, it is believed that participants save on premium payments by receiving a group coverage rate. However, it is difficult to project how many ocean freight forwarders would opt for group financial responsibility as a result of the new rule. Therefore, it is not feasible to forecast the potential cost savings to the industry of modifying the group financial responsibility provision in the new rule. Instead, the Commission will assume that all OTIs will post financial responsibility at the higher individual premium rate.

For individual financial responsibility coverage, the Commission estimates that the premium for establishing financial responsibility ranges from \$800 to \$1,200 per year for \$50,000 in financial responsibility coverage. The Commission employed an average premium cost of \$1,000 per year for \$50,000 in bond coverage to calculate the cost to OTIs of the proposed increases in financial responsibility coverages. In addition, the proportion of ocean freight forwarders to branch offices was applied to estimate the number of NVOCC unincorporated branch offices.

The Commission estimates that the average cost to OTIs of additional financial responsibility requirements is as follows: Ocean freight forwarders operating solely as ocean freight forwarders in the U.S. export trade will pay \$887,000 more (\$578 per entity) per year for financial responsibility; ocean freight forwarders also operating as NVOCCs will pay \$297,000 more per year (\$578 per entity); U.S.-based NVOCCs will pay \$967,000 more per year (\$678 per entity); and foreign-based NVOCCs will pay \$1,252,000 more per year (\$2,000 per entity). The total first year cost of increased financial responsibility requirements for all entities under the new rule totals \$3.4 million.

In some cases, financial responsibility underwriters may require individual OTIs to provide collateral in order to secure a financial responsibility. Collateral accounts typically accrue interest at a risk-free rate until they are claimed or remitted in full to an OTI.

However, when considering the industry as a whole, funds that are set aside as collateral could be otherwise invested in higher earning assets, such as in an OTI's business operations, thereby effectively assessing a cost to OTIs. Calculating the opportunity cost of increased collateral requires specific data on individual OTI's financial and operating riskiness. However, the Commission does not have that information available. In lieu of such information, and in order to ensure that no substantial economic impact is overlooked, the Commission solicits comments concerning the effects of the cost of increased collateral and premium requirements on OTIs.

Summary of Costs

In the first year of its implementation, the additional burden of the new rule is expected to average \$1,600 for each U.S.-based NVOCC, \$2,062 for each foreign-based NVOCC, \$961 for each ocean freight forwarder also operating as an NVOCC, and \$578 for each ocean freight forwarder operating solely as an ocean freight forwarder in the U.S. export trade. The total additional first year cost as a result of the new rule is estimated to be almost \$5 million.

The new rule seeks to increase the amount of financial responsibility required to be provided by OTIs to more accurately reflect the diversity of activities engaged in by OTIs. The current NVOCC financial responsibility amount of \$50,000 was established by the Non-Vessel-Operating Common Carrier Amendments of 1990, Pub. L. 101-195. At that time, House Merchant Marine and Fisheries Chairman Walter B. Jones commented that the \$50,000 was a minimum amount, which the Commission would "have the continuing flexibility to adjust * * * as changing circumstances warrant." 136 Cong. Rec. E2210-2211 (June 28, 1990). Thus far, the Commission has not increased the amount of financial responsibility required by an NVOCC, but current circumstances warrant the increased amounts proposed here. The Commission has pursued several investigations against NVOCCs in which the \$50,000 liability amount has fallen short of the penalties assessed. The Commission has faced an increasing number of NVOCCs who have gone bankrupt or changed company names to avoid their responsibilities arising from transportation-related activities, thereby augmenting the importance of an adequate bond, surety or other insurance. Increasingly, injured shippers have not been made whole when seeking reparation from the

instrument of financial responsibility. The Commission notes as well the diverse activities engaged in by OTIs due to the innovations and technological advances made by the shipping industry. The increased amounts proposed in the new rule will better protect the shipping public.

In addition, the Report directs the FMC to consider that some foreign-based OTIs are not "in the United States" as defined by proposed § 515.3, and, therefore are not subject to the Commission's licensing requirements, but do provide ocean transportation intermediary services for transportation to or from the United States, when establishing the amount of financial responsibility necessary for such OTIs. Report at 31. Accordingly, the Commission has established different levels of financial responsibility requirements, increasing the amount of financial responsibility required by foreign entities, based on the high volume of judgments obtained against foreign-based NVOCCs and the extent of financial injuries to shippers that have resulted.

The Commission cannot certify that the new rule will not have a significant economic impact on a substantial number of small entities. However, based on the above discussion, the Commission believes that the burden imposed on small ocean freight forwarders and NVOCCs as a result of the new rule is justified and necessary in light of the legislative benefit to effect these changes, and because of the benefit to the shipping public and to carriers gained by licensing and requiring financial responsibility of all OTIs.

Relevant Federal Rules That may Duplicate, Overlap, or Conflict With the New Rule

The Commission is not aware of any other federal rules that duplicate, overlap, or conflict with the new rule.

List of Subjects in 46 CFR parts 510, 515 and 583

Exports, Freight forwarders, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reports and recordkeeping requirements, surety bonds.

Under the authority of Pub. L. 105-258 and as discussed in the preamble, the Federal Maritime Commission proposes to amend subchapter B, chapter IV, of 46 CFR as follows:

PART 510—[REMOVED]

1. Remove Part 510

PART 583—[REMOVED]

2. Remove Part 583
3. Revise the heading of subchapter B to read as follows:

SUBCHAPTER B—REGULATIONS AFFECTING OCEAN SHIPPING IN FOREIGN COMMERCE

4. Add Part 515 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

- 515.11 Basic requirements for licensing; eligibility.
- 515.12 Application for license.
- 515.13 Investigation of applicants.
- 515.14 Issuance and use of license.
- 515.15 Denial of license.
- 515.16 Revocation or suspension of license.
- 515.17 Application after revocation or denial.
- 515.18 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.
- Appendix A to Subpart C of Part 515—Ocean Transportation Intermediary (OTI) Bond Form [Form 48]
- Appendix B to Subpart C of Part 515—Ocean Transportation Intermediary (OTI) Insurance Form [Form 67]
- Appendix C to Subpart C of Part 515—Ocean Transportation Intermediary (OTI) Guaranty Form [Form 68]
- Appendix D to Subpart C Part 515—Ocean Transportation Intermediary (OTI) Group Bond Form [FMC-69]

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

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

Subpart E—Freight Forwarding Fees and Compensation

515.41 Forwarder and principal; fees.

515.42 Forwarder and carrier; compensation.

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718, as amended by Pub. L. 105–258, 112 Stat. 1902, and Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

Subpart A—General

§ 515.1 Scope.

(a) This part sets forth regulations providing for the licensing as ocean transportation intermediaries of persons who wish to carry on the business of providing intermediary services, including the grounds and procedures for revocation and suspension of licenses. This part also prescribes the financial responsibility requirements and the duties and responsibilities of ocean transportation intermediaries, and regulations concerning practices of ocean transportation intermediaries with respect to common carriers.

(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. Persons operating without the proper license may be subject to civil penalties not to exceed \$5,500 for each such violation unless the violation is willfully and knowingly committed, in which case the amount of the civil penalty may not exceed \$27,500 for each violation; for other violations of the provisions of this part, the civil penalties range from \$5,500 to \$27,500 for each violation (46 U.S.C. app. 1712). Each day of a continuing violation shall constitute a separate violation.

§ 515.2 Definitions.

The terms used in this part are defined as follows:

(a) *Act* means the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998.

(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. This term does not include a separately incorporated entity.

(d) *Brokerage* refers to payment by a common carrier to an ocean freight broker for the performance of services as specified in paragraph (m) of this section.

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

(f) *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.

(g) *Compensation* means payment by a common carrier to a freight forwarder for the performance of services as specified in § 515.42(c).

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

(i) *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 declarations;
- (3) Booking, arranging for or confirming cargo space;

(4) Preparing or processing delivery orders or dock receipts;

(5) Preparing and/or processing ocean bills of lading;

(6) Preparing or processing consular documents or arranging for their certification;

(7) Arranging for warehouse storage;

(8) Arranging for cargo insurance;

(9) 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.

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

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

(l) *Ocean common carrier* means a vessel-operating common carrier (“VOCC”).

(m) *Ocean freight broker* is an entity which is engaged by a carrier to secure cargo for such carrier and/or to sell or offer for sale ocean transportation services and which holds itself out to the public as one who negotiates between shipper or consignee and carrier for the purchase, sale, conditions and terms of transportation.

(n) *Ocean transportation intermediary* means an ocean freight forwarder or a non-vessel-operating common carrier.

For the purposes of this part, the term

(1) *Ocean freight forwarder* 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.

(o) *Person* includes individuals, corporations, partnerships and

associations existing under or authorized by the laws of the United States or of a foreign country.

(p) *Principal*, except as used in Surety Bond Form FMC 48, Rev. and Group Bond Form FMC 69, refers to the shipper, consignee, seller, or purchaser of property, and to anyone acting on behalf of such shipper, consignee, seller, or purchaser of property, who employs the services of a licensed freight forwarder to facilitate the ocean transportation of such property.

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

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

(s) *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.

(t) *Small shipment* refers to a single shipment sent by one consignor to one consignee on one bill of lading which does not exceed the underlying common carrier's minimum charge rule.

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

(v) *Transportation-related activities* which are covered by the bond, surety or other insurance obtained pursuant to this part, include, to the extent involved in the foreign commerce of the United States, the freight forwarding services enumerated in paragraph (i) of this section, and, in addition, may include, but are not limited to, the following:

- (1) Payment of ocean freight charges;
- (2) Payment of inland charges for through movements;
- (3) Loss or conversion of cargo;
- (4) Service contract obligations of an NVOCC, as a shipper;
- (5) Obligations as an NVOCC member of a shippers' association;
- (6) Cargo damage;
- (7) Delay in shipment; and
- (8) Breach of fiduciary responsibility.

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

§ 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. A separate license is required for each branch office that is separately incorporated. (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. Only persons licensed under this part may furnish or contract to furnish ocean transportation intermediary services in the United States on behalf of an unlicensed ocean transportation intermediary.) (For purposes of this part, a person is considered to be "in the United States" if such person is incorporated in, resident in, or established under the laws of the United States, or otherwise maintains a physical presence in the United States. Such indicia of physical presence may include, but are not limited to, whether the person holds a taxpayer identification number, a state or local business license, or maintains a mailing address in the United States.)

§ 515.4 License; when not required.

A license is not required in the following circumstances:

(a) *Shipper*. 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) *Employee or branch office of licensed ocean transportation intermediary*. (1) An individual employee or unincorporated branch office of a licensed ocean transportation intermediary is not required to be licensed in order to act solely for such licensee, provided that such branch offices:

- (i) Have been reported to the Commission in writing; and
- (ii) Are covered by an increased bond in accordance with § 515.21(a)(5).

(2) Each licensed ocean transportation intermediary will be held strictly responsible for the acts or omissions of any of its employees or agents rendered in connection with the conduct of its business.

(c) *Common carrier*. 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) *Ocean freight brokers*. An ocean freight broker is not required to be licensed to perform those services specified in § 515.2(m).

(e) *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.

§ 515.5 Forms and fees.

(a) *Forms*. License form FMC-18 Rev., and financial responsibility forms FMC-48, FMC-67, FMC-68, FMC-69 may be obtained from the Commission's website at www.fmc.gov, the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, or from any of the Commission's area representatives.

(b) *Fees*. All fees shall be payable by money order, certified check, cashier's check, or personal check to the "Federal Maritime Commission." Should a personal check not be honored when presented for payment, the processing of an application under this section shall be suspended until the processing fee is paid. In any instance where an application has been processed in whole or in part, the fee will not be refunded. Such fees are:

- (1) Application for License as required by § 515.12(a): \$778;
- (2) Application for status change of license transfer as required by §§ 515.18(a) and 515.18(b): \$362; and
- (3) Supplementary investigation as required by § 515.25(a): \$224.

Subpart B—Eligibility and Procedure for Licensing

§ 515.11 Basic requirements for licensing; eligibility.

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

- (1) It possesses the necessary experience, that is, its qualifying individual has a minimum of three (3) years experience in ocean transportation intermediary activities in the United States, and the necessary character to

render ocean transportation intermediary services; and

(2) It has obtained and filed with the Commission a valid bond, proof of insurance, or other surety in conformance with § 515.21.

(3) An NVOCC with a tariff and proof of financial responsibility in effect as of December 22, 1998, may continue to operate as an NVOCC without the requisite three years experience; and will be provisionally licensed while the Commission reviews their application. Such person designated as the qualifying individual for a provisionally licensed NVOCC may not act as a qualifying individual for another ocean transportation intermediary until it has obtained the necessary three years experience in ocean transportation intermediary services in the United States.

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

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

(2) *Partnership.* At least one of the active managing partners, but all partners must execute the application.

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

(c) *Affiliates of intermediaries.* (1) 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:

(i) A separate application and fee, and
(ii) a valid instrument of financial responsibility in the form and amount prescribed under § 515.21.

(2) The qualifying individual of one active licensee shall not also be designated contemporaneously as the qualifying individual of an applicant for another ocean transportation intermediary license.

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

§ 515.12 Application for license.

(a) *Application and forms.* Any person who wishes to obtain a license to operate as an ocean transportation intermediary shall submit, in duplicate, to the Director of the Commission's Bureau of Tariffs, Certification and Licensing, a completed application

Form FMC-18 Rev. ("Application for a License as an Ocean Transportation Intermediary") accompanied by the fee required under § 515.5(b). All applications will be assigned an application number, and each applicant will be notified of the number assigned to its application. Notice of filing of such application shall be published in the **Federal Register** and shall state the name and address of the applicant and the name and address of the qualifying individual. If the applicant is a corporation or partnership, the names of the officers or partners thereof shall be published.

(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, shall be returned by certified U.S. mail or other method reasonably calculated to provide actual notice to the applicant without further processing, together with an explanation of the reason(s) for rejection, and the application fee shall be refunded in full. Persons who have had their applications returned may reapply for a license at any time thereafter by submitting a new application, together with the full application fee.

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

(d) *Changes in fact.* Each applicant and each licensee shall submit to the Commission, in duplicate, an amended Form FMC-18 Rev. advising of any changes in the facts submitted in the original application, within thirty (30) days after such change(s) occur. In the case of an application for a license, any unreported change may delay the processing and investigation of the application and may result in rejection or denial of the application. No fee is required when reporting changes to an application for initial license under this section.

§ 515.13 Investigation of applicants.

The Commission shall conduct an investigation of the applicant's qualifications for a license. Such investigations may address:

(a) The accuracy of the information submitted in the application;

(b) The integrity and financial responsibility of the applicant;

(c) The character of the applicant and its qualifying individual; and

(d) The length and nature of the qualifying individual's experience in handling ocean transportation intermediary duties.

§ 515.14 Issuance and use of license.

(a) *Qualification necessary for issuance.* The Commission will issue a license if it determines, as a result of its investigation, that the applicant possesses the necessary experience and character to render ocean transportation intermediary services and has filed the required bond, insurance or other surety.

(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, or a corporation. 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.

§ 515.15 Denial of license.

If the Commission determines, as a result of its investigation, that the applicant:

(a) Does not possess the necessary experience or character to render intermediary services;

(b) Has failed to respond to any lawful inquiry of the Commission; or

(c) Has made any materially false or misleading statement to the Commission in connection with its application; then, a letter of intent to deny the application shall be sent to the applicant by certified U.S. mail or other method reasonably calculated to provide actual notice, stating the reason(s) why the Commission intends to deny the application. If the applicant submits a written request for hearing on the proposed denial within twenty (20) days after receipt of notification, such hearing shall be granted by the Commission pursuant to its rules of practice and procedure contained in part 502 of this chapter. Otherwise, denial of the application will become effective and the applicant shall be so notified by certified U.S. mail or other method reasonably calculated to provide actual notice.

§ 515.16 Revocation or suspension of license.

(a) *Grounds for revocation.* Except for the automatic revocation for termination of proof of financial responsibility under § 515.26, or as provided in § 515.25(b), a license may be revoked or

suspended after notice and an opportunity for a hearing for any of the following reasons:

- (1) Violation of any provision of the Act, or any other statute or Commission order or regulation related to carrying on the business of an ocean transportation intermediary;
 - (2) Failure to respond to any lawful order or inquiry by the Commission;
 - (3) Making a materially false or misleading statement to the Commission in connection with an application for a license or an amendment to an existing license;
 - (4) Where the Commission determines that the licensee is not qualified to render intermediary services; or
 - (5) Failure to honor the licensee's financial obligations to the Commission.
- (b) *Notice of revocation.* The Commission shall publish in the **Federal Register** a notice of each revocation.

§ 515.17 Application after revocation or denial.

Whenever a license has been revoked or an application has been denied because the Commission has found the licensee or applicant to be not qualified to render ocean transportation intermediary services, any further application within 3 years of the Commission's notice of revocation or denial, made by such former licensee or applicant or by another applicant employing the same qualifying individual or controlled by persons on whose conduct the Commission based its determination for revocation or denial, shall be reviewed directly by the Commission.

§ 515.18 Changes in organization.

(a) 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 Rev., filed in duplicate with the Commission's Bureau of Tariffs, Certification and Licensing, and accompanied by the fee required under § 515.5(b)(2):

- (1) Transfer of a corporate license to another person;
- (2) Change in ownership of a sole proprietorship;
- (3) Addition of one or more partners to a licensed partnership;
- (4) Any change in the business structure of a licensee from or to a sole proprietorship, partnership, or corporation, whether or not such change involves a change in ownership;
- (5) Any change in a licensee's name; or
- (6) Change in the identity or status of the designated qualifying individual,

except as described in paragraphs (b) and (c) of this section.

(b) Operation after death of sole proprietor: In the event 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 thirty (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 Rev., and shall be accompanied by the transfer fee required under § 515.5(b)(2).

(c) Operation after retirement, resignation, or death of qualifying individual: When a partnership or corporation has been licensed on the basis of the qualifications of one or more of the partners or officers thereof, and such qualifying individual(s) no longer serve in a full-time, active capacity with the firm, the licensee shall report such change to the Commission within thirty (30) days. Within the same 30-day period, the licensee shall furnish to the Commission the name(s) and detailed intermediary experience of any other active managing partner(s) or officer(s) who may qualify the licensee. Such qualifying individual(s) must meet the applicable requirements set forth in § 515.11(a). The licensee may continue to operate as an ocean transportation intermediary while the Commission investigates the qualifications of the newly designated partner or officer.

(d) Incorporation of branch office: In the event a licensee's validly operating branch office becomes incorporated as a separate entity, the licensee may continue to operate such office pending receipt of a separate license, provided that:

- (1) The separately incorporated entity applies to the Commission for its own license within ten (10) days after incorporation, and
 - (2) While the application is pending, the continued operation of the office is carried on as a *bona fide* branch office of the licensee, under its full control and responsibility, and not as an operation of the separately incorporated entity.
- (e) 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 change within thirty (30) days after such change occurs by submitting in duplicate, an amended Form FMC-18, Rev. No application fee is required when reporting this change.

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

§ 515.21 Financial responsibility requirements.

(a) *Form and amount.* Except as otherwise provided in this part, no person may operate as an ocean transportation intermediary unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility. The bond, insurance or other surety covers the transportation-related activities of an ocean transportation intermediary only when acting as an ocean transportation intermediary.

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

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

(3) Any person operating in the United States as both an ocean freight forwarder and an NVOCC as defined by §§ 515.2(n)(1) and (2) shall furnish evidence of financial responsibility in the amount of \$100,000.

(4) Any unlicensed foreign-based entity, not operating in the United States as defined in § 515.3, providing ocean transportation intermediary services for transportation to or from the United States, shall furnish evidence of financial responsibility in the amount of \$150,000. Such foreign entity will be held strictly responsible hereunder for the acts or omissions of its agent in the United States.

(5) The amount of the financial responsibility required to be furnished by any entity pursuant to paragraphs (a)(1), (a)(2) or (a)(3) of this section shall be increased by \$10,000 for each of the applicant's unincorporated branch offices.

(b) *Group financial responsibility.* Where 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 must file either a group supplemental coverage 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 the amount required by paragraph (a) of this section for each member or \$3,000,000 in aggregate.

(c) *Common trade name.* Where more than one person operates under a common trade name, separate proof of financial responsibility is required covering each corporation or person separately providing ocean transportation intermediary services.

(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 C 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.

§ 515.22 Proof of financial responsibility.

Prior to the date it commences furnishing ocean transportation intermediary services, every ocean transportation intermediary shall establish its financial responsibility for the purpose of this part by one of the following methods:

(a) Surety bond, by filing with the Commission a valid bond on Form FMC-48. Bonds must be issued by a surety company found acceptable by the Secretary of the Treasury;

(b) Insurance, by filing with the Commission evidence of insurance on Form FMC-67. The insurance must provide coverage for damages, reparations or penalties arising from any transportation-related activities under the Act of the insured ocean transportation intermediary. This evidence of financial responsibility shall be accompanied by: In the case of a financial rating, the Insurer's financial rating on the rating organization's letterhead or designated form; in the case of insurance provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's; and in

the case of insurance provided by 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 Insurer must certify that it has sufficient and acceptable assets located in the United States to cover all transportation-related liabilities of the insured ocean transportation intermediary as specified under the Act. The insurance must be placed with:

(1) An Insurer having a financial rating of Class V or higher under the Financial Size Categories of A.M. Best & Company, or equivalent from an acceptable international rating organization;

(2) Underwriters at Lloyd's; or

(3) Surplus lines insurers named on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners; or

(c) Guaranty, by filing with the Commission evidence of guaranty on Form FMC-68. The guaranty must provide coverage for damages, reparations or penalties arising from any transportation-related activities under the Act of the covered ocean transportation intermediary. This evidence of financial responsibility shall be accompanied by: In the case of a financial rating, the Guarantor's financial rating on the rating organization's letterhead or designated form; in the case of a guaranty provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's; and in the case of a guaranty provided by 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 Guarantor must certify that it has sufficient and acceptable assets located in the United States to cover all transportation-related liabilities of the covered ocean transportation intermediary as specified under the Act. The guaranty must be placed with:

(1) A Guarantor having a financial rating of Class V or higher under the Financial Size Categories of A.M. Best & Company, or equivalent from an acceptable international rating organization;

(2) Underwriters at Lloyd's; or

(3) Surplus lines insurers named on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners; or

(d) Evidence of financial responsibility of the type provided for in paragraphs (a), (b) and (c) of this section established through and filed with the Commission by a group or association of ocean transportation intermediaries on behalf of its members, subject to the following conditions and procedures:

(1) Each group or association of ocean transportation intermediaries shall notify the Commission of its intention to participate in such a program and furnish documentation as will demonstrate its authenticity and authority to represent its members, such as articles of incorporation, bylaws, etc.;

(2) Each group or association of ocean transportation intermediaries shall provide the Commission with a list certified by its Chief Executive Officer containing the names of those ocean transportation intermediaries to which it will provide coverage; the manner and amount of existing coverage each covered ocean transportation intermediary has; an indication that the existing coverage provided each ocean transportation intermediary is provided by a surety bond issued by a surety company found acceptable to the Secretary of the Treasury, or by insurance or guaranty issued by a firm meeting the requirements of paragraphs (b) or (c) of this section with coverage limits specified above in § 515.21; and the name, address and facsimile number of each surety, insurer or guarantor providing coverage pursuant to this section. Each group or association of ocean transportation intermediaries or its financial responsibility provider shall notify the Commission within thirty (30) days of any changes to its list;

(3) The group or association shall provide the Commission with a sample copy of each type of existing financial responsibility coverage used by member ocean transportation intermediaries;

(4) Each group or association of ocean transportation intermediaries shall be responsible for ensuring that each member's financial responsibility coverage allows for claims to be made in the United States against the Surety, Insurer or Guarantor for any judgment for damages against the ocean transportation intermediary arising from its transportation-related activities under the Act, or order for reparations issued pursuant to section 11 of the Act, or any penalty assessed against the ocean transportation intermediary pursuant to section 13 of the Act. Each group or association of ocean transportation intermediaries shall be responsible for requiring each member ocean transportation intermediary to

provide it with valid proof of financial responsibility annually;

(5) Where the group or association of ocean transportation intermediaries determines to secure on behalf of its members other forms of financial responsibility, as specified by this section, for damages, reparations or penalties not covered by a member's individual financial responsibility coverage, such additional coverage must:

(i) Allow claims to be made in the United States directly against the group or association's Surety, Insurer or Guarantor for damages against each covered member ocean transportation intermediary arising from each covered member ocean transportation intermediary's transportation-related activities under the Act, or order for reparations issued pursuant to section 11 of the Act, or any penalty assessed against each covered member ocean transportation intermediary pursuant to section 13 of the Act; and

(ii) Be for an amount up to \$75,000 or \$150,000, whichever is applicable, for each covered member ocean transportation intermediary up to a maximum of \$3,000,000 for each group or association of ocean transportation intermediaries. In the event of a claim against a group bond, the bond must be replenished up to the original amount of coverage within 30 days payment of the claim; and

(6) The coverage provided by the group or association of ocean transportation intermediaries on behalf of its members shall be provided by:

(i) in the case of a surety bond, a surety company found acceptable to the Secretary of the Treasury and issued by such a surety company on Form FMC-69; and

(ii) in the case of insurance and guaranty, a firm having a financial rating of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization, Underwriters at Lloyd's, or surplus line insurers named on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners and issued by such firms on Form FMC-67 and Form FMC-68, respectively.

(e) All forms and documents for establishing financial responsibility of ocean transportation intermediaries prescribed in this section shall be submitted to the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. Such forms and documents must clearly identify the

name; trade name, if any; and the address of each ocean transportation intermediary.

§ 515.23 Claims against an ocean transportation intermediary.

The Commission or another party may seek payment from the bond, insurance, or other surety that is obtained by an ocean transportation intermediary pursuant to this section.

(a) Payment pursuant to Commission order. If the Commission issues an order for reparation pursuant to section 11 or 14 of the Act, or assesses a penalty pursuant to section 13 of the Act, a bond, insurance, or other surety shall be available to pay such order or penalty.

(b) Payment pursuant to a claim. (1) If a party does not file a complaint with the Commission pursuant to section 11 of the Act, 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 certified mail, return receipt requested. 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 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 90 days of the date of the initial notification of the claim, the bond, insurance, or other surety shall be available to pay any judgment for 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 10 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) 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.

§ 515.24 Agent for service of process.

(a) Every ocean transportation intermediary not located in the United States and every group or association of ocean transportation intermediaries not located in the United States which provides financial coverage for the financial responsibility of a member ocean transportation intermediary shall designate and maintain a person in the United States as legal agent for the receipt of judicial and administrative process, including subpoenas.

(b) If the designated legal agent cannot be served because of death, disability, or unavailability, the Secretary, 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 registered mail, return receipt requested, at its address published in its tariff, a copy of each document served upon the Secretary, and shall attest to that mailing at the time service is made upon the Secretary.

(c) Service of administrative process, other than subpoenas, may be effected upon the legal agent by mailing a copy of the document to be served by certified or registered mail, return receipt requested. Administrative subpoenas shall be served in accordance with § 502.134 of this chapter.

(d) Designations of resident 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.

(e) Every ocean transportation intermediary using a group or association of ocean transportation intermediaries to cover its financial responsibility requirement under § 515.21(b) shall publish the name and address of the group or association's resident agent for receipt of judicial and administrative process, including subpoenas, in its tariff, when required, in accordance with part 520 of this chapter.

§ 515.25 Filing of proof of financial responsibility.

(a) *Filing of proof of financial responsibility.* Upon notification by the Commission by certified U.S. mail or other method reasonably calculated to provide actual notice that the applicant has been approved for licensing, the applicant shall file with the Director of the Commission's Bureau of Tariffs, Certification and Licensing proof of financial responsibility in the form and amount prescribed in § 515.21. No tariff shall be published until a license is issued, if applicable, and proof of financial responsibility is provided. No license will be issued until the Commission is in receipt of valid proof of financial responsibility from the applicant. If more than six (6) months elapse between issuance of the notification of qualification and receipt of the proof of financial responsibility, the Commission may, at its discretion, undertake a supplementary investigation to determine the applicant's continued qualification, for which a fee is required under § 515.5(b)(3). Should the applicant not file the requisite proof of financial responsibility within two years of notification, the Commission will consider the application to be invalid.

(b) *Branch offices.* New proof of financial responsibility, or a rider to the existing proof of financial responsibility, increasing the amount of the bond in accordance with § 515.21(a)(5), shall be filed with the Commission prior to the date the licensee commences operation of any branch office. Failure to adhere to this requirement may result in revocation of the license.

§ 515.26 Termination of financial responsibility.

No license shall remain in effect unless valid proof of financial responsibility is maintained on file with the Commission. Upon receipt of notice of termination of such financial responsibility, the Commission shall notify the concerned licensee by certified U.S. mail or other method reasonably calculated to provide actual notice, at its last known address, that the Commission shall, without hearing or other proceeding, revoke the license as of the termination date of the financial responsibility, unless the licensee 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.

§ 515.27 Proof of compliance.

(a) No common carrier may transport cargo for the account of a shipper known by the carrier to be an NVOCC unless the carrier has determined that the NVOCC has a tariff and financial responsibility as required by sections 8 and 19 of the Act.

(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 rule published by the NVOCC and in effect under part 520 of this chapter;

(2) Consulting the Commission 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.

(c) A common carrier that has employed the procedure prescribed in either paragraph (b)(1) or (b)(2) of this section shall be deemed to have met its obligations under section 10(b)(11) of the Act, unless the common carrier knew that such NVOCC was not in compliance with the tariff and financial responsibility requirements.

(d) The Commission will publish at its website, www.fmc.gov, a list of the locations of all carrier and conference tariffs, and a list of ocean transportation intermediaries who have furnished the Commission with evidence of financial responsibility, current as of the last date on which the list is updated. The Commission will update this list on a periodic basis.

Appendix A to Subpart C of 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, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998) ____, as Principal (hereinafter called Principal), and ____, as Surety (hereinafter called 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, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998 ("1984 Act"), 46 U.S.C. app 1702, and, if necessary, has a valid tariff published pursuant to 46 CFR part 515 and 520, and pursuant to section 19 of the 1984 Act, files this bond with the Commission;

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(b) 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. app. 1710, or any penalty assessed against the Principal pursuant to section 13 of the 1984 Act, 46 U.S.C. app. 1712.

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(b) for damages against the Principal arising from its transportation related activities or order of reparation issued pursuant to section 11 of the 1984 Act, and to the benefit of the Federal Maritime Commission for any penalty assessed against the Principal pursuant to section 13 of the 1984 Act. 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 of this bond, and in no event shall the Surety's total obligation hereunder exceed said penalty regardless of the number of claims or claimants.

This bond is effective the ____ day of ____, 19 ____, 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 thirty (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 1984 Act of Principal in the event that such legal liability has not been discharged by the Principal or Surety within 10 days 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(b), the Federal Maritime Commission, or where all parties and claimants 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(b),

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 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 underwriting Surety will promptly notify the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) against this bond.

Signed and sealed this ____ day of ____, 19 ____.

(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 Subpart C of 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.
app. 1718

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] (hereinafter called "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
46 U.S.C. app. 1718 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, as
amended by the Ocean Shipping Reform Act
of 1998 and the Coast Guard Authorization
Act of 1998 ("1984 Act").

Whereas, the Insured is or may become an
OTI subject to the 1984 Act, 46 U.S.C. app.
1701 *et seq.*, 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 1984 Act, 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 1984 Act, 46 U.S.C. app. 1718, 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 claim under
46 CFR § 515.23(b) for damages against the
Insured arising from the Insured's
transportation-related activities under the
1984 Act, or order for reparations issued
pursuant to section 11 of the 1984 Act, 46
U.S.C. app. 1710, or any penalty assessed
against the Insured pursuant to section 13 of
the 1984 Act, 46 U.S.C. app. 1712; 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(b) arising
from its transportation-related activities
under the 1984 Act, or order of reparation
issued pursuant to section 11 of the 1984 Act,
and to the benefit of the Federal Maritime
Commission for any penalty assessed against
the Insured pursuant to section 13 of the
1984 Act.

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 1984 Act, of Insured in
the event that such legal liability has not
been discharged by the Insured or Insurer
within 10 days 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(b), the Federal Maritime Commission,
or where all parties and claimants 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(b),
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 of the amount per
member OTI set forth in 46 CFR 515.21 or the
amount per group or association of OTIs set
forth in 46 CFR 515.21, whichever comes
first, 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 ____, 19____, 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
1984 Act of the Insured after the expiration
of the thirty (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 under 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 promptly notify the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) against the Insurance.

Signed and sealed this ____ day of ____, 19 ____.

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, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998

1. Whereas ____ (Name of Applicant) (Hereinafter referred to as the "Applicant") is or may become an Ocean Transportation Intermediary ("OTI") subject to the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998 ("1984 Act"), 46 U.S.C. app. 1701 *et seq.*, 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 1984 Act, 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 transportation-related liabilities of the covered OTI as specified under the 1984 Act.

2. 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(b) for damages against the Applicant arising from the Applicant's transportation related activities or order for reparations issued pursuant to section 11 of the 1984 Act, 46 U.S.C. app. 1710, or any penalty assessed against the Principal pursuant to section 13 of the 1984 Act, 46 U.S.C. app. 1712.

3. The undersigned Guarantor hereby guarantees 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 1984 Act, in the event that such legal liability has not been discharged by the Applicant within 10 days 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(b), the FMC, or where all parties and claimants 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(b), 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.

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

5. 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 1984 Act, occurring after the Guaranty has become effective, and before the expiration date of this Guaranty, which shall be the date 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.

6. 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.

7. Guarantor shall pay, subject up to a limit of the amount per OTI set forth in 46 CFR 515.21, directly to a claimant any sum or sums which Guarantor, in good faith, determines that the Applicant has failed to pay and would be held legally liable by reason of Applicant's transportation-related activities, or its legal responsibilities under the 1984 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.

8. Applicant or Guarantor shall immediately give written notice to the FMC

of all lawsuits filed, judgments rendered, and payments made under the Guaranty.

9. 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.

10. 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.

11. This Guaranty is effective the ____ day of ____, 19 ____, 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.

12. 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 Subpart C of 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 (Section 19, Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998)

____, as Principal (hereinafter called Principal), and ____, as Surety (hereinafter called 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, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998 ("1984 Act"), files this bond with the Federal Maritime Commission;

Now, Therefore, the conditions of this obligation are that the penalty amount of this bond shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23(b) 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 1984 Act, 46 U.S.C. app. 1701 *et seq.*, or order for reparations issued pursuant to section 11 of the 1984 Act, 46

U.S.C. app. 1710 or any penalty assessed pursuant to section 13 of the 1984 Act, 46 U.S.C. app. 1712 that are not covered by the identified OTIs' individual insurance policy(ies), guaranty(ies) or surety bond(s).

This 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(b) 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 1984 Act, or order for reparation issued pursuant to section 11 of the 1984 Act, and to the benefit of the Federal Maritime Commission for any penalty assessed against said OTIs pursuant to section 13 of the 1984 Act. 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 1984 Act of the OTIs in the event that such legal liability has not been discharged by the OTIs or Surety within 10 days 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(b), the Federal Maritime Commission, or where all parties and claimants 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 OTIs and/or Surety pursuant to 46 CFR 515.23(b), whereby, upon payment of the agreed sum, the Surety is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of this bond, and in no event shall the Surety's total obligation hereunder exceed the amount per member OTI set forth in 46 CFR 515.21 identified in Appendix A, or the amount per group or association of OTIs set forth in 46 CFR 515.21, regardless of the number of OTIs, claims or claimants.

This bond is effective the ___ day of ___, 19 ___, 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 thirty (30) day period,

but such termination shall not affect the liability of the Principal and Surety for any transportation-related activity 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 Tariffs, 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 thirty (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 after the expiration of the thirty (30) day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activity of said OTI(s) occurring prior to the date when said termination becomes effective.

The underwriting Surety will promptly notify the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) against this bond.

Signed and sealed this ___ day of ___, 19 ___.
(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

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

§ 515.31 General duties.

(a) *License; name and number.* Each licensee shall carry on its business only under the name in which its license is issued and only under its license number as assigned by the Commission. Wherever the licensee's name appears on shipping documents, its Commission license number shall also be included.

(b) *Stationery and billing forms; notice of shipper affiliation.* (1) The name and license number of each licensee shall be permanently imprinted on the licensee's office stationery and billing forms. The Commission may temporarily waive this requirement for good cause shown if the licensee rubber stamps or types its name and Commission license number on all papers and invoices concerned with any ocean transportation intermediary forwarding transaction.

(2) When a licensee is a shipper or seller of goods in international commerce or affiliated with such an entity, the licensee shall have the option of:

- (i) Identifying itself as such and/or, where applicable, listing its affiliates on its office stationery and billing forms, or
- (ii) Including the following notice on such items:

This company is a shipper or seller of goods in international commerce or is affiliated with such an entity. Upon request, a general statement of its business activities and those of its affiliates, along with a written list of the names of such affiliates, will be provided.

(c) *Use of license by others; prohibition.* No licensee shall permit its license or name to be used by any person who is not a *bona fide* individual employee of the licensee.

Unincorporated branch offices of the licensee may use the license number and name of the licensee if such branch offices:

- (1) Have been reported to the Commission in writing; and
- (2) Are covered by increased financial responsibility in accordance with § 515.21(a)(5).

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

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

(2) Assist in the furtherance of any ocean transportation intermediary business of such person;

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

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

(e) *Arrangements with unauthorized persons.* No licensee shall enter into an agreement or other arrangement (excluding sales agency arrangements not prohibited by law or this part) with an unlicensed person that bestows any fee, compensation, or other benefit upon the unlicensed person. When a licensee is employed to perform ocean transportation intermediary services by the agent of the person responsible for paying for such services, the licensee shall also transmit a copy of its invoice for services rendered to the person paying those charges.

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

(g) *Information provided to the principal or shipper.* No licensee shall withhold any information concerning an ocean transportation intermediary transaction from its principal or shipper, and each licensee shall comply with the laws of the United States and shall exercise due diligence to assure that all information provided to its principal or shipper or provided in any export declaration, bill of lading, affidavit, or other document which the licensee executes in connection with a shipment is accurate.

(h) *Errors and omissions of the principal or shipper.* A licensee who has reason to believe that its principal or shipper has not, with respect to a shipment to be handled by such licensee, complied with the laws of the United States, or has made any error or misrepresentation in, or omission from, any export declaration, bill of lading, affidavit, or other paper which the

principal or shipper executes in connection with such shipment, shall advise its principal or shipper promptly of the suspected noncompliance, error, misrepresentation or omission, and shall decline to participate in any transaction involving such document until the matter is properly and lawfully resolved.

(i) *Response to requests of Commission.* Upon the request of any authorized representative of the Commission, a licensee 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.

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

(k) *Invoices; documents available upon request.* Upon the request of its principal(s) or shipper(s), each licensee shall provide a complete breakout of its charges and a true copy of any underlying document or bill of charges pertaining to the licensee's invoice. The following notice shall appear on each invoice to a principal or shipper:

Upon request, we shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges.

(l) *Accounting to principal or shipper.* Each licensee 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).

§ 515.32 Records required to be kept.

Each licensee shall maintain in an orderly and systematic manner, and keep current and correct, all records and books of account in connection with its ocean transportation intermediary business. These records must be kept in the United States in such manner as to enable authorized Commission personnel to readily determine the licensee's cash position, accounts receivable and accounts payable. The licensee must maintain the following records for a period of five years:

(a) *General financial data.* A current running account of all receipts and disbursements, accounts receivable and payable, and daily cash balances, supported by appropriate books of account, bank deposit slips, canceled

checks, and monthly reconciliation of bank statements.

(b) *Types of services by shipment.* A separate file shall be maintained for each shipment. Each file shall include a copy of each document prepared, processed, or obtained by the licensee, including each invoice for any service arranged by the licensee and performed by others, with respect to such shipment.

(c) *Receipts and disbursements by shipment.* A record of all sums received and/or disbursed by the licensee for services rendered and out-of-pocket expenses advanced in connection with each shipment, including specific dates and amounts.

(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. *Bona fide* shippers shall also have access to such records upon reasonable request.

§ 515.33 Regulated Persons Index.

The Regulated Persons Index is a database containing the names, addresses, phone/fax numbers and bonding information, where applicable, of Commission-regulated entities. The database may be purchased for \$84 by contacting Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. Contact information is listed on the Commission's website at www.fmc.gov.

Subpart E—Freight Forwarding Fees and Compensation

§ 515.41 Forwarder and principal; fees.

(a) *Compensation or fee sharing.* No licensed freight forwarder shall share, directly or indirectly, any compensation or freight forwarding fee with a shipper, consignee, seller, or purchaser, or an agent, affiliate, or employee thereof; nor with any person advancing the purchase price of the property or guaranteeing payment therefor; nor with any person having a beneficial interest in the shipment.

(b) *Receipt for cargo.* Each receipt for cargo issued by a licensed freight forwarder shall be clearly identified as "Receipt for Cargo" and be readily distinguishable from a bill of lading.

(c) *Special contracts.* To the extent that special arrangements or contracts are entered into by a licensed freight forwarder, the forwarder shall not deny equal terms to other shippers similarly situated.

(d) *Reduced forwarding fees.* No licensed freight forwarder shall render,

or offer to render, any freight forwarding service free of charge or at a reduced fee in consideration of receiving compensation from a common carrier or for any other reason. *Exception:* A licensed freight forwarder may perform freight forwarding services for recognized relief agencies or charitable organizations, which are designated as such in the tariff of the common carrier, free of charge or at reduced fees.

(e) *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 in the manner of a special contract under § 515.32(d), which shall identify all services provided by either party (whether or not constituting a freight forwarding service); state the amount of compensation to be received by either party for such services; set forth all details concerning the procurement, maintenance or sharing of office facilities, personnel, furnishings, equipment and supplies; describe all powers of supervision or oversight of the licensee's employee(s) to be exercised by the principal; and detail 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.

§ 515.42 Forwarder and carrier; compensation.

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

(b) *Certification required for compensation.* A common carrier may pay compensation to a licensed freight forwarder only pursuant to such common carrier's tariff provisions. Where 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 written 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 certification for a period of five (5) years.

(c) *Form of certification.* Where a licensed freight forwarder is entitled to compensation, the forwarder shall provide the common carrier with a signed certification which indicates that the forwarder has performed the required services that entitle it to compensation. The required certification 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. 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.

(d) *Compensation pursuant to tariff provisions.* No licensed freight forwarder, or employee thereof, shall accept compensation from a common carrier which is different from that specifically provided for in the carrier's effective tariff(s). No conference or group of common carriers shall deny in the export commerce of the United States compensation to an ocean freight forwarder or limit that compensation to less than a reasonable amount.

(e) *Electronic data interchange.* A licensed freight forwarder may own, operate, or otherwise maintain or supervise an electronic data interchange based computer system in its forwarding business; however, the forwarder must directly perform value-added services as described in paragraph (c) of this section in order to be entitled to carrier compensation.

(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(i) 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.

(g) *Duplicative compensation.* A common carrier shall not pay compensation for the services described in paragraph (c) of this section more than once on the same shipment.

(h) *Non-vessel-operating common carriers; compensation.* (1) A licensee operating as an NVOCC and a freight forwarder, or a person related thereto, may collect compensation when, and only when, the following certification is made together with the certification required under paragraph (c) of this section:

The undersigned certifies that neither it nor any related person has issued a bill of lading or otherwise undertaken common carrier responsibility as a non-vessel-operating common carrier for the ocean transportation of the shipment covered by this bill of lading.

(2) Whenever a person acts in the capacity of an NVOCC as to any shipment, such person shall not collect compensation, nor shall any underlying ocean common carrier pay compensation to such person, for such shipment.

(i) *Compensation; beneficial interest.* A licensed freight forwarder may not receive compensation from a common carrier with respect to any shipment in which the forwarder has a beneficial interest or with respect to any shipment in which any holding company, subsidiary, affiliate, officer, director, agent, or executive of such forwarder has a beneficial interest.

By the Commission.

Joseph C. Polking,
Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 22

[WT Docket Nos. 98-205, 96-59, GN Docket No. 93-252; FCC 98-308]

1998 Biennial Regulatory Review—Spectrum Aggregation Limits for Wireless Telecommunications Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this *Notice of Proposed Rulemaking* the Commission undertakes a comprehensive review of the 45 MHz Commercial Mobile Radio Services (CMRS) spectrum cap as part of our biennial review of the Commission's regulations. The Commission seeks comment on whether it should repeal,