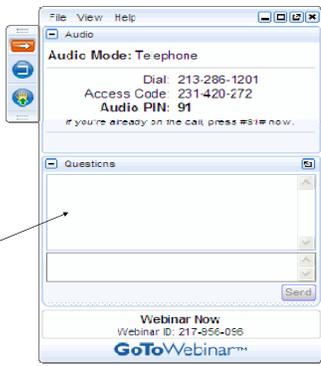


FMC Final Rule on OTI Licenses, Financial Responsibility and General Duties 13-05 and SOLAS Update

Webinar for Roanoke Insurance Group, Inc.
January 5, 2016
Presented by Cameron Roberts, Roberts & Kehagiaras LLP



ROBERTS & KEHAGIARAS LLP
ATTORNEYS AND COUNSELORS AT LAW



The screenshot shows a GoToWebinar interface. At the top, it says "Audio" and "Audio Mode: Telephone". Below that, it lists "Dial: 213-286-1201", "Access Code: 231-420-272", and "Audio PIN: 91". A note says "if you're already on the call, press #51# now.". Below the audio information is a "Questions" section with a text input field and a "Send" button. An arrow points to the question input field. At the bottom, it says "Webinar Now" and "Webinar ID: 217-956-066".

Your Presenter



Cameron Roberts, Esq.
Roberts & Kehagiaras LLP



Effective Dates:

- ▶ November 3, 2015, FMC issued a Final Rule in FMC Docket 13-05. The Final Rule amends regulations at 46 C.F.R. Part 515 governing Ocean Transportation Intermediaries (OTIs),
- ▶ Effective date December 9, 2015, except for the amendments to § 515.14(c) and (d), which are effective December 9, 2016.

ROBERTS & KEHAGIAS LLP
ATTORNEYS AND COUNSELLORS AT LAW

FMC – Summary of Changes:

- ▶ Definitions;
- ▶ OTI licenses renew every three years;
- ▶ On-line renewals at the FMC's web site;
- ▶ Unified compliance and verification;
- ▶ Expedited hearing process for license denials, revocations or suspensions;
- ▶ Appeal adverse decisions to the full FMC commission.

ROBERTS & KEHAGIAS LLP
ATTORNEYS AND COUNSELLORS AT LAW

FMC – Definitions

- ▶ Additions or Changes to:
 - "freight forwarding services" and "non-vessel-operating common carrier services"
 - Material changes
 - "[R]egistered NVOCC"
 - "Person"
 - "Principal"
 - "Qualifying Individual"
- ▶ Deleted
 - "Ocean freight broker"; "Brokerage"; "Small shipper"



FMC – Renewal

- ▶ OTI licenses expire;
- ▶ OTIs will have to renew their licenses after every three-year period by applying online no later than 60 days prior to the renewal date of the license;
- ▶ No fee.



Use of Licensed OTI

- ▶ Foreign NVOCC must use a FMC licensed agent to perform OTI services in USA.



No Branch Office Bonds

- ▶ No longer required;
- ▶ OTIs with unincorporated branch offices can reduce their bond amounts to \$50,000 (for freight forwarders) and \$75,000 (for NVOCCs).



ROBERTS & KENAGIARAS LLP
ATTORNEYS AND COUNSELLORS AT LAW

Unlicensed Agents – NOT Secret



- ▶ Landstar case;
- ▶ Disclosed agents who act on behalf of OTI;
- ▶ The OTI is "fully responsible" for the actions of its agents.

ROBERTS & KENAGIARAS LLP
ATTORNEYS AND COUNSELLORS AT LAW

Character counts

- ▶ The FMC's determination whether an applicant has the "necessary character," depends on many factors including violations of any shipping or statutes relating to the import, export, or transport of merchandise in international trade laws; operating without a license; state and federal criminal violations; bankruptcies, tax liens, and judicial or administrative judgments (EAR – Export control and sanction list violations)

ROBERTS & KENAGIARAS LLP
ATTORNEYS AND COUNSELLORS AT LAW

General Duties



- ▶ Obliges OTIs to make all records and books of account available to the FMC, and to require their agents to disclose records relating to the OTI principals' activities;
- ▶ OTI are fully responsible for their overseas agents compliance with FMC requests.



Hearings and appeal process

- ▶ Expedited process for OTI licenses;
- ▶ Denial, suspension and revocation proceedings
- ▶ The hearing officer will provide the OTI or applicant with a copy of BCL's notice of intent and materials, along with a written notice advising the party of its right to submit its written arguments, affidavits of fact, and documents within 30 days.
- ▶ BCL has 20 to respond to OTI or applicant;
- ▶ Hearing officer determination within 40 days;
- ▶ 115 days.



SOLAS



SOLAS Compliance

- ▶ In May 2014, the Maritime Safety Committee of the International Maritime Organization approved certain Guidelines Regarding the Verified Gross Mass of a Container Carrying Cargo (the "IMO Guidelines").



ROBERTS & KENAGIARAS LLP
ATTORNEYS AND COUNSELLORS AT LAW

SOLAS Compliance

- ▶ "The responsibility for obtaining and documenting the verified gross mass of a packed container lies with the shipper."
- ▶ Under the IMO Guidelines, "[s]hipper means a legal entity or person named on the bill of lading or sea waybill or equivalent multimodal transport document (e.g. 'through' bill of lading) as shipper and/or who (or in whose name or on whose behalf) a contract of carriage has been concluded with a shipping company."

ROBERTS & KENAGIARAS LLP
ATTORNEYS AND COUNSELLORS AT LAW

The shipper must verify.

- ▶ The "shipper" is the party that appears in the Shipper/Consignor field on the Master Bill of Lading or an equivalent document issued by the VOCC and may be any of the following people/entities:
- ▶ The Beneficial Cargo Owner (i.e. the owner of the goods or the exporter);
- ▶ NVOCC; or
- ▶ For consolidated cargo, the entity that consolidates the cargo (i.e. the "Master Loader").

ROBERTS & KENAGIARAS LLP
ATTORNEYS AND COUNSELLORS AT LAW

Verifying the weight



- ▶ Shippers or third-parties can:
 - Weigh a loaded the container, or
 - add the weight of the cargo and the container's tare weight.
 - For certain commodities, such as scrap metal, unbagged grain and other **bulk** cargo the loaded container must be weighed.
 - Use of the second method may be subject to certification by the IMO Member State in which the packing and weighing took place.



No Estimating

- ▶ "Individual, original sealed packages that have the accurate mass of the packages and cargo items clearly and permanently marked on their surfaces, do not need to be weighed again when they are packed into the container." IMO Guidelines, paragraph 5.1.2.1.
- ▶ Example: Original sealed packages (e.g., flat screen TVs that have their weight (e.g. X kg.) marked by the manufacturer on the box containing the TV).



No exceptions for co-loads

- ▶ The IMO Guidelines are clear that the shipper named on the ocean carrier bill of lading is the party responsible for providing the container's verified gross mass. IMO Guidelines, paragraph 5.1.3. Thus, the "master" forwarder named on the ocean carrier's bill of lading is responsible for the accurate cargo weight verification of all the cargo from all the co-loading forwarders using the container. **NO PASS ON WEIGHTS.**



NCBFAA T&C and POA

- ▶ (c) Customer acknowledges that it is required to provide verified weights obtained on calibrated, certified equipment of all cargo that is to be tendered to steamship lines and represents that Company is entitled to rely on the accuracy of such weights and to counter-sign or endorse it as agent of Customer in order to provide the certified weight to the steamship lines. The Customer agrees that it shall indemnify and hold the Company harmless from any and all claims, losses, penalties or other costs resulting from any incorrect or questionable statements of the weight provided by the Customer or its agent or contractor on which the Company relies.
- ▶ Sign and swear to any document and to perform any act that may be necessary or required by law or regulation in connection with the lading, or endorse or countersign weight certificates or tickets provided by grantor or grantor's designee, or operation of any vessel or other means of conveyance;



Sign on the line ...



- ▶ "The shipping document shall be: .1 signed by a person duly authorized by the shipper; and .2 submitted to the master or his representative ...". SOLAS Chapter VI, Regulation 2, paragraph 1.



SOLAS sources:

- ▶ [http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-\(SOLAS\),-1974.aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx)
- ▶ http://www.worldshipping.org/industry-issues/safety/SOLAS_CHAPTER_VI_Regulation_2_Paragraphs_4-6.pdf
- ▶ <http://www.worldshipping.org/industry-issues/safety/cargo-weight>





Roanoke Trade is a division of Roanoke Insurance Group Inc., specializing in surety and insurance solutions for the trade and transportation industry. Our cumulative knowledge base and experience level are unparalleled in this arena, having served this niche client base since 1935. We are a leading provider of customs bonds, marine cargo and transportation-related liability insurance, transportation-related business insurance, transportation-related bonds and ATA Carnets for the industry.



To learn more about Roanoke's result-driven insurance and surety solutions for global trade and transportation, contact us today at

1-800-ROANOKE

www.roanoketrade.com | info@roanoketrade.com

Questions

Cameron W. Roberts, Esq.
Roberts & Kehagiaras LLP
310-642-9800
www.tradeandcargo.com



SOLAS Container Weight Verification Requirements

By Andrew Kehagiaras and Cameron Roberts

In May 2014, the Maritime Safety Committee of the International Maritime Organization (“IMO”) approved the Guidelines Regarding the Verified Gross Mass of a Container Carrying Cargo (the “IMO Guidelines”). The IMO Guidelines are part of the Safety of Life at Sea Convention (“SOLAS”)¹. The IMO Guidelines state: “The responsibility for obtaining and documenting the verified gross mass of a packed container lies with the shipper.”² Under the IMO Guidelines, “[s]hipper means a legal entity or person named on the bill of lading or sea waybill or equivalent multimodal transport document (e.g. ‘through’ bill of lading) as shipper and/or who (or in whose name or on whose behalf) a contract of carriage has been concluded with a shipping company.” The IMO Guidelines become effective July 1, 2016.

Given the above and other language in the IMO Guidelines, and also given the language in the World Shipping Council’s Guidelines for Improving Safety and Implementing the SOLAS Container Weight Verification Requirements and also various industry-media articles, it is an inescapable conclusion that NVOCCs and other intermediaries, as shippers, will be subject to the verification requirement.³

The IMO Guidelines will require the shipper of a loaded container, *regardless of who packed it*, to verify and provide the container’s verified gross mass (“VGM”) to the ocean carrier *and* to the port terminal operator. A verified container weight shall be a condition for loading a container aboard a vessel for export—no certification, no loading. Shippers will have to prove the weight of their containers through one of two methods: Method 1: weigh the loaded container on a calibrated and certified instrument; or Method 2: weigh the cargo along with dunnage, securing and lashing materials, and the tare weight of the container and aggregate them together in order to arrive at an aggregated weight.

The shipper will also have a duty to ensure that the VGM is declared on the accompanying shipping document. In order for the document to be validated and accepted, it will have to be signed by a person duly authorized by the shipper and submitted to the master and the terminal representative sufficiently in advance, as required by the master, to be used in the preparation of the stowage plan.

Industry preparation for the implementation of the regulations is a “work in progress.” The International Cargo Handling Association held a two-day seminar in mid-September to discuss implementation in the United Kingdom. FIATA recently discussed the new measures and has prepared a “toolkit” for its member associations. The British International Freight Association will be discussing the topic at an upcoming conference. The NCBFAA, a member of FIATA, has also urged its members to “get ready” for compliance.

Compliance with the regulations will involve, first and foremost, operational changes, such as when and where to weigh containers. But there will be corresponding documentary changes, too. Intermediaries will likely have to revise terms in their bills of lading and trading conditions. In so doing, intermediaries will have to change existing forms or create new ones in order to ensure compliance. An unnamed industry executive stated that he expects “chaos” at the ports during the implementation period.

There is a lot for NVOCCs to consider. But if there is a single take-away, it is that NVOCCs, regardless of whether they are co-loading or directly tendering cargo, are “shippers” that must prepare to comply with the IMO Guidelines.

¹ The United States ratified the International Convention for the Safety of Life at Sea (“SOLAS”), Nov. 1, 1974, 32 U.S.T. 47. Recife, 827 F. Supp. at 994. It serves as an important reference for carriers seeking to transport cargo safely and efficiently while complying with international regulations. Various amendments to SOLAS has been codified into U.S. law. Mark J. Fisher, Inc. v. M/V DG Harmony (In re M/V DG Harmony), 533 F.3d 83, 88 (2d Cir. N.Y. 2008) and Spector v. Norwegian Cruise Line Ltd., 545 U.S. 119 (U.S. 2005).

² Case law and vessel operators commonly use the term “merchant” and “shipper” interchangeably. The merchant definition is generally broader, including the consignee, owner of the goods, and anyone acting on behalf of the owner of the goods. It is logical to conclude that vessel operators will seek to transfer SOLAS liability by contract.

³ Under Federal Maritime Commission regulations, an NVOCC is a “shipper” in its relationship to a vessel operator. 46 CFR § 520.2 (2015).

DECEMBER 2015

VERIFIED GROSS MASS INDUSTRY FAQs

Implementation of the SOLAS amendments effective from 1 July 2016



TT CLUB
established expertise


WORLD SHIPPING COUNCIL
PARTNERS IN TRADE

ICHCA
INTERNATIONAL

 global
shippers
forum

CONTENTS

Introduction	1
Section A: General	2-4
Section B: Method 1	5
Section C: Method 2	6-7
Sponsors	5

INTRODUCTION

This document has been compiled in response to questions that have been raised by the industry in relation to the revised SOLAS¹ regulation and the accompanying guidelines².

The amendments to this regulation have substantial impact on operational practices between the parties in the international supply chain involved in the movement of containers by sea. While the convention relates to the safety of ships at sea, it should be recognised that shore based activities relating to the presentation of cargo are fundamental to safe outcomes at sea.

These FAQs relate to new mandatory rules, effective from 1 July 2016, concerning the requirement for shippers to verify the gross mass of a container carrying cargo. Without a verified gross mass the packed container shall not be loaded aboard ship. The rules prescribe two methods by which the shipper may obtain the verified gross mass of a packed container:

- Method 1, upon the conclusion of packing and sealing a container, the shipper may weigh, or have arranged that a third party weigh, the packed container.
- Method 2, the shipper or, by arrangement of the shipper, a third party may weigh all packages and cargo items, including the mass of pallets, dunnage and other packing and securing material to be packed in the container, and add the tare mass of the container to the sum of the single masses of the container's contents.
- In respect of both Method 1 and 2, the weighing equipment used must meet the applicable accuracy standards and requirements of the State in which the equipment is being used.

This document should be considered as dynamic; it is not intended to be comprehensive and other questions are likely to



be raised in the future. Stakeholders are encouraged to discuss amongst their counter-parties how compliance will be achieved, particularly in relation to matters of a commercial nature.

These SOLAS amendments were adopted by the International Maritime Organization (IMO) in November 2014 and become mandatory on 1 July 2016. SOLAS is globally binding; all States that are party to the Convention have undertaken to implement amendments, including these in relation to verified gross mass, in their respective jurisdictions. Such implementation may be done pursuant to existing authority. It should be recognised that national rules and regulations may exist and stakeholders should engage with the relevant Competent Authorities to obtain clarification on such national procedures.

All stakeholders have an incentive to encourage compliance in order to avoid disruptions in the supply chain. This document is part of a broad industry communication programme to ensure that all stakeholders are aware of the SOLAS amendments and take appropriate action to engage with counterparties in order to be prepared to comply on 1 July 2016.

The arrangement of the information in this document is as follows.

a. Questions

The questions are grouped on the basis of whether they are 'General' (Section A), or relate to 'Method 1' (Section B) or to 'Method 2' (Section C). Everything contained here reflects actual questions that have been raised by industry representatives; these will not be comprehensive and stakeholders are invited to approach one of the sponsoring organisations (see end of document for details), who will consult in order to provide a joint industry response.

b. Type of FAQs

Each question below is categorised into one of four categories:

- i. National (e.g. the approach of a given Competent Authority (CA) towards enforcement)
- ii. International (e.g. how to respond where the tare mass of a container is missing or shipper believes it to be inaccurate)
- iii. Commercial (e.g. cut-off times for provision of the verified gross mass to the carrier and the terminal operator)
- iv. Other (anything not included in another category).

c. Answers

Where it is recognised as a 'National' issue, it will be for the relevant national Competent Authority to provide further information.

¹ The Safety of Life at Sea Convention, as amended

² MSC.1/Circ.1475

SECTION A: GENERAL

A1. Clearly responsibilities start with the shipper. But who is 'the shipper' in the context of this new procedure?

This is an **International** issue. There are also Commercial implications.

Under the SOLAS requirements, the shipper named on the ocean bill of lading is the party responsible for providing the maritime (ocean) carrier ('master') and the terminal operator ('terminal representative') with the verified gross mass of a packed container. The carrier and the terminal operator must not load a packed container aboard a ship unless they have the verified gross mass for that container.

MSC 1 / Circ. 1475³ defines 'the shipper' as "a legal entity or person named on the bill of lading or sea waybill or equivalent multimodal transport document as shipper, and/or who (or in whose name or on whose behalf) a contract of carriage has been concluded with a shipping company."

Due to the complexity of the international supply chain, the entity identified as the 'shipper' on the bill of lading may not have direct or physical control over key elements of the process by which verified gross mass is determined. A 'shipper' in such circumstances should be aware of their responsibilities and ensure that arrangements are in place to obtain and provide a verified gross mass in compliance with these international and national regulations.

It should be noted that the SOLAS requirements are distinct from INCOTERMS, which govern the *sale* of the goods, not the *transport* of the goods. The parties to the sales contract/contract of sale under INCOTERMS need to determine how verified gross mass will be obtained, i.e. whether by Method 1 or Method 2 (as permitted by the CA of the State in which the packing of the container is completed) and how this information can be provided to the carrier by the shipper as identified in the bill of lading.

If in doubt about which entity is 'the shipper', contact one of the organisations identified at the end of this document.

A2. Is there an agreed format to communicate verified gross mass?

As an **International** issue, SOLAS does not mandate any particular form of communication between the parties exchanging the verified gross mass information.

Subject to any additional national requirements, the information to be provided by the shipper is the same under Method 1 and Method 2, being the verified gross mass of the packed container, conspicuously identified as such, signed by the shipper or a person duly authorised by the shipper.

The information and signature may be transmitted electronically, and the signature may consist of the last name of the responsible person in capital letters.

Several existing EDI messages have been amended by SMDG (Ship-planning Message Design Group) and a new EDI message 'VERMAS' specifically in relation to verified gross mass has been developed. Further information is available from SMDG (www.smdg.org).

In parallel to the SMDG efforts, the US organization responsible for the ANSI X12 messages has announced that a new code is available to capture verified container weight information. The new code will be published with the next release of the ANSI X12 standard, but trading partners may agree to use the code in earlier versions of the standard (for example, version 4010).

As a **Commercial** issue, the form of exchange and precise substance should be agreed between the commercial parties.

A3. Is there a deadline for when the information must be received by the carrier and the terminal operator?

This is a **Commercial** issue.

Verified gross mass is required in order to prepare the stowage plan of the ship prior to loading. Deadlines will differ according to a number of factors; shippers should obtain information on documentary cut-off times from their carriers in advance of shipment. It is recognised that 'just in time' shipments will need specific coordination between the shipper and carrier to ensure that the objectives of SOLAS are met and the verified gross mass for such shipments is communicated and used in the ship stowage plan.

A4. If the shipper communicates the verified gross mass as required by this regulation, is there then an obligation under either Method 1 or Method 2 on the carrier (or terminal operator) to check the value given for that gross mass and report to the authorities any discrepancy that may be found?

As an **International** issue, the requirements are for the carrier and the terminal to ensure that the verified gross mass has as a condition for ship loading been communicated sufficiently in time to be used in the ship stow planning process. There is no legal obligation to check the value so communicated. There is no requirement for the verified gross mass to be notified to governmental authorities.

As a **Commercial** issue, the objective of the SOLAS amendments is to ensure that the carrier and terminal operator have available as a condition for ship loading an accurate gross mass of each packed container. Shippers should develop effective procedures in conformance with the SOLAS requirements to obtain such information with that objective in mind. There is no requirement that the carrier or terminal operator weigh a packed container for which the shipper has already provided the verified gross mass.

³ Ibid. Annex paragraph 2.1.12

If, however, the packed container is weighed, for whatever reason, and the gross mass is different from that provided by the shipper by an amount deemed to be material, then the carrier and terminal operator will need to have a process for determining which value to use.

A5. If goods are put onto a feeder ship from, for example, Grangemouth (UK) that proceeds to Rotterdam (Netherlands), will verified gross mass have to be established in Grangemouth or Rotterdam or both places?

This is an **International** issue.

Verified gross mass is required before loading the packed container on board a ship covered by the SOLAS requirements at its initial port of loading, unless driven onto a ro-ro ship on a chassis or trailer. Thus, in this question, the verified gross mass must be determined prior to loading aboard ship at Grangemouth.

A6. The requirement is for accurate gross mass; is there a margin of error defined for this 'accuracy'?

As an **International** issue, the SOLAS regulations provide that verified gross mass shall be obtained under both Method 1 and 2 by using weighing equipment that meets the applicable accuracy standards and requirements in the State in which the equipment is being used. Those national standards and requirements will determine the acceptable level of accuracy of the weighing equipment used. There is no provision in SOLAS for any margin of error; this is a physical weighing requirement, not a system of estimation. Gross mass derived using compliant equipment and procedures will meet the legal requirements.

There is no single international weighing equipment accuracy standard at present although the International Organization of Legal Metrology has issued recommendations for various types of weighing equipment. For example, EU Directive 2004/22/EC on measuring instruments provides guidance within the European Union in relation to 'automatic weighing instruments'. Similar guidance exists for 'non-automatic weighing instruments' and many countries and regions will have enacted legislation and standards to cover such equipment.

Accuracy refers to the precision with which a measurement (in this case mass) is made. Accuracy is the only concept with which the shipper need be concerned. National enforcement agents may exercise discretion or tolerance in deciding when to initiate further investigations or penalty action. However, shippers using compliant weighing devices and processes will obtain values that are well within any tolerances adopted nationally for enforcement purposes. Shippers not using compliant weighing devices and processes may be found in violation even if the gross

masses that they provide fall within government enforcement tolerances.

If a shipper is merely estimating the gross mass and hoping to fall within government enforcement tolerances, it is violating the SOLAS requirements and could incur sanctions or delays pursuant to applicable national legislation. There are no exemptions from the requirement to weigh using either Method 1 or Method 2.

See also Questions A7, A8, A9 and A10.

A7. Given that there is no single international approval for weighing equipment, does this mean that different standards will be applied around the world, making it uncertain whether equipment can be approved internationally or whether values given will be accepted globally?

This is a **National** issue.

Within the scope of SOLAS, this is a matter for determination by signatory States. It is the case, however, that all equipment used (whether for Method 1 or Method 2) will need to meet the applicable accuracy standards and requirements of the State in which the equipment is being used.

A8. How accurate does the verified gross mass need to be considering environmental factors of influence such as humidity on wood (pallets), carton (if used as primary packaging), etc.?

This is an **International** issue.

Any verified gross mass obtained under both Method 1 and 2 shall be obtained using weighing equipment that meets the applicable accuracy standards and requirements of the State in which the equipment is used.

Some cargo products may incur normal, minor changes in mass from the time of packing and weighing until delivery (e.g. due to evaporation or humidity changes) and some containers' tare mass may change over time and vary somewhat from the tare mass marked on the container. However, these margins of error should not normally present safety concerns.

A9. Will governments apply an enforcement tolerance threshold for determining compliance with the SOLAS requirements?

This is a **National** issue.

However, a government's enforcement threshold should not be confused with the issue of how accurate the verified gross mass obtained by the shipper should be. The shipper is obligated to use weighing equipment that complies with the accuracy standards of the jurisdiction in which the

equipment is used. Use of such equipment should produce a verified gross mass that is well within government enforcement tolerances. Enforcement tolerances are simply a means by which a government decides how best to allocate its enforcement resources; as such, they have no effect on how the shipper goes about determining the verified gross mass.

The SOLAS Method 1 and Method 2 regulations (and any additional national regulations) control the procedures by which the gross mass is to be determined.

A10. How will this be enforced and what will be the level of penalties imposed by an Administration if a container is delivered by a shipper to a carrier with a mis-declared gross mass or if a shipper does not provide the verified gross mass for a packed container?

As a **National** issue, fines and other penalties will be imposed under national legislation. Enforcement agencies may implement measures to satisfy themselves that compliance is achieved, which might be expected to include documentation checks, auditing or random weighing.

As a **Commercial** issue, the penalties may involve repacking costs, administration fees for amending documents, demurrage charges, delayed or cancelled shipments etc. It should be noted that SOLAS imposes an obligation on the carrier and the terminal operator not to load a packed container aboard ship for which no verified gross mass has been provided or obtained. Compliance with this obligation by the carrier and terminal operator may result in commercial and operational penalties, such as delayed shipment and additional costs if the shipper has not provided the verified gross mass for the packed container.

(Note: The new SOLAS requirements apply equally to both under and overweight containers.)

A11. The SOLAS requirement derives from safety aspects. Cargo mass information may also be required for Customs purposes. If the verified gross mass declared for SOLAS purposes subsequently is amended, for example after actual weighing of the packed container, does Customs need to be informed?

This is a **National** issue.

SOLAS does not regulate Customs matters. Provision of the gross and net mass of goods in declarations to Customs is regulated according to national Customs legislation. The mass required under SOLAS versus Customs requirements may be different; e.g. Customs may require cargo mass, while SOLAS requires the total, verified gross mass of the packed container.

A12. Should a 'pilot' scheme be set up by a carrier, shippers, port and competent authority to test the system?

This is a **National** and/or **Commercial** issue.

It is recognised that there may be valuable lessons from such an effort, but it is a matter to be discussed among the affected parties.

A13. Simply knowing the verified gross mass is not sufficient to achieve safety through the supply chain, since many incidents on the road and rail are caused by improper load distribution and inadequate securing. What can be done about that?

This is an **International** issue.

It is correct that improper load distribution and inadequate securing in packed containers may result in incidents even where the gross mass has been correctly obtained and declared. The IMO, ILO and UNECE collaborated to produce the 'Code of Practice for Packing Cargo Transport Units' (CTU Code) to address such concerns. This non-mandatory international code provides recommended and actionable guidance for the proper packing, securing and handling of cargo into or onto CTUs. The Code, which applies to surface transport operations throughout the intermodal supply chain, is available to download in various languages through the searchable website at: www.unece.org/trans/wp24/guidelinespackingctus/intro.html

SECTION B: METHOD 1

B1. Where can we find a list of publically available weighbridges?

This is a **National** issue.

It should be noted that procedures need to be in place to obtain the verified gross mass of each packed container, taking accurate account of any other mass, such as truck, trailer, fuel or equipment etc. Additionally, note that where applicable the International Vehicle Weight Certificates (IVWC) shows the total gross weight of the un-laden vehicle, not the gross mass of the packed container.

B2. Some weighbridges don't produce tickets. Would a gross mass being written on driver's consignment note, signed and stamped by the load point be acceptable?

As a **International** issue, there is no requirement under SOLAS that a 'weight ticket' or similar must be provided. What SOLAS requires is that the shipper communicates the verified gross mass in a 'shipping document' that can be part of the shipping instructions or be a separate communication. In either case, the document should clearly highlight that the gross mass provided is the 'verified gross mass', and the document must be signed by a person duly authorised by the shipper (the signature may be an electronic signature or may be replaced by the name in capitals of the person authorised to sign it).

As a **National** issue, national governments may, as part of their enforcement policies, require that shippers using Method 1 are in a position, upon request, to produce weight tickets or other documentation as deemed acceptable pursuant to national rules and regulations.

As a **Commercial** issue, it should be recognised that the shipper remains responsible to obtain and communicate the verified gross mass. There are inevitable process challenges to ensure effective coordination between the shipper and haulier to achieve effective documentary hand-off (whether electronic or paper) to avoid in-gate delays. Such processes should be discussed between the commercial parties, including the maritime carrier and the terminal operator.

B3. Where a third party (including potentially a port terminal) starts weighing freight containers (i.e. under Method 1) will it have to become a 'verified weigher' in order to issue a valid weight ticket?

As an **International** issue, there is no such concept as a 'verified weigher' and the only obligation under SOLAS for a party weighing a packed container is to use calibrated and certified equipment that meets the accuracy standards and requirements of the state in which the equipment is being used. SOLAS does not make any additional requirements of the party weighing a packed container.

As a **National** issue, National governments may, as part of their enforcement policies, implement requirements applicable to owners of weighing equipment. It should be noted that SOLAS itself does not require any assessment or registration of a service provider and any such requirements would be determined by national authorities. See also Question B2.

B4. Port container handling equipment generally has on-board weighing technology ('PLCs') typically accurate to within 5% and designed to prevent overloading of the equipment. If such data are integrated into other relevant systems (including those used for ship stowage planning) is this likely to be acceptable for determining verified gross mass under Method 1?

As an **International** issue, SOLAS only requires that the weighing equipment used to obtain the verified gross mass meets the applicable accuracy standards and requirements of the State in which the equipment is being used.

As a **National** issue, although accuracy of weighing equipment is a matter for national regulation, it is unlikely that a weighing device with a known margin of error of 5% would meet applicable accuracy standards.

B5. Who will pay for carrying out the weighing process for Method 1?

This is a **Commercial** issue and will be a matter to be determined by the parties involved. Since the shipper is legally responsible to obtain and provide the verified gross mass, it may be expected that any third party service provider would seek re-imbursement of the cost of weighing.

SECTION C: METHOD 2

C1. Our company only ever provides part loads/less than container load (LCL), never a full container load (FCL) so what is our position?

This is a **Commercial** issue

This will depend on your contractual arrangement with the co-loading freight forwarder that enters into the contract of carriage with the carrier and thus becomes the shipper to the carrier (see A1 above). If permitted under the terms of the contract with the 'master' forwarder, your company may use Method 2 to verify the actual mass of the goods being shipped and pass that information on to the party completing the packing of the container. However, responsibility for providing the accurate, verified gross mass of a co-loaded container remains with the shipper named on the maritime carrier's bill of lading, i.e. the 'master' freight forwarder.

C2. Can I deliver freight to my freight forwarder without knowing the mass and ask them to weigh it and establish the verified gross mass of the cargo and issue the appropriate documents?

This is a **Commercial** issue.

See the response to questions in C1 above. The 'shipper' under the contract of carriage remains responsible for accurately establishing verified gross mass of a packed container.

If your freight forwarder is the shipper on the maritime carrier's bill of lading, it may weigh the cargo, using Method 1 or 2, and provide the carrier with the verified gross mass of the container. If you are the shipper on the bill of lading, you are responsible for providing the carrier with the verified gross mass. Where the verified gross mass is obtained by a third party, such as a freight forwarder, the shipper will remain responsible that the verified gross mass provided to the carrier is correct. Parties in the maritime containerised supply chain are encouraged to ensure that their contractual arrangements take account of the SOLAS requirements.

C3. Is it permissible for a company to provide a service to weigh cargo under Method 2 and issue a 'Verified Gross Mass' certificate to a shipper? If so what criteria will they have to meet?

This is an **International** and **National** issue:

As an **International** issue, nothing in SOLAS would prevent a company from offering such a service as long as the company uses weighing equipment that meets the applicable accuracy standards and requirements of the State in which the equipment is used. However, a shipper using the mass obtained from a company providing such

weighing services remains under SOLAS responsible to ensure that the verified gross mass provided to the carrier and the terminal operator is accurate.

As a **National** issue, provision of services to weigh cargo using Method 2 may be subject to national rules and regulations.

C4. If Method 2 is chosen and intercompany transactions take place (e.g. the producing / dispatching entity is based in UK while bill of lading is drawn up for export at a consolidation port such as Antwerp (Belgium) and a different legal entity within a group of companies is the exporter of record) which legal entity should comply with any national rules and regulations regarding Method 2, the exporter of record or local UK entity actually packing the container and physically able to determine the relevant mass information?

This is an **International** issue.

The entity that would need to comply with any national rules and regulations regarding Method 2 is the one in the State in which the packing and sealing of the container is completed⁴.

C5. For FCL shipments involving a freight forwarder there are two different scenarios:

- a. where the forwarder is the agent (putting the carrier and shipper in a direct contractual arrangement); and
- b. where the freight forwarder acts as principal and issues a house bill of lading, being named as the 'shipper' on the maritime carrier's bill of lading/contract of carriage.

In either scenario, can the freight forwarder rely on the mass provided by the forwarder's customer using Method 2?

This is an **International** and a **National** issue.

Internationally, for the purpose of the SOLAS requirements, the 'shipper' is the entity named on the maritime carrier's bill of lading/contract of carriage. It is the shipper who is responsible for obtaining the verified gross mass of the packed container and for providing it to the maritime carrier and terminal operator; the preparation of any documentation needs to be determined between the commercial parties involved.

The SOLAS requirements do not include registration or approval in order to use Method 2, but this may be part of national implementation measures to achieve compliance. It must be stressed that the absence of specific national rules for registration and approval for use of Method 2 does not mean that shippers may not use Method 2 to determine the

⁴ Ibid. paragraphs 5.1.2.3 and 5.1.2.3.1

verified gross mass and provide it to the carrier and the terminal operator. However, mass should be obtained using calibrated and certified weighing equipment that complies with the accuracy standards of the jurisdiction in which the equipment is used.

As a **National** issue:

In jurisdictions that do not implement Method 2 registration and certification requirements, where a freight forwarder enters into contracts of carriage with maritime carriers (i.e. acts as a *principala*), it is the freight forwarder who is named as the shipper on the maritime carrier's bill of lading and as such is legally responsible under SOLAS for obtaining and providing the verified gross mass. If such a freight forwarder, named as shipper on the bill of lading, seeks to rely on another party (such as a customer) to provide that verified gross mass information, it is the forwarder's responsibility to be satisfied that the other party accurately determines the verified gross mass that is then provided to the carrier. If the forwarder is acting as an agent, it will not be named as shipper on the bill of lading. Consequently, it will not be responsible for obtaining and providing the verified gross mass; the shipper named on the bill of lading will.

In jurisdictions that do implement Method 2 registration and approval requirements, the basic SOLAS requirements still apply, i.e. if the forwarder is named as the shipper on the bill of lading, that forwarder is legally responsible for obtaining and providing the verified gross mass. Whether such a forwarder would be able to rely on the verified gross mass obtained by another party may depend on the specific national rules pertaining to Method 2. If the forwarder is acting as an agent, it will not be named as shipper on the bill of lading. Consequently, it will not be responsible for obtaining and providing the verified gross mass; the shipper named on the bill of lading will.

C6. What if the tare mass appearing on containers is lacking or inaccurate due to wear and tear, etc.? What remedy is available?

This is an **International** issue.

The tare mass of every container is marked on the exterior of the container at the time of manufacture. Shippers should solely rely on the tare mass value marked on the container. Where it is missing, or believed or established to be inaccurate, the container operator should be contacted to take appropriate remedial action.

C7. We conclude that the four elements to be determined in order to declare the verified gross mass of a packed container under Method 2 are:

- a. the tare container mass,**
- b. the mass of the product without any packaging,**
- c. the mass of primary packaging (if any), and**
- d. the mass of all other packaging, pallets, dunnage, space fillers and securing material**

Is this correct?

This is an **International** issue.

Reference is made to MSC.1/Circ.1475. In general, this correctly states the process for determining the verified gross mass of a packed container using Method 2, but it should be noted that there may be several layers or levels of packaging depending partly of the value and the level of protection that the product requires.

It should also be noted regarding points b-d that it is only possible to rely on mass information provided by a supplier if such mass information is clearly and permanently marked on the surfaces of individual, original sealed packages and cargo items⁵.

In all other cases, the mass referred to in points b-d must be determined by weighing, using weighing equipment that meets the applicable accuracy standards and requirements in the State in which the equipment is being used.

The tare mass of the container is indicated on the door end of the container and does not need to be determined by weighing.

Furthermore, Method 2 may be inappropriate and impractical for certain types of cargo items, e.g., scrap metal, unbagged grain and other cargo in bulk, that do not easily lend themselves to individual weighing of the items to be packed in the container⁶.

Method 2 is also inappropriate for liquid and gaseous cargoes, whether carried in ISO tank containers or 'flexitanks'. Volumetric flow systems may be acceptable for other purposes but gross mass may not be accurately determined due to other variables.

⁵ Ibid. paragraph 5.1.2.1

⁶ Ibid. paragraph 5.1.2.2

SPONSORS

The following organisations have produced this Frequently Asked Questions document, expanding from the initial correspondence group work undertaken by the UK Maritime & Coastguard Agency. It is recognised that further general questions are likely to be raised, only some of which will be resolved with the relevant National Competent Authority or commercial counter-party. You are invited to raise such further questions with one of the organisations below.



TT Club

TT Club is the international transport and logistics industry's leading provider of insurance and related risk management services. Established in 1968, the Club's membership comprises ship operators, ports and terminals, road, rail and airfreight operators, logistics companies and container lessors. TT Club has regularly highlighted issues arising through the supply chain relating to inaccurate gross mass information, and incorrect or inadequate packing of CTUs. As a result, TT Club has participated throughout the IMO process leading to the amendment of SOLAS and the related implementation guidelines.

www.ttclub.com



World Shipping Council

The World Shipping Council (WSC), with offices in Washington and Brussels, represents the global liner industry on regulatory, environmental, safety and security policy issues. WSC members operate approximately 90 percent of the global liner capacity, providing approximately 400 regularly scheduled services linking the continents of the world. Collectively, these services transport about 60 percent of the value of global seaborne trade, and more than US\$ 4 trillion worth of goods annually. The WSC has observer status with the IMO, and was actively involved in the development of the SOLAS container gross mass verification requirements.

www.worldshipping.org



ICHCA International Limited

The International Cargo Handling Coordination Association (ICHCA), founded in 1952, is an independent, not-for-profit organisation dedicated to improving the safety, security, sustainability, productivity and efficiency of cargo handling and goods movement by all modes, and through all phases of national and international supply chains. ICHCA's privileged non-government organisation (NGO) status enables it to represent its members and the cargo handling industry at large, in front of national and international agencies and regulatory bodies. In this capacity, ICHCA actively participated in the debates leading to these SOLAS amendments.

www.ichca.com



Global Shippers' Forum

The Global Shippers' Forum (GSF), with offices in London and Brussels, is the world's leading trade association for shippers engaged in international trade moving all goods by all modes of transport. The GSF represents shippers as users of international freight services on regulatory, operational and trade issues. Its main focus is to influence commercial developments in the global supply chain and the policy decisions of governments and international organisations as they affect shippers and receivers of freight. GSF was actively involved in the debates leading to these SOLAS amendments.

www.globalshippersforum.com



TT Club

90 Fenchurch Street
London EC3M 4ST
United Kingdom

Contact:

Peregrine Storrs-Fox
T: +44 20 7204 2254
E: peregrine.storrs-fox@thomasmiller.com
www.ttclub.com

World Shipping Council

1156 15th Street
NW Suite 300
Washington, DC 20005
United States of America

Contact:

Lars Kjaer
T: +1 202 589 1234
E: LKjaer@worldshipping.org
www.worldshipping.org

ICHCA International Limited

Suite 5 Meridian House
62 Station Road
London E4 7BA
United Kingdom

Contact:

Captain Richard Brough OBE
T: +44 1482 634673
E: rwab@broughmarine.co.uk
www.ichca.com

Global Shippers' Forum

Hermes House
St John's Road
Tunbridge Wells
Kent TN4 9UZ
United Kingdom

Contact:

Chris Welsh MBE
(Secretary-General)
T: +44 1892 552384
E: cwelsh@fta.co.uk
www.globalshippersforum.com

(S E R V E D)
(NOVEMBER 3, 2015)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

46 CFR Part 515

DOCKET NO. 13-05

RIN 3072-AC44

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

AGENCY: Federal Maritime Commission

ACTION: Final rule

SUMMARY: The Federal Maritime Commission amends its rules governing the licensing, financial responsibility requirements and duties of Ocean Transportation Intermediaries. The rule adapts to changing industry conditions, improves regulatory effectiveness, improves transparency, streamlines processes and reduces regulatory burdens.

DATES: This rule is effective December 9, 2015, except for the amendments to § 515.14(c) and (d), which are effective December 9, 2016.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: On October 10, 2014, the Federal Maritime Commission (FMC or Commission) published a Notice of Proposed Rulemaking, 79 FR 61544 (October 10, 2014) significantly amending its regulations governing Ocean Transportation Intermediaries (OTIs) for the first time since it promulgated implementing regulations under the Ocean Shipping Reform Act of 1998, Public Law 105-258, 112 Stat. 1902 (OSRA). The proposed rule was published following an Advance Notice of Proposed Rulemaking (ANPR) published in May 2013. 78 FR 32946 (May 31, 2013). The Commission dropped a number of rulemaking proposals in response to earlier ANPR comments.

Changes proposed to the Commission's current rules include: adding requirements to renew OTI licenses every three years; providing for simple on-line renewals at the Commission's web site; providing a single on-line location where the status of an NVOCC's compliance with the Commission's regulations can be quickly verified; and establishing an expedited hearing process for license denials, revocations or suspensions while continuing to provide applicants and licensees due process and the ability to appeal adverse decisions to the full Commission.

The Commission received 25 comments (including three late-filed comments) on the proposed rule from North American Logistics, Inc. (North American); Trans-World Shipping Service, Inc. (Trans-World); J.W. Allen & Co. Inc. (J.W. Allen); Customs Clearance Int. Inc. (Customs Clearance); Kuehne & Nagel Inc. (K&N); John S. Connor, Inc. (John S. Connor); New Direx, Inc. (New Direx); National Customs Brokers & Forwarders Association of America, Inc. (NCBFAA); W.R. Zanes & Co. of La., Inc. (W.R.

Zanes); Transportation Intermediaries Association (TIA); Pride International, Inc. (Pride); World Shipping Council (WSC); John S. James Co.; Pacific Coast Council of Brokers & Freight Forwarders Association, Inc. (PCC)¹; Roanoke Trade (the surety bond division of Roanoke Insurance Group Inc.) (Roanoke); Sefco Export Management Company, Inc. and Quinn Corporate Services, Inc. (Sefco); UPS Freight Services, Inc., UPS Europe SPRL and UPS Asia Group Pte. Ltd. and UPS Supply Chain Solutions, Inc. (collectively UPS); New York New Jersey Foreign Freight Forwarders and Brokers Association, Inc. (NYNJFFF&BA); C J International, Inc. (CJ International); Federazione Nazionale delle Imprese di Spedizioni Internazionali (Fedespedi)²; Cargo-Link International (Cargo-Link); Mohawk Global Logistics (Mohawk); Vanguard Logistics Services (USA), Inc. (Vanguard); Thunderbolt Global Logistics, LLC (Thunderbolt); and the International Federation of Freight Forwarders Associations (FIATA)³.

Subpart A – General

Section 515.2 – Definitions.

The proposed rule removes several definitions that are no longer relevant to the Commission’s regulatory activities, including “ocean freight broker” (§ 515.2(n)), “brokerage” (§ 515.2(d)) and “small shipment” (§ 515.2(u)). NCBFAA and NYNJFFF&BA agree that these terms are no longer necessary.

Section 515.2(n) modifies the definition of “person” to conform to the definition of “person” in 1 U.S.C. 1, but also specifically includes “limited liability companies.” The

¹ PCC supported the comments of NCBFAA in their entirety.

² Fedespedi supported the comments of TIA.

³ FIATA supported the comments of TIA.

Commission retains the current language that entities covered are those “existing under or authorized by the laws of the United States or of a foreign country.” NCBFAA acknowledges the expansion of the definition to cover new forms of corporate structure to be a beneficial change.

NCBFAA, TIA, NYNJFFF&BA and UPS are concerned that the revision of the term “principal” in § 515.2(o) renders it capable of a much broader application than the current definition, imposing duties on Ocean Freight Forwarders (OFFs) to entities with whom such forwarders have no contractual relationship. This concern arises even though the Commission indicated that the revised definition is not intended to change its meaning or scope.

The current definition provides, in pertinent part, that the term “refers to the shipper, consignee, seller, or purchaser of property, who employs the services of a licensed freight forwarder to facilitate the ocean transportation of such property.” UPS asserts that the words “who employs the services of” makes it clear that OFFs are the agents of those that employ them and not agents to those that do not. The revised definition would have eliminated clarifying text that OFF principals are limited to those who employ licensed forwarders. The Commission finds these concerns have merit and revises the definition to substantially restore the current definition as follows:

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.

As redrawn, only the introductory phrase “except as used in Surety Bond Form FMC-48, and Group Bond Form FMC-69” is deleted from the current definition. The use of “principal” in financial responsibility forms is made clear in each form and need not be further distinguished in the § 515.2(o) definition.

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

NCBFAA favorably opines that the revisions to “freight forwarding services” and “non-vessel-operating common carrier services” make the definitions more consistent with the services that OTIs currently provide. However, it also indicates that the definitions could be expanded further to include “the filing of shipment manifest data with relevant government agencies.” Inasmuch as these definitions provide that services “may include, but are not limited to” those listed, it would appear that the addition of NCBFAA’s suggested text is not necessary.

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

Commenting on the definition, NCBFAA opines that the Commission’s review process does not adequately address a qualifying individual’s competence. NCBFAA asserts that QIs need to have skill sets to comply with Shipping Act, United States export/import requirements and other statutes that apply to international shipping. NCBFAA suggests that the Commission consider adding affirmative competency requirements for QIs as NCBFAA has done with respect to its Certified Export Specialist program.

The QI’s three years of OTI experience in the U.S. oceanborne foreign trades provides a foundation for ensuring that QIs are exposed to and gain working knowledge of the Shipping Act and Commission regulations, as well as with other regulations and statutes that apply in the U.S. trades. The NCBFAA’s comment that the competence of QIs is not as high as the association would prefer has serious implications for the nation’s security and transport policy objectives. Its suggestions for improvements are welcome, however, they are well beyond the scope of the current proposed rulemaking proceeding. The details, procedures, cost to the agency and associated fees to the OTI applicants must be more fully developed by NCBFAA, and made subject to full and open public comment in order to be further considered by the Commission.

Section 515.3 – License; when required.

The requirement that “separately incorporated branch offices” must be licensed as an OTI is deleted as unnecessary. All separately incorporated entities that perform OTI services for which they assume responsibility for the transportation remain subject to the requirements that they be licensed and otherwise comply with the financial responsibility obligations of part 515.

The Commission also revises § 515.3 to provide that a “registered NVOCC” (terminology replacing the use of “unlicensed NVOCC”) must use licensed OTIs as their agents in the United States with respect to OTI services performed in the U.S. The section is also conformed to provide that only licensed OTIs may provide OTI services in the United States to registered NVOCCs.

NCBFAA comments that these are positive changes as they better reflect the compliance obligations of the parties. TIA, however, expresses a concern that the Commission attempts to regulate the activities of OTI agents contrary to the decision in *Landstar Express America Inc. v. Federal Maritime Commission*, 569 F.3d 493 (D.C. Cir. 2009).

TIA asserts that the provision in § 515.3 whereby only licensed OTIs may provide OTI services in the United States for registered NVOCCs in effect regulates the OTI agent. TIA also comments that there is no corresponding definition of “OTI services” in the regulations that would delineate the § 515.3 requirement. TIA questions the Commission’s authority to require registered NVOCCs to use only licensed OTIs in the United States.

Section 19 of the Shipping Act of 1984 provides that “[a] person in the United States may not act as an ocean transportation intermediary unless the person holds an ocean transportation intermediary’s license issued by the Federal Maritime Commission.” 46 U.S.C. 40901. This section imposes the licensing requirement on NVOCCs “in the United States” but not on foreign-based NVOCCs that are not in “in the United States.”

The Commission addressed its authority to regulate unlicensed foreign-based NVOCCs’ operations “in the United States” in 1999 as a necessary element of its rulemaking implementing OSRA. The Commission stated:

OSRA requires that all OTIs in the United States be licensed by the Commission. The legislative history of OSRA directs the Commission to determine “when foreign-based entities conducting business in the United States are to be considered persons in the United States” for purposes of the licensing requirements of section 19 of the 1984 Act. S. Rep. No. 105–61, 105th Cong., 1st Sess., at 31 (1997).

FMC Docket No. 98-28, Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries, 28 SRR 629-54 (March 8, 1999). (Docket No. 98-28 Final Rule).

In that rulemaking, after considering the comments on approaches to meet Congress’ instructions (including comments from NCBFAA and American International Freight Association and Transportation Intermediaries Association (AIFA/TIA)), the Commission adopted the current language found in § 515.3, which provides in pertinent part:

For purposes of this part, a person is considered to be “in the United States” if such person is resident in, or incorporated or established under, the laws of the United States. Only persons licensed under this part may furnish or contract to furnish ocean transportation intermediary services in the United States on behalf of an unlicensed ocean transportation intermediary.

The Commission explained its reasoning in adopting the current rule language:

We believe it is a good step towards leveling the playing field between OTIs in the United States who are within the Commission’s jurisdictional reach and those who are outside of that reach. Moreover, this definition will increase competition, consistent with the intent of OSRA.

Docket No. 98-28 Final Rule, *supra* at 28 SRR 638.

The Commission expressed its view that the rule presented foreign-based NVOCCs with the option of obtaining a license (and obtaining a bond at the level applicable to NVOCCs in the U.S.) or operating through independently licensed OTI agents after obtaining a bond in the higher amount established for such foreign-based NVOCCs. *Id.*

The Commission exercised the discretion that Congress envisioned and promulgated a rule that recognized that all foreign-based NVOCCs would not obtain a license but ensured that unlicensed NVOCCs that were not “in the United States” would not conduct business as if they were resident without first meeting the requirements for a license. The requirement that unlicensed foreign-based NVOCCs use licensed OTIs as their agents in the United States is necessary to make sure that the distinction created by Congress would not be thwarted. Consistent with the court’s proscription in *Landstar*, only

OTI principals are regulated thereby. Moreover, the rule as proposed does not substantively change the rule that has long been in effect.

Section 515.4 – License; when not required.

Section 515.4(b) - Branch Offices. The rule eliminates the regulatory burden associated with procuring and maintaining additional financial responsibility to cover an OTI's unincorporated branch offices by deleting the reference to obtaining additional financial responsibility currently set out in § 515.4(b)(ii). A corresponding change is made to § 515.21, deleting the current text of paragraph § 515.21(a)(4). The rule also deletes § 515.4(d), which refers to ocean freight brokers, as it is no longer needed. Comments by OTIs and the associations were uniformly in support of the elimination of the additional \$10,000 bonding requirements for each unincorporated branch office.

The NYNJFFF&BA opposes the provision in § 515.4(b) that an OTI “shall be fully responsible for the acts and omissions of any of its employees and agents that are performed in connection with the conduct of such licensee’s business.” NYNJFFF&BA is concerned that the provision will expose OTIs to all manners of liability for acts of their agents, including gross negligence and personal injury.

The most significant change in this provision from that adopted in 1999, is the substitution of “shall be fully responsible” in place of “shall be held strictly responsible.” The change is intended to clarify that the provision places full responsibility on OTIs for the acts and omissions of their employees and agents for actions that violate the Shipping Act or Commission regulations. The current rule’s reference to strict responsibility is imprecise and its elimination avoids any inference that a statutory or regulatory regime

relating to strict liability applies. The Commission considers the provision as clarified does not open OTIs to liability beyond the scope of the Shipping Act and, accordingly, no change to the rule as proposed is necessary.

Section 515.5 – Forms and fees.

Section 515.5(b) is modified to provide that all license applications and registration forms, including renewal forms, must be filed with the Commission electronically unless a waiver request to file on paper is granted by the Director of the Bureau of Certification and Licensing. Electronic filing anticipates the implementation of on-line filing and processing of all applications and forms. OTIs will also be able to view their on-line applications, reflecting the changes that they make to the application, including license renewal changes, by logging into the Commission's system.

Section 515.5(c)(1) has been added and requires OTIs to pay applicable fees within ten (10) business days of the time of submission of such applications and forms. The Commission has developed the ability to receive on-line payments by credit or debit cards via Pay.gov and the Automated Clearing House system. These developments enable OTIs to pay fees in a timely and convenient manner, consistent within the 10 day window.

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

NCBFAA supports the changes to § 515.5 providing for the electronic filing of applications and the relocation of all fee amounts. It notes that electronic filing of

applications should be no burden to prospective OTIs as virtually all data is already submitted electronically to carriers, banks and government agencies. NYNJFFF&BA also supports the electronic filing provisions and the requirement that fees be paid within 10 days of submission of an application. NYNJFFF&BA also suggested that the OTI be able to check its profile on-line. As indicated above OTIs will be able to check their profile at any time by logging on via the Commission's web site.

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

Section 515.11 – Basic requirements for licensing; eligibility.

Except for the addition of a sentence clarifying the experience required of a foreign-based NVOCC that elects to become licensed, § 515.11(a)(1) remains unchanged inasmuch as revisions put forward in the ANPR have been deleted. Foreign-based NVOCCs seeking to become licensed must acquire the requisite experience with respect to shipments transported in the United States oceanborne foreign commerce, but may acquire that experience while resident in a foreign country with respect to shipments moving in the U.S. trades. The added sentence reflects the standard that has been applied by the Commission since 1999.

While NCBFAA recognizes the Commission's inclusion of the agency's standard that has been applied to foreign-based NVOCC experience over the years, it would like the Commission to explain its rationale for doing so. NCBFAA largely restates its view that the vetting of QIs does not presently determine the QI's "knowledge of or competency with the Shipping Act, the Commission's regulations or the myriad of export control and other regulations that affect the function of any OTI and questions whether the requisite three

years' U.S. experience differs substantively from OTI working experience gained in non-U.S. trades.

As indicated with respect to NCBFAA's comments on the definition of qualifying individual, the Commission considers that the OTI experience acquired by QIs in the U.S. trades provides them with exposure to and working knowledge of U.S. laws, regulations, and practices, including those of the Shipping Act and Commission regulations. The QIs of foreign-based OTIs also gain experience with U.S. laws and regulations as a result of working on shipments in the U.S. trades. In 1999, the Commission made it possible for foreign-based OTIs to seek OTI licenses by promulgating its current rules permitting the necessary U.S. trade experience to be acquired abroad. The Commission will continue to require U.S. trade experience for QIs of foreign-based OTIs that apply for licenses.

The new content in § 515.11(a)(2) makes it clear that the Commission may consider all information relevant to the determination of whether the applicant has the necessary character to render OTI services. Types of information that may be considered include, but are not limited to: violations of any shipping laws or statutes relating to the import, export or transport of merchandise in international trade; operating as an OTI without a license or registration; state and federal felonies and misdemeanors; voluntary and non-voluntary bankruptcies not discharged; outstanding tax liens; court and administrative judgments and proceedings; non-compliance with immigration status requirements; and denial, revocation, or suspension of a Transportation Worker Identification Credential or of a customs broker's license. The types of information with respect to character, now set out in § 515.11(a)(2), reflect the information that the Commission's Bureau of Certification

and Licensing (BCL) has considered and applied during the 15 years since the current regulations went into effect. This section better informs applicants of potential issues that should be addressed in filing their applications so as not to unnecessarily delay processing of their applications.

NYNJFFF&BA expresses its concern that the information that may be considered by the Commission in assessing an applicant's character could lead to the denial of a license in circumstances that have nothing to do with character. As examples, the association points to the possibility of erroneously filed tax liens and questions the relevance of a suspension or revocation of a TWIC card or customs broker license.

As noted, the factors set out in § 515.11(a)(2) are the types of information that have been considered for years in Commission licensing determinations. The scope of information considered by the Commission does not negatively affect an applicant's character assessment unless there arises a serious and relevant concern for licensing as evidenced by the information obtained. The Commission will continue to refer to the types of information listed but, as it has in the past, will not peremptorily commence the process for denying, revoking or suspending a license without first seeking clarification and an opportunity for response from the applicant. In sum, the listing will result in greater transparency, both facilitating applicants' preparation of their applications and the Commission's consideration of them.

Section 515.12 – Application for license.

Section 515.12(c) memorializes a process pursuant to which BCL shall close applications where applicants fail to timely provide information or documents needed for

review. The date for submission of such information will be provided by BCL to the applicant. The Commission will apply § 515.12(c) reasonably and flexibly. Once the date has been established for a response by BCL, the applicant should keep BCL fully informed as to the reasons for any response delays in order to avoid closure of its application. Applicants whose applications are closed may reapply at any time.

NCBFAA comments favorably on the inclusion, in § 515.12(c), of the application closure process that will be followed by the Commission with respect to applicants that do not timely provide information or documents. NCBFAA indicates its favorable experience with the practice of the BCL flexibly extending deadlines for submission of application information and documents.

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

Section 515.14(c) requires licenses to be renewed every three (3) years. New OTI licenses will be issued for an initial three-year period and renewed every three years thereafter. Existing licenses will be phased-in over a three-year period in order to facilitate smooth and timely processing by Commission staff. Moreover, the renewal requirement will be implemented only when the necessary programming of the Commission's computer systems has been completed and tested so that on-line processing can be reliably activated. To this end, the renewal requirements of § 515.14(c) and (d) will become effective, and implementation of the on-line renewal process will commence, December 9, 2016. All other provisions of the final rule adopted in this rulemaking proceeding become effective December 9, 2015.

The Commission will issue a notice on its web site of the schedule by which currently licensed OTIs will have to renew their licenses. It is anticipated that current licensees will be grouped for renewal by ranges of license numbers in order to facilitate smooth processing.

OTIs and the OTI associations that filed comments to the proposed rule object generally to the requirement that licenses be renewed every three years. The comments assert that license renewals are not needed to obtain up-to-date information because the Commission's regulations already require that certain changes in a licensee's organization be submitted to the Commission for prior approval (§ 515.20(a)) and certain other changes in material facts be submitted within 30 days of such changes (§ 515.20(e)). As an alternative, NCBFAA suggests that the Commission vigorously enforce its existing rules by assessing penalties against OTIs that fail to update their information. NYNJFFF&BA suggests that the data the Commission presented in the proposed rule regarding failures of OTIs to update information under the current requirements is insufficient to support the need for a license renewal requirement applicable to all OTIs. NYNJFFF&BA suggests that the Commission issue a one-time request to all OTIs for the essential corporate information that the proposed rule's renewal process seeks on a triennial basis in order to determine the current level of unreported non-compliance. NCBFAA also comments that there is no indication in the Notice of Proposed Rulemaking that a vast majority of OTIs fail to comply with the current regulations.

As described in the proposed rule, BCL has 30 to 40 inquiries concerning the identity of a licensee's QI, officers, owners, or business affiliations at any given time,

notwithstanding current requirements that such information be updated within 30 days of a change. Both BCL and the Commission's Bureau of Enforcement have experienced frequent failures over a two year period to timely report: changes of business address, QI retirements/resignations, failure to notify/increase OTI's surety bond, and operations under new trade names. This data included NVOCCs and Ocean Freight Forwarders (OFFs), large and small.

As indicated in the NOPR, the incidence of noncompliance by OTIs in timely reporting changes material to their license and bond revealed while dealing with the Commission on other matters has ranged between 14 and 24 percent. At the low end, that would translate into over 1,000 OTIs not having complied with the Commission's current updating requirements. Without implementing the renewal requirement, the Commission simply cannot adequately know which OTIs are not complying at any given time, nor adequately meet its statutory obligations to maintain effective oversight of the conduct and financial responsibility of the OTI industry, both in the U.S. and abroad. The need for the renewal process provided for in the rule is a reflection of the Commission's experience since 1999.

The suggestion that the Commission should instead pursue enforcement proceedings against offenders misses the fact that the Commission has worked diligently to bring the OTI industry into compliance without such proceedings and seeks to continue doing so once the renewal process is in place. It is unnecessary to abandon the Commission's current process in favor of one where enforcement proceedings seeking

penalties are commenced each time the Commission discovers a failure to update information.

Neither will the renewal process, as configured, place a great burden on the OTI industry. This is borne out by the Commission's impact analysis required by the Regulatory Flexibility Act. Renewal does not involve OTIs having to re-qualify to continue its license to operate, nor does the process result in the expiration of a license beyond which date an OTI cannot operate.

NCBFAA, North American, J.W. Allen, John S. Connor, New Direx, Pride, C J International, Cargo-Link, Vanguard, Mohawk and Thunderbolt expressed concerns that the renewal process may jeopardize their license where, for example, there are carrier or shipper claims against the OTI causing the Commission to withhold issuance of a renewed license. These parties fear that the OTI license would become ineffective in the interim, and the OTI left unable to operate.

Along the same lines, NYNJFFF&BA objects to reference in § 515.14(d)(3) indicating that information provided by an OTI or another source may be reviewed by the Commission at any time, including at the time of renewal. The association expresses the reasonable concern that any OTI scrutinized by the Commission be given opportunity to respond and refute information that could jeopardize its license.

Even where the renewal process identifies changes in the licensee's information necessitating separate Commission approval, the NOPR makes clear the licensee may continue to operate during such review, § 515.14(d)(2). Indeed, a license may be revoked or suspended only after the Commission gives notice and provides a hearing pursuant to

§ 515.16 (Revocation or suspension of license) and § 515.17 (Hearing procedures governing denial, revocation, suspension of OTI license). Among the reasons for revocation set out in § 515.16 is that the licensee is no longer qualified to render ocean transportation intermediary services. This would include where the licensee was found to no longer possess the character required by the Shipping Act.

The Commission emphasizes that § 515.14(d)(3) creates no new right or power of review of a licensee's character. Such reviews have historically been a function of credible information coming to the attention of the Commission irrespective of any timing relative to license renewal. Section 515.14(d)(3) simply alerts OTIs to that circumstance. In any event, the receipt of information potentially implicating a licensee's character will normally result in Commission staff first contacting the licensee regarding the information.

The OTI and the association commenters suggest that only a simple report, one that is submitted electronically, should be implemented in the event that the Commission goes forward with a requirement that all OTIs update information every three years. NCBFAA suggests a process consistent with the five-year registration renewal requirement included by in the Moving Ahead for Progress in the 21st Century Act, Pub. L. 112-141, 126 Stat. 405 (MAP-21) or with the triennial broker report to CBP. TIA in turn refers to the MAP-21 renewal and to the Federal Motor Carrier Safety Administration's requirement that domestic transportation intermediaries renew their information every two years. TIA points out that the FMCSA biennial renewal can be completed on-line in less than an hour, and adds that the Commission and the FMCSA should work to harmonize their proposals

so as to streamline regulations as between land-based domestic transport intermediaries and OTIs under the Shipping Act.

Responsive to comments by NCBFAA, NYNJFFF&BA and TIA, the Commission again states its intention that the renewal process will be on-line, user friendly and free. The Commission's objective is that licensed OTIs will verify on-line information such as the QI's identification and contact information, changes in business or organization, trade names, tariff publication information, physical address, and electronic contact data for purposes of notification. Only information that is no longer accurate must be updated. The process will result in a renewed license which specifies the date by which the next renewal is to be completed. An OTI license will not simply expire. In short, the process is less complicated than the status reports submitted to CBP by customs brokers. The consequences of late filing likewise are less onerous in that failure to submit the CBP broker report by the end of February of the reporting year results in a license suspension on March 1, by operation of law. If the status report is not filed within 60 days of the suspension notice, the license is revoked.

The renewal process required by MAP-21 appears similar to the renewal process established by this rule. While registration must be renewed on-line every five years, FMCSA's Unified Registration System (URS) requires updates within 30 days of a change in a registrant's legal name, form of business, or address, and transfers of operating authority. Docket No. FMCSA-1997-2349, *Unified Registration System*, 78 FR 52608 (2013). The registration form also requires an entity's principal address, mailing address, phone number, principal contact and email address, among other information specific to

the type of the registrant's operating authority. Also, an update to a registration prompted by, for example, a change in business organization, does not alter the requirement for a registrant to meet the FMCSA's update schedule applicable to the registrant.

UPS expresses a concern that renewed licenses will expire on the date indicated on its license. UPS sees a danger that a license will not be renewed before it expires due to circumstances beyond an OTI's control or, perhaps, beyond the Commission's control, leading to its inability to lawfully accept bookings. In such circumstances, UPS suggests that the Commission's rule provide that the expiration date be automatically extended by ten days.

A failure to renew by the renewal date does not terminate the effectiveness of an OTI's license. Where an OTI has failed to renew, BCL will contact the OTI and remind it of their obligation, urge the OTI to complete the process promptly and offer such assistance as practicable. In the unusual instance where an OTI continually ignored or rebuffed the Commission's efforts to bring it into compliance, (and where such OTI's financial responsibility remains in effect), an enforcement proceeding for suspension or revocation of the OTI license will remain as options for the Commission's consideration. Even in such circumstances, the license remains in effect until revoked or suspended following notice and opportunity for a hearing as provided by the Commission's regulations.

UPS suggests that an update to an OTI's FMC-18 result in the OTI's renewal date being extended to three years from that update. The Commission considers that renewal dates fixed pursuant to § 515.14(d) (1) provides a more stable timeline for OTIs and the Commission. That section provides that a new license bear a renewal date on the same day

and month as the date on which the license was originally issued, with the renewal day and month remaining the same for successive renewals. Also, the renewal date remains the same regardless of the date a renewal form is submitted or the date a renewed license is issued. Extending the date as suggested by UPS would require additional resources to accurately track data entry dates in order to establish a renewal date. It is foreseeable that in some instances multiple replacement licenses would have to be produced where there are multiple updates between renewals. In contrast, the rule will provide OTIs and the Commission with ongoing certainty as to the OTI's renewal date.

NCBFAA comments that the Commission should explain its authority to implement a renewal process as neither the specific authority in MAP-21 for the FMCSA to "renew" their registrations nor CBP's status reporting provide a basis. Section 17 of the Shipping Act, 46 U.S.C. 305, provides broad authority to the Commission to "prescribe regulations to carry out its duties and powers," which encompasses the authority to require OTIs to update information that is essential to the Commission's oversight of OTIs. The triennial license renewal requirement in this rule is an extension of its current rules that require OTIs to inform the Commission of changes in information for prior Commission approval for certain changes (e.g., change in QI) or within 30 days after certain changes have occurred.

Since 1961, the Commission has had the responsibility for licensing independent ocean freight forwarders and, from the outset, included regulations requiring forwarders to update information supplied in its application, for example, 46 CFR § 510.5(c) (1965). Upon passage of OSRA, the Commission implemented its statutory requirements by

extending the prior approval and notification requirements to NVOCC licensees as well as to OFFs. Based upon the Commission's experience that OTIs too often do not update the required information, and the present inability to identify OTIs which should have reported changes under the current rules but have not, the Commission finds it necessary to require OTIs to update that information every three years, using today's technology to enable an on-line renewal process. The shared need of the public and the Commission for current, accurate and reliable information is best served by ensuring the Commission's OTI data base is updated by all licensees every three years to display current licensee information, rather than relying solely on the current requirements.

The Commission is mindful that there are approximately 4,700 OTIs that are currently licensed that have no expiration date. As a result the Commission will advise the public of the timetable and process that will be used to implement renewals for those licensees. That notice will be issued well in advance of the date by which any current licensees will need to renew their licenses. The process will allow current licensees to renew without being unreasonably burdened and should avoid processing delays by the Commission that could occur where too many renewals are submitted within a short time. The total number of current licensed OTIs may, for example, be divided up so that one third of licensees are notified to renew in the first year and one third for each of the following two years, and any renewal dates likewise scheduled on a monthly basis across the course of a given year. A phased schedule is necessary in order to make the workload achievable for Commission staff, without imposing undue or unnecessarily rigid deadlines for the OTI industry.

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

This section streamlines appeal procedures for denial of OTI license applications, and for revocation or suspension of OTI licenses. Currently, such appeals are conducted under the Commission’s Rules of Practice and Procedure, published at 46 CFR Part 502, and provide procedures ill-suited to reducing the burden, expense and delay attendant to such licensing determinations.

Upon being advised by the hearing officer that a hearing request has been made, BCL will deliver to the hearing officer a copy of the notice of intent given to the applicant/licensee along with materials supporting the notice under § 515.15 (license denials) or § 515.16 (license revocations and suspensions). The hearing officer will provide the OTI or applicant with a copy of BCL’s notice of intent and the materials, along with a written notice advising the party of its right to submit its written arguments, affidavits of fact, and documents within 30 days. BCL then would submit its response within 20 days of the OTI’s submission. These records and submissions constitute the entire record for the hearing officer’s decision. The hearing officer’s decision must be issued within 40 days of the record being closed.

Section 515.17(d) provides that, for all revocation, termination or suspension proceedings that seek findings of Shipping Act violations, formal proceedings before an Administrative Law Judge are still required. The Commission’s formal discovery rules are available in such instances.

NCBFAA expresses concern that revision of the hearing process for denials, suspensions and revocations deny a full evidentiary hearing. NYNJFFF&BA, UPS and Vanguard also suggest that the change in hearing process denies OTIs due process. UPS suggests that the new procedure be used only where an OTI does not appear or comply with the Commission's part 502 (Rules of Practice and Procedure).

As the comments indicate, this streamlined procedure will be of significant benefit where an OTI fails to appear, as such proceedings will consume significantly less time than typical show cause proceedings. The new procedure will take approximately 115 days. In contrast, in Docket No. 14-01, *Revocation of Ocean Transportation Intermediary License No. 022025 – Cargologic USA LLC*, the matter was decided by the Commission over the course of approximately 170 days (initiated by Show Cause Order served February 18, 2014, 33 SRR 299, and resolved by its decision revoking Cargologic's license, served August 8, 2014, 33 SRR 666). While revocation proceedings remain infrequent, uncontested proceedings comprise by far the majority of such cases.

The new procedure will also serve to shorten denial, suspension and revocation proceedings where the OTI formally appears through counsel, thereby reducing the burden and expense even as to contested proceedings. At the outset of any proceedings, OTIs will receive a far broader disclosure of BCL's case in chief than that required for proceedings conducted under the procedures in part 502. See 46 CFR § 502.201. Counsel for the OTI will be able to assess the factual basis of BCL's decision, participate fully in the hearing, and emerge readily equipped to seek Commission review in the event of an adverse decision. OTIs are not disadvantaged by the new procedure as it protects OTIs' due process

rights at all stages. Section 515.17(c) provides that OTIs and applicants may seek Commission review of the hearing officer's adverse decision pursuant to 46 CFR § 502.227 (applicable to the filing of exceptions). Such requests may include a request for further hearing under part 502 (Rules of Practice and Procedure), including appointment of an Administrative Law Judge. The Commission also may, on its own motion, require a part 502 hearing to review an adverse decision.

Finally, § 515.17(d) provides that, for all revocation, termination or suspension proceedings that seek assessment of civil penalties for Shipping Act violations, formal proceedings before an Administrative Law Judge are still required. The Commission's formal discovery rules remain available in such instances.

Section 515.19 (g)(1) also provides for the hearing process contained in § 515.17 with respect to terminations or suspensions of the effectiveness of foreign-based NVOCC registrations. The streamlined process similarly accords registered NVOCCs the due process required.

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

Section 515.23 - Claims against an ocean transportation intermediary.

Section 515.23(c) requires financial responsibility providers to file with the Commission notices of each "claim, court action, or court judgment against the financial responsibility and each claim paid (including the amount [thereof]) by the [financial responsibility] provider." Section 515.23(c) provides that such notices be submitted only to the Commission.

NCBFAA, TIA, NYNJFFF&BA, North American, J.W. Allen, Customs Clearance, K&N, John S. Connor, New Direx, W.R. Zanes, Pride, John S. James, C J International, Cargo-Link, Vanguard, Mohawk and Thunderbolt object to the provision requiring financial responsibility providers having to file with the Commission notices of claims and claims paid against a financial responsibility. Although claim information is filed only with the Commission and not published, they assert such information could be damaging to an OTI as claims are often without merit.

NYNJFFF&BA asserts that the additional requirement in § 515.23(c) (3) that reporting of the claimant's name, the court, court case number, the OTI's name and license number may create an impression that such OTIs were irresponsible and cause the Commission to use the information against the OTI. The association suggests that if the Commission is interested in gathering data to better understand the claim experience of financial responsibility, it could request aggregate data without reference to specific claimants and OTIs. NCBFAA and TIA also question the relevance of such information to the fitness of an OTI, and seek assurances it will be kept confidential.

Financial responsibility providers have been required for many years to provide claim information to the Commission. While this requirement has long been a key component in the financial responsibility forms that providers must use in establishing the OTI's financial responsibility under the current regulations, the NOPR brings such requirements forward into its rules. The NOPR also revises the wording of the form's contractual requirements with regard to providing such claim information in order to make

the wording more uniform across all four of the financial responsibility forms received by the Commission.

The Commission seeks this fuller claims information as a function of its oversight of OTI financial responsibility coverage. These changes will improve the detail and accuracy of claims information received, the regularity of its receipt from surety providers, and the timeliness by which the Commission may respond in the event the financial responsibility instrument is cancelled, becomes ineffective or is extinguished upon payment of one or more valid claims.

NYNJFFF&BA comments that it is unfair to require such information from OTIs and not from vessel operating carriers or terminal operators. The Commission does not seek this information from vessel operators or terminal operators because such entities are not required by the Shipping Act to obtain financial responsibility. The Commission collects the information for its internal use only and it will be protected to the extent provided by law.

Roanoke supports the inclusion in § 515.23(c) of requirements for financial responsibility providers to notify the Commission of claims and claim payments. Roanoke comments that it would prefer that § 515.23(c)(2) be modified so that notices could be reported within 45 days rather than reported “promptly” as provided in the rule. The Commission does not see a need to drop the word “promptly” and will retain § 515.23(c)(2) as proposed. However, the Commission considers it reasonable for financial responsibility providers to compile claims and claim payment information on a periodic basis and then promptly submit the information to the Commission, e.g. monthly or more frequently.

Roanoke also suggests that the changes made to the financial responsibility forms that provide that such information be provided “immediately” be changed to refer to “promptly.” In light of the Commission’s decision with respect to § 515.23(c)(2), the Commission will revise the financial responsibility forms to substitute “promptly” for “immediately.” Roanoke also refers to the need in Form FMC-48 (Bond Form) to change the two references to “Insured” to “Principal.” The Commission agrees and will make the substitution.

With respect to Bond Form FMC-48, Roanoke believes that the proviso in the second “Whereas” clause (that a group bond will pay-out claims only to the extent not covered by another surety bond) is unnecessary as it serves no purpose. This same proviso also appears in the Insurance and Guarantee forms. Roanoke asserts that the proviso is appropriately included only in Group Bond Form FMC-69, where it provides that a group bond pays against claims only after other surety bonds, insurance or guaranties have been exhausted. The Commission concurs that the proviso is unnecessary and will delete it from Forms FMC-48, FMC-67 and FMC-68.

Roanoke also proposes that the Commission provide guidance as to the schedule for incorporating the claim reporting changes to the financial responsibility forms and how to quickly make the rule effective in current financial responsibility contracts. Roanoke suggests that the changes be permitted, in the short term, by riders to current bonds. Roanoke also suggests the Commission give OTIs and financial responsibility providers twelve months after the proposed rule becomes effective for new bonds to be fully updated and executed.

Under OSRA, the Commission authorized use of riders so that OTIs and financial responsibility providers could more easily meet the new statutory requirements. This process worked well under OSRA and the Commission agrees that the use of riders here is also appropriate. The Commission also concurs that 12 months would be a reasonable period over which current financial responsibility contracts can be reworked and replaced using the new forms. The Commission will closely monitor this process and work with financial responsibility providers and OTIs following effectiveness of the proposed rule.

Section 515.27 - Proof of compliance – NVOCC.

Section 515.27(a) makes it clear that no common carrier shall “knowingly and willfully” transport cargo for an NVOCC unless the common carrier has determined that the NVOCC has: a license or registration; published a tariff; and provided proof of financial responsibility. Section 515.27(b)(2) sets forth the Commission’s web address as the single-source location that common carriers can consult to verify an NVOCC’s status. The Commission is working to ensure that common carriers can readily make the required verifications at a single, convenient location on the Commission’s website.

The World Shipping Council suggests that the Commission also make a change to § 515.27(d) that would harmonize it with paragraph (b)(1) by using the same reference to “applicable licensing, registration, tariff and financial responsibility requirements” throughout this section. The Commission agrees that these conforming changes improve the section and revises § 515.27(d) to read as follows:

(d) The Commission will publish at its website, *www.fmc.gov*, a list of the locations of all carrier and conference tariffs, and a list of ocean transportation intermediaries

who have met 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.

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

Section 515.31 - General duties.

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

NYNJFFF&BA comments that OTIs are not in a position to ensure that their agents make their corporate records available as those records are not legally the OTI's. The association also indicates that, if the agents resist requests by the OTI, the OTI should not experience the regulatory consequences.

Section 515.31(g) makes OTIs responsible to make available all records relating to ocean transportation intermediary service provided by or for the OTI. The Commission agrees with NYNJFFF&BA that the law of agency and contract govern the OTI's relationship with its agents. Accordingly, the regulation requires OTIs to obligate its agents to provide all records relating to its OTI principal's activities. The Commission's rule anticipates OTIs will be readily able to include provisions in their agency agreements so as to ensure compliance by their agents.

Section 515.31(j) embodies the Commission's decision in Docket No. 06-01, *Worldwide Relocations, Inc., et. al - Possible Violations*, 32 SRR 495, 503 (FMC 2012),

in which the Commission found that persons or entities may hold themselves out to act as an NVOCC “by the establishment and maintenance of tariffs, by advertisement and solicitation, and otherwise.” Section 515.31(j) applies to OFFs, as well as NVOCCs, insofar as they hold out to perform ocean freight forwarding services via advertising and solicitation.

TIA, NCBFAA, NYNJFFF&BA, North American, J.W. Allen, Customs Clearance, K&N, John S. Connor, New Direx, W.R. Zanes, Pride, John S. James, C J International, Cargo-Link, Mohawk, Vanguard, Thunderbolt express their concern that § 515.31(j) can be read to apply to agents that might advertise to perform an OTI service, as agent, for an OTI. TIA indicates that the use of “OTI services” in the rule is confusing because such services are not defined in the proposed rule. As a consequence, these commenters view § 515.31(j) as problematic. The Commission agrees that the section as proposed is imprecise and is revised as follows:

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.

The reference to “OTI services” is deleted and the words “to act as an OTI” are inserted to make it clear that only those advertising or holding out to act as an OTI are subject to the rule.

Subpart E – Freight Forwarding Fees and Compensation

Section 515.41- Forwarder and principal; fees.

The current content of § 515.41(c) with respect to special contracts of ocean freight forwarders is deleted. The Commission has determined it is no longer needed. NCBFAA

supports the elimination of the current content of § 515.41(c) as not relevant in light of the enactment of OSRA and the importance of individually negotiated rates.

Section 515.42- Forwarder and carrier; compensation.

Section 515.42(c) is revised to specifically authorize electronic certifications by forwarders to carriers that forwarding services have been provided. Such electronic certifications (e.g., an automated forwarder database) must identify the shipments for which compensation is made and provide for the forwarder's confirmation that the services for which forwarder compensation is to be paid have been provided. This provision will ensure, for example, that the forwarder will confirm that the carrier's list of shipments is correct, and, if not, the forwarder will advise the carrier of shipments that should be added or deleted. Certifications must be retained for a period of 5 years by the common carrier.

NCBFAA supports the authorization in section 515.42(c) of electronic certifications that forwarder services have been provided. However, it proposes that there is no need for any certification because vessel operating common carriers have largely eliminated forwarder compensation, in that compensation is only paid where forwarders bring substantial cargo to the carrier and provide significant services. J.W. Allen and W.R. Zanes support elimination of certifications.

NYNJFFF&BA also urges that certifications by forwarders and by vessel operators be dropped based on the paucity of compensation being paid by vessel operators. The association also expresses a concern that carriers may create their own systems requiring OFFs to provide verification of carrier lists. No comments were received from vessel operators or their associations on the change to § 515.42(c).

Vanguard suggests the Commission should allow for a one-time blanket certification by the OFF that services have been rendered on all future shipments, or eliminate certifications entirely. Vanguard questions why a vessel operator certification is necessary.

The Commission appreciates that the number of shipments on which forwarder compensation is paid have greatly diminished. However, the reasons for certification remain – to ensure that forwarder compensation is only paid and received for services actually rendered in accordance with vessel operators’ service contracts and tariffs. It would appear that the provision of electronic certification exchanges, verified periodically by the forwarder and the vessel operator, together with the greatly reduced volume of compensation paid will reduce correspondingly the number of certifications required.

Regulatory Flexibility Act - Threshold Analysis

And Chairman’s Certification of No Significant Economic Impact

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

In the NPRM, the Commission advised the public that the proposed rule directly affects all U.S. licensed OTIs, of which there were 4,648. The FMC estimated that approximately 97 percent of these OTIs are small entities. Therefore, the Commission

determined that this proposed rule will affect a substantial number of small entities.

At that time, the Commission determined that the economic impact on entities affected by the proposed rule would not be significant. Most of the proposed changes were found to have either no economic impact or beneficial economic impacts. Concerning the one change with the potential to generate economic disbenefit, i.e., the license renewal requirement, the dollar magnitude of the economic impact was estimated to be less than one-tenth of one percent of average annual revenue for even the smallest of small entities. The Commission invited comment from members of the public who believe the rule will have a significant economic impact on the U.S.-based OTIs.

The NCBFAA comments asserted that the license renewal requirement would have a significant economic impact on a substantial number of small entities. Inasmuch as NCBFAA provided no data regarding the potential economic burden associated with this requirement, their assertion remains unsubstantiated. On the other hand, with respect to the rule's elimination of the \$10,000 bonding requirement for each unincorporated branch office, a number of OTIs and associations stated that the elimination of that requirement would ease their regulatory burden, reduce their cost of operations and make their companies more competitive in the market for OTI services. These commenters offered no data to quantify their assertions.

NCBFAA asserts that the Commission likewise ignores the cost implications of small entities having to respond to follow-up requests or the need for such entities to defend against any action that might challenge the renewal of a license. As outlined, the on-line renewal process will be free, user-friendly and focused upon verifying factual issues

material to the licensee's current status. Only information that is no longer accurate need be updated.

The Commission may revoke a license where an OTI no longer has the experience or character to act as an OTI. OTIs are in control of whether they meet those standards and, correspondingly, in control of whether they have engaged in activities that might lead to a revocation proceeding. The occurrence of such litigation is highly speculative and ultimately in the hands of the OTI. Similarly, the incidence of OTIs needing to respond to follow-up requests by the Commission staff is also speculative as the OTI is expected to provide accurate information in the first instance.

Accordingly, the Chairman of the FMC hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The FMC's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for review under 5 U.S.C. 605(b).

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

List of Subjects in

46 CFR Part 515

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

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

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

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

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

Subpart A – General

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

§ 515.1 Scope.

* * * * *

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

3. Revise § 515.2 to read as follows:

§ 515.2 Definitions.

The terms used in this part are defined as follows:

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

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

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

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

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

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

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country,

except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

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

(ii) Only with respect to those commodities.

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

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

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

(1) Ordering cargo to port;

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

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

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

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

- (6) Preparing or processing consular documents or arranging for their certification;
- (7) Arranging for warehouse storage;
- (8) Arranging for cargo insurance;
- (9) Assisting with clearing shipments in accordance with United States Government export regulations;
- (10) Preparing and/or sending advance notifications of shipments or other documents to banks, shippers, or consignees, as required;
- (11) Handling freight or other monies advanced by shippers, or remitting or advancing freight or other monies or credit in connection with the dispatching of shipments;
- (12) Coordinating the movement of shipments from origin to vessel; and
- (13) Giving expert advice to exporters concerning letters of credit, other documents, licenses or inspections, or on problems germane to the cargoes' dispatch.
 - (i) *From the United States* means oceanborne export commerce from the United States, its territories, or possessions, to foreign countries.
 - (j) *Licensee* is any person licensed by the Federal Maritime Commission as an ocean transportation intermediary.
 - (k) *Non-vessel-operating common carrier services* refers to the provision of transportation by water of cargo between the United States and a foreign country for compensation without operating the vessels by which the transportation is provided, and may include, but are not limited to, the following:

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

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

(3) Entering into affreightment agreements with underlying shippers;

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

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

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

(7) Paying lawful compensation to ocean freight forwarders;

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

(9) Leasing containers;

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

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

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

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

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

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

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

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

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

(o) *Principal* 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.

4. Revise § 515.3 to read as follows:

§ 515.3 License; when required.

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

5. Revise § 515.4 to read as follows:

§ 515.4 License; when not required.

A license is not required in the following circumstances:

(a) *Shippers*. Any person whose primary business is the sale of merchandise may, without a license, dispatch and perform freight forwarding services on behalf of its own

shipments, or on behalf of shipments or consolidated shipments of a parent, subsidiary, affiliate, or associated company. Such person shall not receive compensation from the common carrier for any services rendered in connection with such shipments.

(b) *Agents, employees, or branch offices of a licensed ocean transportation intermediary.* An agent, individual employee, or branch office of a licensed ocean transportation intermediary is not required to be licensed in order to act on behalf of and in the name of such licensee; however, branch offices must be reported to the Commission in Form FMC-18 or pursuant to § 515.20(e). A licensed ocean transportation intermediary shall be fully responsible for the acts and omissions of any of its employees and agents that are performed in connection with the conduct of such licensee's business.

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

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

6. Revise § 515.5 to read as follows:

§ 515.5 Forms and fees.

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

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

(c) *Fees.* (1)(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 515 shall be as follows:

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

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

Subpart B – Eligibility and Procedure for Licensing and Registration

7. Revise the heading for subpart B to read as set forth above.

8. Revise § 515.11 to read as follows:

§ 515.11 Basic requirements for licensing; eligibility.

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

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

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

(2) In addition to information provided by the applicant and its references, the Commission may consider all information relevant to determining whether an applicant has the necessary character to render ocean transportation intermediary services, including but not limited to, information regarding: violations of any shipping laws, or statutes relating to the import, export, or transport of merchandise in international trade; operating as an OTI without a license or registration; state and federal felonies and misdemeanors; voluntary and non-voluntary bankruptcies not discharged; 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.

(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.

9. Revise § 515.12 to read as follows:

§ 515.12 Application for license.

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

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

§ 515.14 Issuance, renewal, and use of license.

* * * * *

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

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

(d) *License renewal process.* (1) The licensee shall submit electronically to the Director of the Bureau of Certification and Licensing (BCL) a completed Form FMC-____ (Application for Renewal of Ocean Transportation Intermediary License) no later than sixty (60) days prior to the renewal date set forth on its license. Upon successful

completion of the renewal process, the Commission shall issue a new license bearing a renewal date three (3) years later on the same day and month on which the license was originally issued. The renewal date will remain the same for subsequent renewals irrespective of the date on which the license renewal is submitted or when the renewed license is issued by the Commission, unless another renewal date is assigned by the Commission.

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

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

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

§ 515.15 Denial of license.

* * * * *

(c) Has made any materially false or misleading statement to the Commission in connection with its application; then, a notice of intent to deny the application shall be sent to the applicant stating the reason(s) why the Commission intends to deny the application.

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

12. Revise § 515.16 to read as follows:

§ 515.16 Revocation or suspension of license.

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

- (1) Violation of any provision of the Act, or any other statute or Commission order or regulation related to carrying on the business of an ocean transportation intermediary;
- (2) Failure to respond to any lawful order or inquiry by the Commission;

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

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

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

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

13. Revise § 515.17 to read as follows:

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

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

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

twenty (20) days from the date the applicant or licensee submitted its materials. BCL's notice and materials supporting its notice, the submission of the applicant or licensee, and the responsive submission of BCL shall constitute the entire record upon which the hearing officer's decision will be based. The hearing officer's decision must be issued within forty (40) days after the closing of the record.

(c) *Review by Commission.* An applicant or licensee may seek review of the hearing officer's decision by filing exceptions pursuant to 46 CFR § 502.227, and within the time provided by 46 CFR § 502.227(a)(1). Upon receipt of the exceptions, the Commission may conduct a hearing under Part 502.

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

§ 515.18 [Redesignated as § 515.20]

14. Redesignate § 515.18 as § 515.20.

§ 515.17 [Redesignated as § 515.18]

15. Redesignate § 515.17 as § 515.18.

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

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

* * * * *

(g) * * *

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

* * * * *

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

§ 515.20 Changes in organization.

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

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

(2) Change in ownership of a sole proprietorship;

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

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

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

(b) *Operation after death of sole proprietor.* In the event that the owner of a licensed sole proprietorship dies, the licensee's executor, administrator, heir(s), or assign(s) may

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

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

(d) *Acquisition of one or more additional licensees.* In the event a licensee acquires one or more additional licensees, for the purpose of merger, consolidation, or control, the acquiring licensee shall advise the Commission of such acquisition, including any change

in ownership, within 30 days after such change occurs by submitting an amended Form FMC-18. No application fee is required when reporting this change.

(e) *Other changes.* Other changes in material fact of a licensee shall be reported within thirty (30) days of such changes, in writing by mail or email (bcl@fmc.gov) to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC. 20573. Material changes include, but are not limited to: changes in business address; any criminal indictment or conviction of a licensee, QI, or officer; any voluntary or involuntary bankruptcy filed by or naming a licensee, QI, or officer; changes of five (5) percent or more of the common equity ownership or voting securities of the OTI; or, the addition or reduction of one or more partners of a licensed partnership, one or more members or managers of a Limited Liability Company, or one or more branch offices. No fee shall be charged for reporting such changes.

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

18. In § 515.21, revise paragraphs (a) (1) through (3), remove paragraph (a)(4), and revise paragraph (b).

The revisions read as follows:

§ 515.21 Financial responsibility requirements.

(a) * * *

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

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

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

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

* * * * *

19. Revise § 515.23 to read as follows:

§ 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 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).

20. Revise § 515.25 to read as follows:

§ 515.25 Filing of proof of financial responsibility.

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

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

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

21. Revise § 515.26 to read as follows:

§ 515.26 Termination of financial responsibility.

No license or registration shall remain in effect unless valid proof of a financial responsibility instrument is maintained on file with the Commission. Upon receipt of notice

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

22. Revise § 515.27 to read as follows:

§ 515.27 Proof of compliance - NVOCC.

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

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

(1) Consulting the Commission's website www.fmc.gov as provided in paragraph (d) below, to verify that the NVOCC 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 section 10(b)(11) of the Act (46 U.S.C. 41104(11)), unless the common carrier knew that such NVOCC was not in compliance with the applicable licensing, registration, tariff, and financial responsibility requirements.

(d) The Commission will publish at its website, *www.fmc.gov*, a list of the locations of all carrier and conference tariffs, and a list of ocean transportation intermediaries (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.

Appendices A – F [Removed]

23. Remove appendices A through F to subpart C.

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

24. Revise § 515.31 to read as follows:

§ 515.31 General duties.

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

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

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

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

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

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

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

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

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

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

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

authorized Commission representative, their agents make available all records and books of account relating to ocean transportation intermediary service provided by or for their principals, and respond promptly to any lawful inquiries by such representative.

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

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

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

§ 515.32 [Amended]

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

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

§ 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:

* * * * *

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

§ 515.32 [Amended]

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

Subpart E – Freight Forwarding Fees and Compensation

28. Amend § 515.41 as follows:

- a. Remove paragraph (c);
- b. Redesignate paragraphs (d) and (e) as paragraphs (c) and (d); and
- c. Revise newly redesignated paragraph (d).

The revision reads as follows:

§ 515.41 Forwarder and principal; fees.

* * * * *

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

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

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

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

§ 515.42 Forwarder and carrier compensation; fees.

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

(b) *Certification required for compensation.* A common carrier may pay compensation to a licensed freight forwarder only pursuant to such common carrier's tariff provisions. When a common carrier's tariff provides for the payment of compensation, such

compensation shall be paid on any shipment forwarded on behalf of others where the forwarder has provided a certification as prescribed in paragraph (c) of this section and the shipper has been disclosed on the bill of lading as provided for in paragraph (a) of this section. The common carrier shall be entitled to rely on such certification unless it knows that the certification is incorrect. The common carrier shall retain such certifications for a period of five (5) years.

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

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

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

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

* * * * *

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

* * * * *

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

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

Form FMC-48

Federal Maritime Commission

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

Whereas, Principal operates as an OTI in the waterborne foreign commerce of the United States in accordance with the Shipping Act of 1984, 46 U.S.C. 40101-41309, and,

if necessary, has a valid tariff published pursuant to 46 CFR part 515 and 520, and pursuant to section 19 of the Shipping Act (46 U.S.C. 40901-40904), files this bond with the Commission;

Whereas, this bond is written to ensure compliance by the Principal with section 19 of the Shipping Act (46 U.S.C. 40901-40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs (46 CFR part 515), this bond shall be available to pay any judgment obtained or any settlement made pursuant to a claim under 46 CFR § 515.23 for damages against the 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)

**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.

**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)

**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

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: _____

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

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

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

RIDER

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

1. The following condition is added to this Bond:

a. An additional condition of this Bond is that \$ _____ (payable in U.S. Dollars or Renminbi Yuan at the option of the Surety) shall be available to any NVOCC enumerated in an Appendix to this Rider to pay any fines and penalties for activities in the

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

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

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

Washington, DC. 20573, accompanied by proof of transmission of notice to MOC. Such termination shall become effective thirty (30) days after receipt of said notice and proof of transmission by the Federal Maritime Commission. The Surety shall not be liable for fines or penalties imposed on the Principal after the expiration of the 30-day period but such termination shall not affect the liability of the Principal and Surety for any fine or penalty imposed prior to the date when said termination becomes effective.

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

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

[Principal],

By: _____

[Surety],

By: _____

Privacy Act and Paperwork Reduction Act Notice

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

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

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

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

By the Commission.

Karen V. Gregory
Secretary