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Title 46 —Shipping
Chapter IV —Federal Maritime Commission
Subchapter B —Regulations Affecting Ocean Shipping in Foreign Commerce

Part 515 Licensing, Registration, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries

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PART 515—LICENSING, REGISTRATION, FINANCIAL RESPONSIBILITY REQUIREMENTS AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 40102, 40104, 40501-40503, 40901-40904, 41101-41109, 41301-41302, 41305-41307, 46105; Pub. L. 105-383, 112 Stat. 3411; 21 U.S.C. 862.

Source: 64 FR 11171, Mar. 8, 1999, unless otherwise noted.

Editorial Note: Nomenclature changes to part 515 appear at 67 FR 39860, June 11, 2002, and 70 FR 7669, Feb. 15, 2005.

Subpart A—General

§ 515.1 Scope.

(a) This part sets forth regulations providing for the licensing and registration 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 and registrations. 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 or registration. Persons operating without the proper license or registration may be subject to civil penalties not to exceed $9,000 for each such violation, unless the violation is willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $45,000 for each violation; for other violations of the provisions of this part, the civil penalties range from $9,000 to $45,000 for each violation (46 U.S.C. 41107-41109). Each day of a continuing violation shall constitute a separate violation.

[64 FR 11171, Mar. 8, 1999, as amended at 74 FR 50719, Oct. 1, 2009; 80 FR 68730, Nov. 5, 2015; 84 FR 62467, Nov. 15, 2019]

§ 515.2 Definitions.

The terms used in this part are defined as follows:

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

(b) ***Beneficial interest*** includes a lien or interest in or right to use, enjoy, profit, benefit, or receive any advantage, either proprietary or financial, from the whole or any part of a shipment of cargo where such interest arises from the financing of the shipment or by operation of law, or by agreement, express or implied. The term “beneficial interest” shall not include any obligation in favor of an ocean transportation intermediary arising solely by reason of the advance of out-of-pocket expenses incurred in dispatching a shipment.

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

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

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

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

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

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

(ii) Only with respect to those commodities.

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

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

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

(1) Ordering cargo to port;

(2) Preparing and/or processing export documents, including the required `electronic export information';

(3) Booking, arranging for or confirming cargo space;

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

(5) Preparing and/or processing common carrier bills of lading or other shipping documents;

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

(7) Arranging for warehouse storage;

(8) Arranging for cargo insurance;

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

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

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

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

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

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

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

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

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

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

(3) Entering into affreightment agreements with underlying shippers;

(4) Issuing bills of lading or other shipping documents;

(5) Assisting with clearing shipments in accordance with U.S. government regulations;

(6) Arranging for inland transportation and paying for inland freight charges on through transportation movements;

(7) Paying lawful compensation to ocean freight forwarders;

(8) Coordinating the movement of shipments between origin or destination and vessel;

(9) Leasing containers;

(10) Entering into arrangements with origin or destination agents;

(11) Collecting freight monies from shippers and paying common carriers as a shipper on NVOCC's own behalf.

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

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

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

(i) In the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and

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

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

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

(o) ***Principal*** 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.

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

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

(r) ***Registered non-vessel-operating common carrier (registered NVOCC)*** means an NVOCC whose primary place of business is located outside the United States and who elects not to become licensed as an NVOCC, but to register with the Commission as provided in § 515.19, post a bond or other surety in the required amount, and publish a tariff as required by 46 CFR part 520.

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

(t) ***Shipper*** means:

(1) A cargo owner;

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

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

(4) A shippers' association; or

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

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

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

(1) For an ocean transportation intermediary operating as an ocean freight forwarder, the freight forwarding services enumerated in paragraph (h) of this section, and

(2) For an ocean transportation intermediary operating as a non-vessel-operating common carrier, the non-vessel-operating common carrier services enumerated in § 515.2(k).

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

[80 FR 68730, Nov. 5, 2015]

§ 515.3 License; when required.

(a) Except as otherwise provided in this part, no person in the United States may advertise, hold oneself out, or act as an ocean transportation intermediary unless that person holds a valid license issued by the Commission.

(b) 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.

[85 FR 9683, Feb. 20, 2020]

§ 515.4 License; when not required.

A license is not required in the following circumstances:

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

(b) ***Agents, employees, or branch offices of an ocean transportation intermediary.***

(1) A disclosed agent, individual employee, or branch office of an ocean transportation intermediary is not required to be licensed in order to act on behalf of and in the name of such ocean transportation intermediary.

(2) An ocean transportation intermediary must report branch offices to the Commission in Form FMC-18 or under the procedures in § 515.20(e).

(3) An ocean transportation intermediary is fully responsible for the acts and omissions of any of its employees and agents that are performed in connection with the conduct of the ocean transportation intermediary's business.

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

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

[80 FR 68731, Nov. 5, 2015, as amended at 85 FR 9683, Feb. 20, 2020]

§ 515.5 Forms and fees.

(a) ***Forms.*** License Application Form FMC-18 is found at the Commission's website *www.fmc.gov* for completion on-line by applicants and licensees. Foreign-based Unlicensed NVOCC Registration/Renewal Form FMC-65 and financial responsibility Forms FMC-48, FMC-67, FMC-68, FMC-69 may be obtained from the Commission's website at *www.fmc.gov,* from the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, or from any of the Commission's Area Representatives.

(b) ***Filing of license application forms.*** All application forms are to be filed electronically.

(c) ***Fees.***

(1)

(i) All fees shall be paid by:

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

(B) ***Pay.gov;***

(C) The Automated Clearing House system; or

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

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

(2) Fees under this part shall be as follows:

(i) Application for new OTI license as required by § 515.12(a): Filing $1,304.

(ii) Application for change to OTI license or license transfer as required by § 515.20(a) and (b): Filing $943.

[80 FR 68732, Nov. 5, 2015, as amended at 81 FR 59144, Aug. 29, 2016; 83 FR 50294, Oct. 5, 2018; 84 FR 62467, Nov. 15, 2019; 88 FR 16898, Mar. 21, 2023]

Subpart B—Eligibility and Procedure for Licensing and Registration

§ 515.11 Basic requirements for licensing; eligibility.

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

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

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

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

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

(2) ***Partnership.*** At least one of the active managing partners, unless the partners are entities, such as corporations, in which case an officer, member, or manager of one of the entities as long as the entity is a general partner.

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

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

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

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

(e) ***Foreign-based licensed NVOCC.*** A foreign-based NVOCC that elects to obtain a license must establish a presence in the United States by opening an unincorporated office that is resident in the United States and is qualified to do business where it is located.

[80 FR 68732, Nov. 5, 2015, as amended at 84 FR 62467, Nov. 15, 2019]

§ 515.12 Application for license.

(a) ***Application and forms.***

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

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

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

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

(c) ***Failure to provide necessary information and documents.*** In the event an applicant fails to provide documents or information necessary to complete processing of its application, notice will be sent to the applicant identifying the necessary information and documents and establishing a date for submission by the applicant. Failure of the applicant to submit the identified materials by the established date will result in the closing of its application without further processing. In the event an application is closed as a result

of the applicant's failure to provide information or documents necessary to complete processing, the filing fee will not be returned. Persons who have had their applications closed under this section may reapply at any time by submitting a new application with the required filing fee.

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

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

[80 FR 68733, Nov. 5, 2015, as amended at 84 FR 62467, Nov. 15, 2019]

§ 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, renewal, and use of license.

(a) ***Qualification necessary for issuance.***

(1) 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; has filed the required bond, insurance or other surety; and has electronically submitted Form FMC-1 pursuant to § 520.3 if approved to offer NVOCC service.

(2) If, within 120 days of notification of conditional approval for licensing by the Commission, proof of financial responsibility and, in the case of an NVOCC, the Form FMC-1 is not received, the conditional approval of the application will be invalid. Applicants whose applications/approvals have become invalid may submit a new Form FMC-18, together with the required filing fee, at any time.

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

(c) ***Duration of license.*** Licenses shall be issued for an initial period of not less than one year and not greater than four years as determined by the license number and published on the Commission website. Thereafter, licenses will be renewed for sequential three-year periods upon successful completion of the renewal process in paragraph (d) of this section.

(d) ***License renewal process.***

(1) The licensee shall submit the renewal electronically to the Director of the Bureau of Certification and Licensing (BCL) no later than the renewal date as published on the Commission website. The renewal date (month/day) will remain the same for subsequent renewals irrespective of the date on which the license renewal is submitted or when the renewal is accepted by the Commission, unless another renewal date is assigned by the Commission.

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

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

[64 FR 11171, Mar. 8, 1999, as amended at 80 FR 68733, Nov. 5, 2015; 84 FR 62467, Nov. 15, 2019]

§ 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 notice of intent to deny the application shall be sent to the applicant stating the reason(s) why the Commission intends to deny the application. The notice of intent to deny the application will provide, in detail, a statement of the facts supporting denial. An applicant may request a hearing on the proposed denial by submitting to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twenty (20) days of the date of the notice, a statement of reasons why the application should not be denied. Such hearing shall be provided pursuant to the procedures contained in § 515.17. Otherwise, the denial of the application will become effective and the applicant shall be so notified.

[64 FR 11171, Mar. 8, 1999, as amended at 80 FR 68734, Nov. 5, 2015]

§ 515.16 Revocation or suspension of license.

(a) ***Grounds.*** Except for the automatic revocation for termination of proof of financial responsibility under § 515.26, a license may be revoked or suspended after notice and an opportunity for a hearing under the procedures of § 515.17. The notice of revocation or suspension will provide, in detail, a statement of the facts supporting the action. The licensee may request a hearing on the proposed revocation or suspension by submitting to the Commission's Secretary, within twenty (20) days of the date of the notice, a statement of reasons why the license should not be revoked or suspended. Such hearing shall be provided pursuant to the procedures contained in § 515.17. Otherwise, the action regarding the license will become effective. A license may be revoked or suspended for any of the following reasons:

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

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

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

(4) A Commission determination that the licensee is not qualified to render intermediary services; or

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

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

[80 FR 68734, Nov. 5, 2015]

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

All hearing requests under §§ 515.15 and 515.16 shall be submitted to the Commission's Secretary. The hearing will be adjudicated under the procedures set forth in subpart X of part 502 of this chapter.

[85 FR 5583, Jan. 31, 2020]

§ 515.18 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, officer(s), member(s), manager(s) or controlled by persons on whose conduct the Commission based its determination for revocation or denial, shall be reviewed directly by the Commission. If the Commission denies the application, such denial is final and not subject to the hearing procedures described in §§ 515.15 and 515.17.

[84 FR 62467, Nov. 15, 2019]

§ 515.19 Registration of foreign-based unlicensed NVOCC.

(a) Any NVOCC whose primary place of business is located outside the United States and does not elect to become licensed by the Commission shall register with the Commission by submitting to the Director of the Bureau of Certification and Licensing (BCL) a completed registration form, Form FMC-65 (Foreign-based Unlicensed NVOCC Registration/Renewal). A notice of each registration shall be published on the Commission's Web site *www.fmc.gov*. It is a violation of the Commission's regulations implementing the Shipping Act for a foreign-based unlicensed non-vessel-operating common carrier to provide NVOCC services in the U.S. foreign trade without a valid registration and an effective tariff.

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

(c) Registrations are complete upon receipt of a registration form which meets the requirements of this section, evidence of financial responsibility pursuant to § 515.21, and Form FMC-1 pursuant to § 520.3.

(d) Registrations shall be effective for a period of three (3) years. Thereafter, registrations will be renewed for sequential three year periods upon submission of an updated registration form.

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

(f) Registered NVOCCs must report in writing to BCL any changes, within 30 days of such changes, to: legal name(s) or trade name(s); principal place of business address (including telephone number, facsimile number); contact person and email address (including physical address if different from principal place of business); name of resident agent(s) (including physical address, mailing address, email address, telephone and facsimile number(s), and contact person) in the United States for receipt of service of judicial and administrative process (including subpoenas).

(g) ***Termination or suspension of registration*** —

(1) ***Grounds.*** A registration shall become automatically ineffective for a failure of a registered NVOCC to maintain proof of financial responsibility on file with the Commission. The effectiveness of such a registration may otherwise be terminated or suspended, after notice and the opportunity for a hearing, for any of the following reasons:

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

(ii) Failure to respond to any lawful order or inquiry by the Commission or an authorized Commission representative;

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

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

(v) Failure to timely renew a registration;

(vi) Failure to maintain a Form FMC-1 or a tariff in compliance with 46 CFR part 520;

(vii) Knowingly and willfully accepting cargo from or transporting cargo for the account of:

(A) an NVOCC that does not have a published tariff as required by 46 U.S.C. 40501 and part 520 of this chapter, and a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part; or

(B) an OFF that does not have a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part; and

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

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

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

[78 FR 42887, July 18, 2013, as amended at 80 FR 68734, Nov. 5, 2015; 84 FR 62468, Nov. 15, 2019; 85 FR 9683, Feb. 20, 2020]

§ 515.20 Changes in organization.

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

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

(2) Change in ownership of a sole proprietorship;

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

(4) Any change in a licensee's name, including adding or deleting a trade name relating to its OTI services; or

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

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

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

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

(e) ***Other changes.*** Other changes in material fact of a licensee shall be reported within thirty (30) days of such changes, in writing by mail or email (*bcl@fmc.gov*) to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. Material changes include, but are not limited to: Changes in business address; any criminal indictment or conviction of a licensee, QI, or officer; any voluntary or involuntary bankruptcy filed by or naming a licensee, QI, or officer; changes of five (5)

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

[80 FR 68734, Nov. 5, 2015, as amended at 84 FR 62468, Nov. 15, 2019]

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 advertise, hold oneself out, or act 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.

(1) Any person in the United States advertising, holding oneself out, or acting as an ocean freight forwarder as defined in § 515.2(m)(1) shall furnish evidence of financial responsibility in the amount of $50,000.

(2) Any person in the United States advertising, holding oneself out, or acting as an NVOCC as defined in § 515.2(m)(2) shall furnish evidence of financial responsibility in the amount of $75,000.

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

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

(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.

[64 FR 11171, Mar. 8, 1999, as amended at 69 FR 17945, Apr. 6, 2004; 80 FR 68735, Nov. 5, 2015; 85 FR 9683, Feb. 20, 2020]

§ 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 damages arising from the transportation-related activities 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 damages arising from the transportation-related activities 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 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 (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed against the ocean transportation intermediary pursuant to section 13 of the Act (46 U.S.C. 41107-41109). 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 (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed against each covered member ocean transportation intermediary pursuant to section 13 of the Act (46 U.S.C. 41107-41109); and

(ii) Be for an amount up to the amount determined in accordance with § 515.21(b), taking into account a member's individual financial responsibility coverage already in place. 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 of payment of the claim; and

(iii) be in excess of a member's individual financial responsibility coverage already in place; 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 Certification and Licensing, via email to *bcl@fmc.gov*. Such forms and documents must clearly identify the principal's name; trade name, if any; address; the state of incorporation/formation; and the printed name and title of the signatory.

[64 FR 11171, Mar. 8, 1999, as amended at 67 FR 39860, June 11, 2002; 74 FR 50719, Oct. 1, 2009; 84 FR 62468, Nov. 15, 2019]

§ 515.23 Claims against an ocean transportation intermediary.

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

(b) ***Payment pursuant to a claim.***

(1) If a person does not file a complaint with the Commission pursuant to section 11 of the Shipping Act (46 U.S.C. 41301-41302, 41305-41307(a)), but otherwise seeks to pursue a claim against an ocean transportation intermediary bond, insurance, or other surety for damages arising from its transportation-related activities, it shall attempt to resolve its claim with the financial responsibility provider prior to seeking payment on any judgment for damages obtained. When a claimant seeks payment under this section, it simultaneously shall notify both the financial responsibility provider and the ocean transportation intermediary of the claim by mail or courier service. The bond, insurance, or other surety may be available to pay such claim if:

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

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

(2) If the parties fail to reach an agreement in accordance with paragraph (b)(1) of this section within ninety (90) days of the date of the initial notification of the claim, the bond, insurance, or other surety shall be available to pay any final judgment for reparations ordered by the Commission or damages obtained from an appropriate court. The financial responsibility provider shall pay such judgment for damages only to the extent they arise from the transportation-related activities of the ocean

transportation intermediary, ordinarily within thirty (30) days, without requiring further evidence related to the validity of the claim; it may, however, inquire into the extent to which the judgment for damages arises from the ocean transportation intermediary's transportation-related activities.

(c) ***Notices of court and other claims against OTIs by financial responsibility providers.***

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

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

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

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

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

[80 FR 68735, Nov. 5, 2015, as amended at 84 FR 62468, Nov. 15, 2019]

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

(c) If the designated legal agent cannot be served because of death, disability, unavailability, termination or expiration of the designation, or if a legal agent authorized to receive such service is not designated in compliance with this section, the Secretary of the Federal Maritime Commission will be deemed to be the legal agent for service of process. Any person serving the Secretary must also send to the ocean transportation intermediary, or group or association of ocean transportation intermediaries which provide financial coverage for the financial responsibilities of a member ocean transportation intermediary, by mail or courier service at the ocean transportation intermediary's, or group's, address published in its tariff, a copy of each document served upon the Secretary, and shall attest to that service at the time service is made upon the Secretary. For purposes of this paragraph, it is sufficient that a person seeking to serve process on an ocean transportation intermediary, or group of such intermediaries, affirm to the Commission's Secretary that: they have contacted, or attempted to contact, the designated agent to confirm whether it remained authorized to accept service of process; or, if no legal agent is designated in the tariff, that it has no knowledge of the identity of the ocean transportation intermediary's legal agent.

Designation of the Commission's Secretary as the legal agent shall survive any cancellation of the OTI's license or tariff and shall continue for the entire period during which claims may be made under the OTI's financial responsibility instrument.

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

(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.

[64 FR 11171, Mar. 8, 1999, as amended at 78 FR 42888, July 18, 2013]

§ 515.25 Filing of proof of financial responsibility.

(a) ***Filing of proof of financial responsibility*** —

(1) ***Licenses.*** Upon notification by the Commission that an applicant has been conditionally approved for licensing, the applicant shall file with the Director of the Commission's Bureau of Certification and Licensing, proof of financial responsibility in the form and amount prescribed in § 515.21. No license will be issued until the Commission is in receipt of valid proof of financial responsibility.

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

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

[80 FR 68736, Nov. 5, 2015, as amended at 84 FR 62468, Nov. 15, 2019]

§ 515.26 Termination of financial responsibility.

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

[84 FR 62468, Nov. 15, 2019]

§ 515.27 Proof of compliance—NVOCC.

(a) No common carrier may knowingly and willfully accept cargo from or transport cargo for the account of:

(1) An NVOCC that does not have a published tariff as required by 46 U.S.C. 40501 and part 520 of this chapter, and a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part; or

(2) An OFF that does not have a bond, insurance, or other surety as required by 46 U.S.C. 40902 and this part.

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

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

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

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

(d) The Commission will publish at its Web site, *www.fmc.gov,* a list of the locations of all carrier and conference tariffs, and a list of ocean transportation intermediaries (including a separate list for NVOCCs) who have met all of their applicable licensing, registration, tariff and financial responsibility requirements, current as of the last date on which the list is updated. The Commission will update this list on a periodic basis.

[80 FR 68736, Nov. 5, 2015, as amended at 85 FR 9683, Feb. 20, 2020]

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

§ 515.31 General duties.

(a) ***Licensees and registrants; names and numbers.*** Each licensee and registrant shall carry on its business only under the name in which it was licensed or registered and only under its license or registration number as assigned by the Commission. When the licensee's or registrant's name appears on shipping documents, its Commission license or registration number shall also be included.

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

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

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

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

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

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

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

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

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

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

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

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

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

[80 FR 68736, Nov. 5, 2015]

§ 515.32 Freight forwarder duties.

(a) ***Notice of shipper affiliation.*** When a licensed freight forwarder is a shipper or seller of goods in international commerce or affiliated with such an entity, the licensed freight forwarder shall have the option of:

(1) Identifying itself as such and/or, where applicable, listing its affiliates on its office stationery and billing forms, or

(2) 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.

(b) ***Arrangements with unauthorized persons.*** No licensed freight forwarder shall enter into an agreement or other arrangement (excluding 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 licensed freight forwarder is employed to perform forwarding services by the agent of the person responsible for paying for such services, the licensed freight forwarder shall also transmit a copy of its invoice for services rendered to the person paying those charges.

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

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

> 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.

[64 FR 11171, Mar. 8, 1999, as amended at 80 FR 68737, Nov. 5, 2015]

§ 515.33 Records required to be kept.

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

(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.

[64 FR 11171, Mar. 8, 1999, as amended at 80 FR 68737, Nov. 5, 2015]

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) ***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.

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

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

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

[64 FR 11171, Mar. 8, 1999, as amended at 80 FR 68737, Nov. 5, 2015]

§ 515.42 Forwarder and carrier compensation; fees.

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

(b) ***Certification required for compensation.*** A common carrier may pay compensation to a licensed freight forwarder only pursuant to such common carrier's tariff provisions. When a common carrier's tariff provides for the payment of compensation, such compensation shall be paid on any shipment forwarded on behalf of others where the forwarder has provided a certification as prescribed in paragraph (c) of this

section and the shipper has been disclosed on the bill of lading as provided for in paragraph (a) of this section. The common carrier shall be entitled to rely on such certification unless it knows that the certification is incorrect. The common carrier shall retain such certifications for a period of five (5) years.

(c) ***Form of certification.*** When a licensed freight forwarder is entitled to compensation, the forwarder shall provide the common carrier with a certification which indicates that the forwarder has performed the required services that entitle it to compensation. The required certification may be provided electronically by the forwarder or may be placed on one copy of the relevant bill of lading, a summary statement from the forwarder, the forwarder's compensation invoice, or as an endorsement on the carrier's compensation check. Electronic certification must contain confirmations by the forwarder and the carrier identifying the shipments upon which forwarding compensation may be paid. Each forwarder shall retain evidence in its shipment files that the forwarder, in fact, has performed the required services enumerated on the certification. The certification shall read as follows:

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

(1) Engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space; and

(2) Prepared and processed the ocean bill of lading, dock receipt, or other similar document with respect to the shipment.

(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, as provided for by section 19(e)(4) of the Act (46 U.S.C. 40904(d)) and 46 CFR part 535.

(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(h), unless such carrier or agent is also a licensed freight forwarder, or unless no other licensed freight forwarder is willing and able to perform such services.

(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.

[64 FR 11171, Mar. 8, 1999, as amended at 74 FR 50721, Oct. 1, 2009; 80 FR 68737, Nov. 5, 2015; 81 FR 4593, Jan. 27, 2016]

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

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072-0018.

[64 FR 11171, Mar. 8, 1999, as amended at 78 FR 42888, July 18, 2013]

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

Form FMC-48

Federal Maritime Commission

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

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

Whereas, this bond is written to ensure compliance by the Principal with section 19 of the Shipping Act (46 U.S.C. 40901-40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs (46 CFR part 515), this bond shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Principal arising from the Principal's transportation-related activities under the Shipping Act, or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed against the Principal pursuant to section 13 of the Shipping Act (46 U.S.C. 41107-41109).

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

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

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty amount of this bond, and in no event shall the Surety's total obligation hereunder exceed said penalty amount, regardless of the number of claims or claimants.

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

The Surety consents to be sued directly in respect of any bona fide claim owed by Principal for damages, reparations or penalties arising from the transportation-related activities under the Shipping Act of Principal in the event that such legal liability has not been discharged by the Principal or Surety after a claimant has obtained a final judgment (after appeal, if any) against the Principal from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR 515.23, the Federal Maritime Commission, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Principal and/or Surety pursuant to 46 CFR 515.23, whereby, upon payment of the agreed sum, the Surety is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant; provided, however, that Surety's total obligation hereunder shall not exceed the amount set forth in 46 CFR 515.21, as applicable.

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

Signed and sealed this ____ day of ____, ____.

(Please type name of signer under each signature.)

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Trade Name, If Any

Corporate Principal

State of Incorporation

Trade Name, If Any

Business Address

By

_____

Title

_____

(Affix Corporate Seal)

_____

Corporate Surety

_____

Business Address

_____

By

_____

Title

(Affix Corporate Seal)

[80 FR 68738, Nov. 5, 2015]

Appendix B to Part 515—Ocean Transportation Intermediary (OTI) Insurance Form [Form 67]

Form FMC-67

Federal Maritime Commission

Ocean Transportation Intermediary (OTI) Insurance

Form Furnished as Evidence of Financial Responsibility

Under 46 U.S.C. 40901-40904

This is to certify, that the (Name of Insurance Company), (hereinafter "Insurer") of (Home Office Address of Company) has issued to (OTI or Group or Association of OTIs [indicate whether NVOCC(s) or Freight Forwarder(s)]) (hereinafter "Insured") of (Address of OTI or Group or Association of OTIs) a policy or policies of insurance for purposes of complying with the provisions of Section 19 of the Shipping Act of 1984 (46 U.S.C. 40901-40904) and

the rules and regulations, as amended, of the Federal Maritime Commission, which provide compensation for damages, reparations or penalties arising from the transportation-related activities of Insured, and made pursuant to the Shipping Act of 1984 (46 U.S.C. 40101-41309) (Shipping Act).

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

Whereas, the Insurance is written to assure compliance by the Insured with section 19 of the Shipping Act (46 U.S.C. 40901-40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs, this Insurance shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Insured arising from the Insured's transportation-related activities under the Shipping Act, or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed against the Insured pursuant to section 13 of the Shipping Act (46 U.S.C. 41107-41109).

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

The Insurer consents to be sued directly in respect of any bona fide claim owed by Insured for damages, reparations or penalties arising from the transportation-related activities under the Shipping Act, of Insured in the event that such legal liability has not been discharged by the Insured or Insurer after a claimant has obtained a final judgment (after appeal, if any) against the Insured from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR 515.23, the Federal Maritime Commission, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Insured and/or Insurer pursuant to 46 CFR 515.23, whereby, upon payment of the agreed sum, the Insurer is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant; provided, however, that Insurer's total obligation hereunder shall not exceed the amount per OTI set forth in 46 CFR 515.21 or the amount per group or association of OTIs set forth in 46 CFR 515.21.

The liability of the Insurer shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of the Insurance in the amount per member OTI set forth in 46 CFR 515.21, or the amount per group or association of OTIs set forth in 46 CFR 515.21, regardless of the financial responsibility or lack thereof, or the solvency or bankruptcy, of Insured. The insurance evidenced by this undertaking shall be applicable only in relation to incidents occurring on or after the effective date and before the date termination of this undertaking becomes effective. The effective date of this undertaking shall be ____ day of

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

(Name of Agent) ____ domiciled in the United States, with offices located in the United States, at ____ is hereby designated as the Insurer's agent for service of process for the purposes of enforcing the Insurance certified to herein.

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

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

Signed and sealed this ____ day of ____, ____.

_____

Signature of Official signing on behalf of Insurer

_____

Type Name and Title of signer

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

[80 FR 68738, Nov. 5, 2015]

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

Form FMC-68

Federal Maritime Commission

Guaranty in Respect of Ocean Transportation Intermediary (OTI) Liability for Damages, Reparations or Penalties Arising from Transportation-Related Activities Under the Shipping Act of 1984 (46 U.S.C. 40101-41309) (Shipping Act).

1. Whereas ____ (Name of Applicant [indicate whether NVOCC or Freight Forwarder]) (hereinafter "Applicant") is or may become an Ocean Transportation Intermediary ("OTI") subject to the Shipping Act of 1984 (46 U.S.C. 40101-41309) and the rules and regulations of the Federal Maritime Commission (FMC), or is or may become a group or association of OTIs, and desires to establish its financial

responsibility in accordance with section 19 of the Shipping Act (46 U.S.C. 41107-41109), then, provided that the FMC shall have accepted, as sufficient for that purpose, the Applicant's application, supported by evidence of a financial rating for the Guarantor of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization on such rating organization's letterhead or designated form, or, in the case of Guaranty provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's, or, in the case of surplus lines insurers, documentation verifying inclusion on a current “white list” issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners, the undersigned Guarantor certifies that it has sufficient and acceptable assets located in the United States to cover all damages arising from the transportation-related activities of the covered OTI as specified under the Shipping Act.

2. Whereas, this Guaranty is written to ensure compliance by the Applicant with section 19 of the Shipping Act (46 U.S.C. 40901-40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs (46 CFR part 515), this guaranty shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against the Applicant arising from the Applicant's transportation-related activities under the Shipping Act, or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed against the Applicant pursuant to section 13 of the Shipping Act (46 U.S.C. 41107-41109).

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

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

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

6. The Guarantor's liability under this Guaranty shall attach only in respect of such activities giving rise to a cause of action against the Applicant, in respect of any of its transportation-related activities under the Shipping Act, occurring after the Guaranty has become effective, and before the expiration date of this

Guaranty, which shall be the date thirty (30) days after the date of receipt of mail or email (*bcl@fmc.gov*) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, that either Applicant or the Guarantor has elected to terminate this Guaranty. The Guarantor and/or Applicant specifically agree to file such written notice of cancellation.

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

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

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

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

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

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

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

_____

(Place and Date of Execution)

_____

(Type Name of Guarantor)

_____

(Type Address of Guarantor)

_____

By

_____

(Signature and Title)

[80 FR 68738, Nov. 5, 2015]

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

Form FMC-69

Federal Maritime Commission

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

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

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

Whereas, this group bond is written to ensure compliance by the OTIs, enumerated in Appendix A of this bond, with section 19 of the Shipping Act (46 U.S.C. 40901-40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs (46 CFR part 515), this group bond shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR 515.23 for damages against such OTIs arising from OTI transportation-related activities under the Shipping Act, or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed against one or more OTI members pursuant to section 13 of the Shipping Act (46 U.S.C. 41107-41109); provided, however, that the Surety's obligation for a group or association of OTIs shall extend only to such damages, reparations or penalties described herein as are not covered by another surety bond, insurance policy or guaranty held by the OTI(s) against which a claim or final judgment has been brought and that Surety's total obligation hereunder shall not exceed the amount per OTI provided for in 46 CFR 515.21 or the amount per group or association of OTIs provided for in 46 CFR 515.21 in aggregate.

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

This group bond shall inure to the benefit of any and all persons who have obtained a judgment or made a settlement pursuant to a claim under 46 CFR 515.23 for damages against any or all of the OTIs identified in Appendix A not covered by said OTIs' insurance policy(ies), guaranty(ies) or surety bond(s) arising from said OTIs' transportation-related activities under the Shipping Act, or order for reparation issued pursuant to section 11 of the Shipping Act, and to the benefit of the Federal Maritime Commission for any penalty assessed against said OTIs pursuant to section 13 of the Shipping Act (46 U.S.C. 41107-41109). However, the bond shall not apply to shipments of used household goods and personal effects for the account of the Department of Defense or the account of federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration.

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

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

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

The Principal or financial responsibility provider will promptly notify the underwriting Surety in writing and the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, by mail or email (*bcl@fmc.gov*), of any additions, deletions or changes to the OTIs enumerated in Appendix A. In the event of additions to Appendix A, coverage will be effective upon receipt of such notice, in writing, by the Commission at its office in Washington, DC. In the event of deletions to Appendix A, termination of coverage for such OTI(s) shall become effective 30 days after receipt of written notice by the Commission. Neither the Principal nor the Surety shall be liable for any transportation-related activities of the OTI(s) deleted from Appendix A that occur after the expiration of the 30-day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activities of said OTI(s) occurring prior to the date when said termination becomes effective.

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

Signed and sealed this ____ day of ____,

(Please type name of signer under each signature).

_____

Individual Principal or Partner

_____

Business Address

_____

Individual Principal or Partner

_____

Business Address

_____

Individual Principal or Partner

_____

Business Address

_____

Trade Name, if Any

_____

Corporate Principal

_____

Place of Incorporation

_____

_____

Trade Name, if Any

_____

Business Address (Affix Corporate Seal)

_____

By

_____

Title

_____

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

_____

Agent's Address

_____

Corporate Surety

_____

Business Address (Affix Corporate Seal)

_____

By

_____

Title

_____

[80 FR 68738, Nov. 5, 2015; 81 FR 4593, Jan. 27, 2016]

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

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

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

RIDER

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

1. The following condition is added to this Bond:

    a. An additional condition of this Bond is that $____ (payable in U.S. Dollars or Renminbi Yuan at the option of the Surety) shall be available to pay any fines and penalties for activities in the U.S.-China trades imposed by the Ministry of Communications of the People's Republic of China ("MOC") or its authorized competent communications department of the people's government of the province, autonomous region or municipality directly under the Central Government or the State Administration of Industry and Commerce pursuant to the Regulations of the People's Republic of China on International Maritime Transportation and the Implementing Rules of the Regulations of the PRC on International Maritime Transportation promulgated by MOC Decree No. 1, January 20, 2003.

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

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

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

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

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

[Principal],

By: _____

[Surety],

By: _____

[80 FR 68738, Nov. 5, 2015]

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

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

Optional Rider for Additional NVOCC Financial Responsibility for Group Bonds [Optional Rider to Form FMC-69]

RIDER

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

1. The following condition is added to this Bond:

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

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

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

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

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

[Principal],

By: _____

[Surety],

By: _____

Privacy Act and Paperwork Reduction Act Notice

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

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

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

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

[80 FR 68738, Nov. 5, 2015]