

## SUBCHAPTER B—REGULATIONS AFFECTING OCEAN SHIPPING IN FOREIGN COMMERCE

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

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

#### Subpart A—General

##### § 515.1 Scope.

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

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

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

### §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;

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(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

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ocean freight forwarder's usual charges for such services.

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

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

(t) *Shipper* means:

- (1) A cargo owner;
- (2) The person for whose account the ocean transportation is provided;
- (3) The person to whom delivery is to be made;
- (4) A shippers' association; or
- (5) A non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract.

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

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

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

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

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

[80 FR 68730, Nov. 5, 2015]

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#### §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.

[80 FR 68731, Nov. 5, 2015]

#### §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

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services shall be assessed in conformance with the carrier's published tariffs.

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

[80 FR 68731, Nov. 5, 2015]

### § 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 Web site *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 Web site 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 NW., Washington, DC 20573, and must demonstrate that electronic filing imposes an undue burden on the applicant or registrant. The director, or a designee, will render a decision on the request and notify the requestor within two (2) business days of receiving the request. If a waiver request is granted, the approval will provide instructions for submitting a paper application or registration. If the waiver request is denied, a statement

of reasons for the denial will be provided.

(c) *Fees.* (1)(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 \$1,962.

(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 \$1,548.

[80 FR 68732, Nov. 5, 2015, as amended at 81 FR 59144, Aug. 29, 2016; 83 FR 50294, Oct. 5, 2018]

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

#### § 515.11 Basic requirements for licensing; eligibility.

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

(1) It possesses the necessary experience, that is, its qualifying individual has a minimum of three (3) years' experience in ocean transportation intermediary activities in the United States, and the necessary character to render ocean transportation intermediary services. A foreign NVOCC seeking to be licensed under this part must demonstrate that its qualifying

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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

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LLC as expressly set forth in the LLC operating agreement.

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

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

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

[80 FR 68732, Nov. 5, 2015]

### §515.12 Application for license.

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

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applicant is a corporation or partnership, the names of the officers or partners thereof may be published. For an LLC, the names of the managers, members or officers, as applicable, may be published.

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

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

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

(c) *Failure to provide necessary information and documents.* In the event an applicant fails to provide documents or information necessary to complete processing of its application, notice will be sent to the applicant identifying the necessary information and documents and establishing a date for submission by the applicant. Failure of the applicant to submit the identified materials by the established date will result in the closing of its application without further processing. In the event an application is closed as a result of the applicant's failure to provide information or documents necessary to complete processing, the filing fee will not be returned. Persons who have had their applications closed under this section may reapply at any time by submitting a new application with the required filing fee.

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

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

[80 FR 68733, Nov. 5, 2015]

### § 515.13 Investigation of applicants.

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

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

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

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

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

### § 515.14 Issuance, renewal, and use of license.

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

(b) *To whom issued.* The Commission will issue a license only in the name of the applicant, whether the applicant is a sole proprietorship, a partnership, 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

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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.

[64 FR 11171, Mar. 8, 1999, as amended at 80 FR 68733, Nov. 5, 2015]

## §515.15 Denial of license.

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

- (a) Does not possess the necessary experience or character to render intermediary services;
- (b) Has failed to respond to any lawful inquiry of the Commission; or
- (c) Has made any materially false or misleading statement to the Commis-

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

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

## §515.16 Revocation or suspension of license.

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

- (1) Violation of any provision of the Act, or any other statute or Commission order or regulation related to carrying on the business of an ocean transportation intermediary;
- (2) Failure to respond to any lawful order or inquiry by the Commission;
- (3) Making a materially false or misleading statement to the Commission in connection with an application for a license or an amendment to an existing license;



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

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

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

[80 FR 68734, Nov. 5, 2015]

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

(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).

[Revised and redesignated at 80 FR 68734, Nov. 5, 2015. Redesignated at 81 FR 4593, Jan. 27, 2016]

### § 515.18 Application after revocation or denial.

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

[81 FR 4593, Jan. 27, 2016]

### § 515.19 Registration of foreign-based unlicensed NVOCC.

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

(b) A registration form which appears, upon submission, to be substantially incomplete may be rejected. If

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rejected, a notice, together with the reasons therefore, shall be sent to the foreign-based unlicensed NVOCC. Persons who have had a registration rejected may submit a new registration at any time.

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

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

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

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

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

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

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

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an authorized Commission representative;

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

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

(v) Failure to timely renew a registration;

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

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

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

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

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

[78 FR 42887, July 18, 2013, as amended at 80 FR 68734, Nov. 5, 2015]

### § 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

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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, consoli-

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

[80 FR 68734, Nov. 5, 2015]

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

#### § 515.21 Financial responsibility requirements.

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

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

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(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).

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

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

Defense, or the General Services Administration.

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

### §515.22 Proof of financial responsibility.

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

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

(b) Insurance, by filing with the Commission evidence of insurance on Form FMC-67. The insurance must provide coverage for damages, reparations or penalties arising from any transportation-related activities under the Act of the insured ocean transportation intermediary. This evidence of financial responsibility shall be accompanied by: in the case of a financial rating, the Insurer's financial rating on the rating organization's letterhead or designated form; in the case of insurance provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's; and in the case of insurance provided by surplus lines insurers, documentation verifying inclusion on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners. The Insurer must certify that it has sufficient and acceptable assets located in the United States to cover all damages arising from the transportation-related activities of the insured ocean transportation intermediary as specified under the Act. The insurance must be placed with:

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

(2) Underwriters at Lloyd's; or

(3) Surplus lines insurers named on a current "white list" issued by the Non-

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Admitted Insurers' Information Office of the National Association of Insurance Commissioners; or

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

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

(2) Underwriters at Lloyd's; or

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

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

(1) Each group or association of ocean transportation intermediaries shall notify the Commission of its intention to participate in such a program and furnish documentation as will demonstrate its authenticity and

authority to represent its members, such as articles of incorporation, by-laws, etc.;

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

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

(4) Each group or association of ocean transportation intermediaries shall be responsible for ensuring that each member's financial responsibility coverage allows for claims to be made in the United States against the Surety, Insurer or Guarantor for any judgment for damages against the ocean transportation intermediary arising from its transportation-related activities under the Act, or order for reparations issued pursuant to section 11 of the Act (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed against the ocean transportation intermediary pursuant to section 13 of the Act (46 U.S.C. 41107-41109). Each group or association of ocean transportation intermediaries shall be responsible for requiring each member ocean transportation intermediary to provide it with

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valid proof of financial responsibility annually;

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

(i) Allow claims to be made in the United States directly against the group or association's Surety, Insurer or Guarantor for damages against each covered member ocean transportation intermediary arising from each covered member ocean transportation intermediary's transportation-related activities under the Act, or order for reparations issued pursuant to section 11 of the Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed against each covered member ocean transportation intermediary pursuant to section 13 of the Act (46 U.S.C. 41107–41109); and

(ii) Be for an amount up to the amount determined in accordance with § 515.21(b), taking into account a member's individual financial responsibility coverage already in place. In the event of a claim against a group bond, the bond must be replenished up to the original amount of coverage within 30 days of payment of the claim; and

(iii) be in excess of a member's individual financial responsibility coverage already in place; and

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

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

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

missioners and issued by such firms on Form FMC–67 and Form FMC–68, respectively.

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

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

#### § 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-

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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](mailto: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).

[80 FR 68735, Nov. 5, 2015]

### § 515.24 Agent for service of process.

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

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

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

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

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

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

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

## § 515.25 Filing of proof of financial responsibility.

(a) *Filing of proof of financial responsibility*—(1) *Licenses*. Upon notification by the Commission that an applicant has been 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 appli-

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cant has furnished proof of financial responsibility pursuant to § 515.21, has submitted a Form FMC-1, and its published tariff becomes effective pursuant to 46 CFR part 520.

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

[80 FR 68736, Nov. 5, 2015]

## § 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.

[80 FR 68736, Nov. 5, 2015]

## § 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:



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

[80 FR 68736, Nov. 5, 2015]

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

#### § 515.31 General duties.

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

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

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

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

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

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

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

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

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

(f) *Errors and omissions of the principal or shipper.* An OTI who has reason to

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

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

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

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

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

[80 FR 68736, Nov. 5, 2015]

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### § 515.32 Freight forwarder duties.

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

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

(2) Including the following notice on such items:

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

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

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

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

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shall appear on each invoice to a principal:

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

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

### § 515.33 Records required to be kept.

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

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

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

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

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

forwarder and a principal, or modification or cancellation thereof.

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

### § 515.34 Regulated Persons Index.

The Regulated Persons Index is a database containing the names, addresses, phone/fax numbers and financial responsibility information, where applicable, of Commission-regulated entities. The database is available at no charge on the Commission's Web site at [www.fmc.gov](http://www.fmc.gov).

[64 FR 11171, Mar. 8, 1999, as amended at 67 FR 39860, June 11, 2002; 70 FR 10330, Mar. 3, 2005; 80 FR 68737, Nov. 5, 2015; 81 FR 59144, Aug. 29, 2016]

## Subpart E—Freight Forwarding Fees and Compensation

### § 515.41 Forwarder and principal; fees.

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

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

(c) *Reduced forwarding fees.* No licensed freight forwarder shall render, or offer to render, any freight forwarding service free of charge or at a reduced fee in consideration of receiving compensation from a common carrier or for any other reason. *Exception:* A licensed freight forwarder may perform freight forwarding services for recognized relief agencies or charitable organizations, which are designated as such in the tariff of the common carrier, free of charge or at reduced fees.

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

## §515.42

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

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

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

### §515.42 Forwarder and carrier compensation; fees.

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

(b) *Certification required for compensation.* A common carrier may pay compensation to a licensed freight forwarder only pursuant to such common carrier's tariff provisions. When a common carrier's tariff provides for the payment of compensation, such compensation shall be paid on any shipment forwarded on behalf of others where the forwarder has provided a certification as prescribed in paragraph (c) of this section and the shipper has been disclosed on the bill of lading as provided for in paragraph (a) of this section. The common carrier shall be entitled to rely on such certification unless it knows that the certification is incorrect. The common carrier shall retain such certifications for a period of five (5) years.

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

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

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

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

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

(d) *Compensation pursuant to tariff provisions.* No licensed freight forwarder, or employee thereof, shall accept compensation from a common carrier which is different from that specifically provided for in the carrier's effective tariff(s). No conference or group of common carriers shall deny in the export commerce of the United States compensation to an ocean freight forwarder or limit that compensation, as provided for by section 19(e)(4) of the Act (46 U.S.C. 40904(d)) and 46 CFR part 535.

(e) *Electronic data interchange.* A licensed freight forwarder may own, operate, or otherwise maintain or supervise an electronic data interchange-based computer system in its forwarding business; however, the forwarder must directly perform value-

added services as described in paragraph (c) of this section in order to be entitled to carrier compensation.

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

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

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

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

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

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

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

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

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

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

APPENDIX A TO PART 515—OCEAN TRANSPORTATION INTERMEDIARY (OTI) BOND FORM [FORM 48]

*Form FMC-48*  
Federal Maritime Commission

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

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

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

Now, Therefore, The condition of this obligation is that the penalty amount of this bond shall be available to pay any judgment or any settlement made pursuant to a claim

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**46 CFR Ch. IV (10–1–19 Edition)**

under 46 CFR 515.23 for damages against the Principal arising from the Principal’s transportation-related activities or order for reparations issued pursuant to section 11 of the Shipping Act (46 U.S.C. 41301–41302, 41305–41307(a)), or any penalty assessed against the Principal pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109).

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

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

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

The Surety consents to be sued directly in respect of any bona fide claim owed by Principal for damages, reparations or penalties arising from the transportation-related activities under the Shipping Act of Principal in the event that such legal liability has not been discharged by the Principal or Surety after a claimant has obtained a final judgment (after appeal, if any) against the Principal from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR

515.23, the Federal Maritime Commission, or where all parties and claimants otherwise mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Principal and/or Surety pursuant to 46 CFR 515.23, whereby, upon payment of the agreed sum, the Surety is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant; provided, however, that Surety’s total obligation hereunder shall not exceed the amount set forth in 46 CFR 515.21, as applicable.

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

Signed and sealed this \_\_\_ day of \_\_\_, \_\_\_.  
(Please type name of signer under each signature.)

\_\_\_\_\_  
Individual Principal or Partner

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Individual Principal or Partner

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Individual Principal or Partner

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Trade Name, If Any

\_\_\_\_\_  
Corporate Principal

\_\_\_\_\_  
State of Incorporation

\_\_\_\_\_  
Trade Name, If Any

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
By

\_\_\_\_\_  
Title

\_\_\_\_\_  
(Affix Corporate Seal)

\_\_\_\_\_  
Corporate Surety

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
By

\_\_\_\_\_  
Title

\_\_\_\_\_  
(Affix Corporate Seal)

\_\_\_\_\_  
[80 FR 68738, Nov. 5, 2015]

**Federal Maritime Commission**

**Pt. 515, App. B**

APPENDIX B TO PART 515—OCEAN  
TRANSPORTATION INTERMEDIARY  
(OTI) INSURANCE FORM [FORM 67]

*Form FMC-67*  
Federal Maritime Commission  
Ocean Transportation Intermediary (OTI) In-  
surance  
Form Furnished as Evidence of Financial Re-  
sponsibility  
Under 46 U.S.C. 40901-40904

This is to certify, that the (Name of Insur-  
ance Company), (hereinafter "Insurer") of  
(Home Office Address of Company) has issued  
to (OTI or Group or Association of OTIs [in-  
dicate whether NVOCC(s) or Freight For-  
warder(s)]) (hereinafter "Insured") of (Ad-  
dress 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 Commis-  
sion, which provide compensation for dam-  
ages, reparations or penalties arising from  
the transportation-related activities of In-  
sured, 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 Mari-  
time Commission, or is or may become a  
group or association of OTIs, and desires to  
establish financial responsibility in accord-  
ance with section 19 of the Shipping Act (46  
U.S.C. 40901-40904), files with the Commission  
this Insurance Form as evidence of its finan-  
cial responsibility and evidence of a finan-  
cial rating for the Insurer of Class V or high-  
er under the Financial Size Categories of  
A.M. Best & Company or equivalent from an  
acceptable international rating organization  
on such organization's letterhead or des-  
ignated form, or, in the case of insurance  
provided by Underwriters at Lloyd's, docu-  
mentation verifying membership in Lloyd's,  
or, in the case of surplus lines insurers, docu-  
mentation verifying inclusion on a current  
"white list" issued by the Non-Admitted In-  
surers' 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 Mari-  
time Commission relating to evidence of finan-  
cial responsibility for OTIs, this Insur-  
ance 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 In-  
sured's transportation-related activities  
under the Shipping Act, or order for repara-  
tions 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 Ship-  
ping 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 per-  
sons 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 repara-  
tion 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 as-  
sessed against the Insured pursuant to sec-  
tion 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 In-  
sured for damages, reparations or penalties  
arising from the transportation-related ac-  
tivities 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 judg-  
ment (after appeal, if any) against the In-  
sured 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, irrev-  
ocably and unconditionally discharged from  
all further liability to such claimant; pro-  
vided, however, that Insurer's total obliga-  
tion 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 fi-  
nancial responsibility or lack thereof, or the  
solvency or bankruptcy, of Insured. The in-  
surance 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 under-  
taking becomes effective. The effective date  
of this undertaking shall be \_\_\_ day of \_\_\_,  
\_\_\_, and shall continue in effect until dis-  
charged or terminated as herein provided.  
The Insured or the Insurer may at any time

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

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

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

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

Signed and sealed this \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Signature of Official signing on behalf of Insurer

\_\_\_\_\_  
Type Name and Title of signer

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

[80 FR 68738, Nov. 5, 2015]

APPENDIX C TO PART 515—OCEAN  
TRANSPORTATION INTERMEDIARY  
(OTI) GUARANTY FORM [FORM 68]

*Form FMC-68*

Federal Maritime Commission

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

1. Whereas \_\_\_\_ (Name of Applicant [indicate whether NVOCC or Freight Forwarder]) (hereinafter "Applicant") is or may become an Ocean Transportation Intermediary ("OTI") subject to the Shipping Act of 1984 (46 U.S.C. 40101–41309) and the rules and regulations of the Federal Maritime Commission (FMC), or is or may become a group or association of OTIs, and desires to establish its financial responsibility in accordance with section 19 of the Shipping Act (46 U.S.C. 41107–41109), then, provided that the FMC shall have accepted, as sufficient for that

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

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

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

4. The undersigned Guarantor hereby consents to be sued directly in respect of any bona fide claim owed by Applicant for damages, reparations or penalties arising from Applicant's transportation-related activities under the Shipping Act, in the event that such legal liability has not been discharged by the Applicant after any such claimant has obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction and has complied with the procedures for collecting on such a judgment pursuant to 46 CFR 515.23, the FMC, or where all parties and claimants otherwise mutually



Federal Maritime Commission

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consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant and/or Guarantor pursuant to 46 CFR 515.23, whereby, upon payment of the agreed sum, the Guarantor is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant. In the case of a guaranty covering the liability of a group or association of OTIs, Guarantor's obligation extends only to such damages, reparations or penalties described herein as are not covered by another insurance policy, guaranty or surety bond held by the OTI(s) against which a claim or final judgment has been brought.

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

6. The Guarantor's liability under this Guaranty shall attach only in respect of such activities giving rise to a cause of action against the Applicant, in respect of any of its transportation-related activities under the Shipping Act, occurring after the Guaranty has become effective, and before the expiration date of this Guaranty, which shall be the date thirty (30) days after the date of receipt of mail or email (bcl@fmc.gov) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, that either Applicant or the Guarantor has elected to terminate this Guaranty. The Guarantor and/or Applicant specifically agree to file such written notice of cancellation.

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

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

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

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

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

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

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

\_\_\_\_\_  
(Place and Date of Execution)

\_\_\_\_\_  
(Type Name of Guarantor)

\_\_\_\_\_  
(Type Address of Guarantor)

By \_\_\_\_\_

\_\_\_\_\_  
(Signature and Title)

[80 FR 68738, Nov. 5, 2015]

APPENDIX D TO PART 515—OCEAN TRANSPORTATION INTERMEDIARY (OTI) GROUP BOND FORM [FMC-69]

Form FMC-69  
Federal Maritime Commission

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

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

Whereas, (Principal) \_\_\_ operates as a group or association of OTIs in the waterborne foreign commerce of the United States

and pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40901–40904), files this bond with the Federal Maritime Commission;

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

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

This group bond shall inure to the benefit of any and all persons who have obtained a judgment or made a settlement pursuant to a claim under 46 CFR 515.23 for damages against any or all of the OTIs identified in Appendix A not covered by said OTIs' insurance policy(ies), guaranty(ies) or surety bond(s) arising from said OTIs' transportation-related activities under the Shipping Act, or order for reparation issued pursuant to section 11 of the Shipping Act, and to the benefit of the Federal Maritime Commission for any penalty assessed against said OTIs pursuant to section 13 of the Shipping Act (46 U.S.C. 41107–41109). However, the bond shall not apply to shipments of used household

goods and personal effects for the account of the Department of Defense or the account of federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration.

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

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

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

The Principal or financial responsibility provider will promptly notify the underwriting Surety in writing and the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, by mail or email (*bcl@fmc.gov*), of any

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additions, deletions or changes to the OTIs enumerated in Appendix A. In the event of additions to Appendix A, coverage will be effective upon receipt of such notice, in writing, by the Commission at its office in Washington, DC. In the event of deletions to Appendix A, termination of coverage for such OTI(s) shall become effective 30 days after receipt of written notice by the Commission. Neither the Principal nor the Surety shall be liable for any transportation-related activities of the OTI(s) deleted from Appendix A that occur after the expiration of the 30-day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activities of said OTI(s) occurring prior to the date when said termination becomes effective.

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

Signed and sealed this \_\_\_ day of \_\_\_, (Please type name of signer under each signature).

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Trade Name, if Any

Corporate Principal

Place of Incorporation

Trade Name, if Any

Business Address (Affix Corporate Seal)

By

Title

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

Agent's Address

Corporate Surety

Business Address (Affix Corporate Seal)

By

Title

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

APPENDIX E TO PART 515—OPTIONAL RIDER FOR ADDITIONAL NVOCC FINANCIAL RESPONSIBILITY (OPTIONAL RIDER TO FORM FMC-48) [FORM 48A]

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

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

RIDER

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

1. The following condition is added to this Bond:

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

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

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

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

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

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

[Principal],  
By:

\_\_\_\_\_  
[Surety],  
By:

[80 FR 68738, Nov. 5, 2015]

APPENDIX F TO PART 515—OPTIONAL RIDER FOR ADDITIONAL NVOCC FINANCIAL RESPONSIBILITY FOR GROUP BONDS [OPTIONAL RIDER TO FORM FMC-69]

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

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

RIDER

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

1. The following condition is added to this Bond:

a. An additional condition of this Bond is that \$ \_\_\_ (payable in U.S. Dollars or Renminbi Yuan at the option of the Surety) shall be available to any NVOCC enumerated in an Appendix to this Rider to pay any fines and penalties for activities in the U.S.-China trades imposed by the Ministry of Communications of the People's Republic of China ("MOC") or its authorized competent

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

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

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

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

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

[Principal],  
By:

\_\_\_\_\_  
[Surety],  
By:

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## § 520.2

### 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](mailto:secretary@fmc.gov)

[80 FR 68738, Nov. 5, 2015]

## PART 520—CARRIER AUTOMATED TARIFFS

Sec.

- 520.1 Scope and purpose.
- 520.2 Definitions.
- 520.3 Publication responsibilities.
- 520.4 Tariff contents.
- 520.5 Standard tariff terminology.
- 520.6 Retrieval of information.
- 520.7 Tariff limitations.
- 520.8 Effective dates.
- 520.9 Access to tariffs.
- 520.10 Integrity of tariffs.
- 520.11 Non-vessel-operating common carriers.
- 520.12 Time/Volume rates.
- 520.13 Exemptions and exceptions.
- 520.14 Special permission.
- 520.91 OMB control number assigned pursuant to the Paperwork Reduction Act.

### APPENDIX A TO PART 520—STANDARD TERMINOLOGY AND CODES

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. 305, 40101–40102, 40501–40503, 40701–40706, 41101–41109.

SOURCE: 64 FR 11225, Mar. 8, 1999, unless otherwise noted.

#### § 520.1 Scope and purpose.

(a) *Scope.* The regulations of this part govern the publication of tariffs in

automated systems by common carriers and conferences in the waterborne foreign commerce of the United States. They cover the transportation of property by such carriers, including through transportation with inland carriers. They implement the tariff publication requirements of section 8 of the Shipping Act of 1984 (“the Act”) (46 U.S.C. 40501–40503), as modified by the Ocean Shipping Reform Act of 1998 and section 424 of Public Law 105–258.

(b) *Purpose.* The requirements of this part are intended to permit:

(1) Shippers and other members of the public to obtain reliable and useful information concerning the rates and charges that will be assessed by common carriers and conferences for their transportation services;

(2) Carriers and conferences to meet their publication requirements pursuant to section 8 of the Act (46 U.S.C. 40501–40503);

(3) The Commission to ensure that carrier tariff publications are accurate and accessible and to protect the public from violations by carriers of section 10 of the Act (46 U.S.C. 41101–41106); and

(4) The Commission to review and monitor the activities of controlled carriers pursuant to section 9 of the Act (46 U.S.C. 40701–40706).

[64 FR 11225, Mar. 8, 1999, as amended at 74 FR 50721, Oct. 1, 2009]

#### § 520.2 Definitions.

The following definitions shall apply to this part:

*Act* means the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998.

*Amendment* means any change, alteration, correction or modification of an existing tariff.

*Assessorial charge* means the amount that is added to the basic ocean freight rate.

*BTA* means the Commission's Bureau of Trade Analysis or its successor bureau.

*Bulk cargo* means cargo that is loaded and carried in bulk without mark or count in a loose unpackaged form, having homogeneous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is,

therefore, subject to the requirements of this part.

*Co-loading* means the combining of cargo by two or more NVOCCs for tendering to an ocean common carrier under the name of one or more of the NVOCCs.

*Combination rate* means a rate for a shipment moving under intermodal transportation which is computed by the addition of a TRI, and an inland rate applicable from/to inland points not covered by the TRI.

*Commission* means the Federal Maritime Commission.

*Commodity description* means a comprehensive description of a commodity listed in a tariff, including a brief definition of the commodity.

*Commodity description number* means a number that may be used to identify a commodity description.

*Commodity index* means an index of the commodity descriptions contained in a tariff.

*Commodity rate* means a rate for shipping to or from specific locations a commodity or commodities specifically named or described in the tariff in which the rate or rates are published.

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

(1) Assumes responsibility for the transportation from 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, or 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 the carriage of those commodities.

*Conference* means an agreement between or among two or more ocean common carriers which provides for the fixing of and adherence to uniform tariff rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members, but the term does not include joint service, consortium, pooling, sailing, or transshipment agreements.

*Consignee* means the recipient of cargo from a shipper; the person to whom a transported commodity is to be delivered.

*Container* means a demountable and reusable freight-carrying unit designed to be transported by different modes of transportation and having construction, fittings, and fastenings able to withstand, without permanent distortion or additional exterior packaging or containment, the normal stresses that apply on continuous all-water and intermodal transportation. The term includes dry cargo, ventilated, insulated, refrigerated, flat rack, vehicle rack, liquid tank, and open-top containers without chassis, but does not include crates, boxes or pallets.

*Controlled carrier* means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government; ownership or control by a government shall be deemed to exist with respect to any common carrier if:

(1) A majority portion of the interest in the common carrier is owned or controlled in any manner by that government, by an agency thereof, or by any public or private person controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the common carrier.

*Effective date* means the date upon which a published tariff or tariff element is scheduled to go into effect. Where there are multiple publications to a tariff element on the same day, the last element published with the same effective date is the one effective for that day.

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*Expiration date* means the last day after which the entire tariff or tariff element is no longer in effect.

*Foreign commerce* means that commerce under the jurisdiction of the Act.

*Forest products* means forest products including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper and paper board in rolls or in pallet or skid-sized sheets, liquid or granular by-products derived from pulping and papermaking, and engineered wood products.

*Harmonized Code* means the coding provisions of the Harmonized System.

*Harmonized System* means the Harmonized Tariff Schedule of the United States (“U.S. HTS”), based on the international Harmonized System, administered by the U.S. Customs Service for the U.S. International Trade Commission, and Schedule B, administered by the U.S. Census Bureau.

*Inland point* means any city and associated state/province, country, U.S. ZIP code, or U.S. ZIP code range, which lies beyond port terminal areas. (A city may share the name of a port: the immediate ship-side and terminal area is the port, but the rest of the city is considered an inland point.)

*Inland rate* means a rate specified from/to an ocean port to/from an inland point, for specified modes of overland transportation.

*Inland rate table* means a structured matrix of geographic inland locations (points, postal codes/postal code ranges, etc.) on one axis and transportation modes (truck, rail, etc.) on the other axis, with the inland rates specified at the matrix row and column intersections.

*Intermodal transportation* means continuous through transportation involving more than one mode of service (e.g., ship, rail, motor, air), for pickup and/or delivery at a point beyond the area of the port at which the vessel calls. The term “intermodal transportation” can apply to “through transportation (at through rates)” or trans-

portation on through routes using combination rates.

*Joint rates* means rates or charges established by two or more common carriers for ocean transportation over the combined routes of such common carriers.

*Local rates* means rates or charges for transportation over the route of a single common carrier (or any one common carrier participating in a conference tariff), the application of which is not contingent upon a prior or subsequent movement.

*Location group* means a logical collection of geographic points, ports, states/provinces, countries, or combinations thereof, which is primarily used to identify, by location group name, a group that may represent tariff origin and/or destination scope and TRI origin and/or destination.

*Loyalty contract* means a contract with an ocean common carrier or agreement by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or agreement and the contract provides for a deferred rebate arrangement.

*Motor vehicle* means a wheeled vehicle whose primary purpose is ordinarily the non-commercial transportation of passengers, including an automobile, pickup truck, minivan, or sport utility vehicle.

*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.

*Ocean transportation intermediary* means an ocean freight forwarder or a non-vessel-operating common carrier. For purposes of this part,

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

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

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(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.

*Open rate* means a rate on a specified commodity or commodities over which a conference relinquishes or suspends its ratemaking authority in whole or in part, thereby permitting each individual ocean common carrier member of the conference to fix its own rate on such commodity or commodities.

*Organization name* means an entity’s name on file with the Commission and for which the Commission assigns an organization number.

*Organization record* means information regarding an entity, including its name, address, and organization type.

*Origin scope* means a location group defining the geographic range of cargo origins covered by a tariff.

*Person* includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees and personal representatives.

*Point of rest* means that area on the terminal facility which is assigned for the receipt of inbound cargo from the ship and from which inbound cargo may be delivered to the consignee, and that area which is assigned for the receipt of outbound cargo from shippers for vessel loading.

*Port* means a place at which a common carrier originates or terminates (by transshipment or otherwise) its actual ocean carriage of cargo or passengers as to any particular transportation movement.

*Project rates* means rates applicable to the transportation of materials and equipment to be employed in the construction or development of a named facility used for a major governmental, charitable, manufacturing, resource exploitation and public utility or public service purpose, including disaster relief projects.

*Proportional rates* means rates or charges assessed by a common carrier for transportation services, the appli-

cation of which is conditioned upon a prior or subsequent movement.

*Publication date* means the date a tariff or tariff element is published in a carrier’s or conference’s tariff.

*Publisher* means an organization authorized to publish or amend tariff information.

*Rate* means a price stated in a tariff for providing a specified level of transportation service for a stated cargo quantity, from origin to destination, on and after a stated effective date or within a defined time frame.

*Retrieval* means the process by which a person accesses a tariff via dial-up telecommunications or a network link and interacts with the carrier’s or publisher’s system on a transaction-by-transaction basis to retrieve published tariff matter.

*Rules* means the stated terms and conditions set by the tariff owner which govern the application of tariff rates, charges and other matters.

*Scope* means the location group(s) (geographic groupings(s)) listing the ports or ranges of ports to and from which the tariff’s rates apply.

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

*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 shipper’s association; or
- (5) An NVOCC that accepts responsibility for payment of all charges applicable under the tariff or service contract.

*Shippers’ association* means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

*Special permission* means permission, authorized by the Commission, for certain tariff publications that do not conform with applicable regulations, usually involving effectiveness on less than statutory notice.

*Tariff* means a publication containing the actual rates, charges, classifications, rules, regulations and practices of a common carrier or a conference of



common carriers. The term “practices” refers to those usages, customs or modes of operation which in any way affect, determine or change the transportation rates, charges or services provided by a common carrier or conference and, in the case of conferences, must be restricted to activities authorized by the basic conference agreement.

*Tariff number* means a unique 3-digit number assigned by the publisher to distinguish it from other tariffs. Tariffs may be identified by the 6-digit organization number plus the user-assigned tariff number (e.g., 999999-001) or a Standard Carrier Alpha Code (“SCAC”) plus the user-assigned tariff number.

*Tariff rate item (“TRI”)* means a single freight rate, in effect on and after a specific date or for a specific time period, for the transportation of a stated cargo quantity, which may move from origin to destination under a single specified set of transportation conditions, such as container size or temperature.

*TRI number* means a number that consists of the numeric commodity code, if any, and a unique numeric suffix used to differentiate TRIs within the same commodity description. TRI numbers are not required in systems that do not use numeric commodity coding.

*Through rate* means the single amount charged by a common carrier in connection with through transportation.

*Through transportation* means continuous transportation between points of origin and destination, either or both of which lie beyond port terminal areas, for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port.

*Thru date* means the date after which an amendment to a tariff element is designated by the publisher to be unavailable for use and the previously effective tariff element automatically goes back into effect.

*Time/volume rate* means a rate published in a tariff which is conditioned upon receipt of a specified aggregate

volume of cargo or aggregate freight revenue over a specified period of time.

*Trade name* means a name used for conducting business, but which is not necessarily its legal name. This is also known as a “d/b/a” (doing business as) name.

*Transshipment* means the physical transfer of cargo from a vessel of one carrier to a vessel of another in the course of all-water or through transportation, where at least one of the exchanging carriers is an ocean common carrier subject to the Commission’s jurisdiction.

[64 FR 11225, Mar. 8, 1999, as amended at 64 FR 23022, Apr. 29, 1999; 65 FR 26512, May 8, 2000; 67 FR 39860, June 11, 2002]

### § 520.3 Publication responsibilities.

(a) *General.* Unless otherwise exempted by § 520.13, all common carriers and conferences shall keep open for public inspection, in automated tariff systems, tariffs showing all rates, charges, classifications, rules, and practices between all points or ports on their own routes and on any through transportation route that has been established.

(b) *Conferences.* Conferences shall publish, in their automated tariff systems, rates offered pursuant to independent action by their members and may publish any open rates offered by their members. Alternatively, open rates may be published in individual tariffs of conference members.

(c) *Agents.* Common carriers or conferences may use agents to meet their publication requirements under this part.

(d) *Notification.* Each common carrier and conference shall notify BTA, prior to the commencement of common carrier service pursuant to a published tariff, of its organization name, organization number, home office address, name and telephone number of firm’s representative, the location of its tariffs, and the publisher, if any, used to maintain its tariffs, by electronically submitting Form FMC-1 via the Commission’s website at [www.fmc.gov](http://www.fmc.gov). Any changes to the above information shall be immediately transmitted to BTA. The Commission will provide a unique organization number to new entities operating as common carriers or conferences in the U.S. foreign commerce.

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(e) *Location of tariffs.* The Commission will publish on its website, *www.fmc.gov*, a list of the locations of all carrier and conference tariffs. The Commission will update this list on a periodic basis.

[64 FR 11225, Mar. 8, 1999, as amended at 67 FR 39860, June 11, 2002]

### § 520.4 Tariff contents.

(a) *General.* Tariffs published pursuant to this part shall:

(1) State the places between which cargo will be carried;

(2) List each classification of cargo in use;

(3) State the level of ocean transportation intermediary, as defined by section 3(17)(A) of the Act (46 U.S.C. 40102(18)), compensation, if any, to be paid by a carrier or conference;

(4) State separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules or regulations that in any way change, affect, or determine any part of the aggregate of the rates or charges;

(5) Include sample copies of any bill of lading, contract of affreightment or other document evidencing the transportation agreement;

(6) Include copies of any loyalty contract, omitting the shipper's name;

(7) Contain an organization record, tariff record, and tariff rules; and

(8) For commodity tariffs, also contain commodity descriptions and tariff rate items.

(b) *Organization record.* Common carriers' and conferences' organization records shall include:

(1) Organization name;

(2) Organization number assigned by the Commission;

(3) Agreement number, where applicable;

(4) Organization type (e.g., ocean common carrier (VOCC), conference (CONF), non-vessel-operating common carrier (NVOCC) or agent);

(5) Home office address and telephone number of firm's representative;

(6) Names and organization numbers of all affiliates to conferences or agreements, including trade names; and

(7) The publisher, if any, used to maintain the organization's tariffs.

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(c) *Tariff record.* The tariff record for each tariff shall include:

(1) Organization number and name, including any trade name;

(2) Tariff number;

(3) Tariff title;

(4) Tariff type (e.g., commodity, rules, equipment interchange, or bill of lading);

(5) Contact person and address;

(6) Default measurement and currency units;

(7) Origination and destination scope; and

(8) A statement certifying that all information contained in the tariff is true and accurate and no unlawful alterations will be permitted.

(d) *Tariff rules.* Carriers and conferences shall publish in their tariffs any rule that affects the application of the tariff.

(e) *Commodity descriptions.* (1) For each separate commodity in a tariff, a distinct numeric code may be used. Tariff publishers are not required to use any numeric code to identify commodities, but should they choose to do so, they are encouraged to use the U.S. Harmonized Tariff Schedule ("U.S. HTS") for both the commodity coding and associated terminology (definitions).

(2) If a tariff publisher uses a numeric code to identify commodities, the following commodity types shall be preceded by their associated 2-digit prefixes, with the remaining digits at the publisher's option:

(i) Mixed commodities—"99";

(ii) Projects—"98"; and

(iii) non-commodities, e.g., "cargo, n.o.s.," "general cargo," or "freight-all kinds"—"00".

(3) *Commodity index.* (i) Each commodity description created under this section shall have at least one similar index entry which will logically represent the commodity within the alphabetical index. Publishers are encouraged, however, to create multiple entries in the index for articles with equally valid common use names, such as, "Sodium Chloride," "Salt, common," etc.

(ii) If a commodity description includes two or more commodities, each included commodity shall be shown in the index.

(iii) Items, such as “mixed commodities,” “projects” or “project rates,” “n.o.s.” descriptions, and “FAK,” shall be included in the commodity index.

(f) *Tariff rate items.* A tariff rate item (“TRI”) is the single freight rate in effect for the transportation of cargo under a specified set of transportation conditions. TRIs must contain the following:

- (1) Brief commodity description;
- (2) TRI number (optional);
- (3) Publication date;
- (4) Effective date;
- (5) Origin and destination locations or location groups;
- (6) Rate and rate basis; and
- (7) Service code.

(g) *Location groups.* In the primary tariff, or in a governing tariff, a publisher may define and create groups of cities, states, provinces and countries (e.g., location groups) or groups of ports (e.g., port groups), which may be used in the construction of TRIs and other tariff objects, in lieu of specifying particular place names in each tariff item, or creating multiple tariff items which are identical in all ways except for place names.

(h) *Inland rate tables.* If a carrier or conference desires to provide intermodal transportation to or from named points/postal regions at combination rates, it shall clearly and accurately set forth the applicable charges in an “Inland Rate Tables” section. An inland rate table may be constructed to provide an inland distance which is applied to a per mile rate to calculate the inland rate.

(i) *Shipper requests.* Conference tariffs shall contain clear and complete instructions, in accordance with the agreement’s provisions, stating where and by what method shippers may file requests and complaints and how they may engage in consultation pursuant to section 5(b)(6) of the Act (46 U.S.C. 40303(b)(6)), together with a sample rate request form or a description of the information necessary for processing the request or complaint.

(j) *Inland divisions.* Common carriers are not required to state separately or otherwise reveal in tariffs the inland division of a through rate.

[64 FR 11225, Mar. 8, 1999, as amended at 74 FR 50722, Oct. 1, 2009]

### § 520.5 Standard tariff terminology.

(a) *Approved codes.* The Standard Terminology Appendix contains codes for rate bases, container sizes, service, etc., and units for weight, measure and distance. They are intended to provide a standard terminology baseline for tariffs to facilitate retriever efficiency. Tariff publishers may use additional codes, if they are clearly defined in their tariffs.

(b) *Geographic names.* Tariffs should employ locations (points) that are published in the National Imagery and Mapping Agency (“NIMA”) gazetteer or the Geographic Names Information System (“GNIS”) developed by the U.S. Geological Survey. Ports published or approved for publication in the World Port Index (Pub. No. 150) should also be used in tariffs. Tariff publishers may use geographic names that are currently in use and have not yet been included in these publications.

### § 520.6 Retrieval of information.

(a) *General.* Tariffs systems shall present retrievers with the ability to:

(1) Search for commonly understood tariff objects (e.g., commodities, origins, destinations, etc.) without restricting such search to a specific tariff;

(2) Search a tariff for a rate on the basis of origin, destination and commodity;

(3) Employ a tariff selection option; or

(4) Select an object group (e.g., rules, locations, groups, etc.) within a particular tariff.

(b) *Search capability.* Tariffs shall provide the capability to search for tariff matter by non-case sensitive text search. Text search matches for commodity descriptions should result in a commodity or commodity index list.

(c) *Commodities and TRIs.* Retriever selection of a specific commodity from a commodity index list shall display the commodity description and provide an option for searching for a rate (e.g., on the basis of origin/destination) or a TRI list, if multiple TRIs are in effect for the commodity.

(d) *Object groups.* Retriever selection of a specific object group shall result in a list of the objects within the group or present a text search mechanism to

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allow location of an object within the group. For example, selection of the rules object group would present a list of the rules or a text search mechanism for locating specific terms or phrases within the rules.

(e) *Basic ocean freight.* The minimum rate display for tariffs shall consist of the basic ocean freight rate and a list of all assessorial charges that apply for the retriever-entered shipment parameters. If other rules or charges may be applicable to a shipment under certain circumstances, the tariff shall so indicate.

(f) *Displays.* All displays of individual tariff matter shall include the publication date, effective date, amendment code (as contained in appendix A of this part) and object name or number. When applicable, a thru date or expiration date shall also be displayed. Use of “S” as an amendment code shall be accompanied by a Commission issued special use number.

### § 520.7 Tariff limitations.

(a) *General.* Tariffs published pursuant to this part shall:

- (1) Be clear and definite;
- (2) Use English as the primary textual language;
- (3) Not contain cross-references to any other rate tariffs, except:
  - (i) A tariff of general applicability maintained by that same carrier or conference,
  - (ii) The individual tariffs of members of a non-conference agreement to enter into time/volume rates may cross-reference the tariffs of other members for purposes of said time/volume rates, and
  - (iii) Multiple common tariffs of a conference agreement to enter into time/volume rates may cross-reference their own multiple conference tariffs for purposes of said time/volume rates; and
- (4) Not duplicate or conflict with any other tariff publication.

(b) *Notice of cancellation.* Carriers and conferences shall inform BTA, in writing, whenever a tariff is canceled and the effective date of that cancellation.

(c) *Applicable rates.* The rates, charges, and rules applicable to any given shipment shall be those in effect on the date the cargo is received by the common carrier or its agent including

originating carriers in the case of rates for through transportation.

(d) *Minimum quantity rates.* When two or more TRIs are stated for the same commodity over the same route and under similar conditions, and the application is dependent upon the quantity of the commodity shipped, the total freight charges assessed against the shipment may not exceed the total charges computed for a larger quantity, if the TRI specifying a required minimum quantity (either weight or measurement; per container or in containers) will be applicable to the contents of the container(s), and if the minimum set forth is met or exceeded. At the shipper's option, a quantity less than the minimum level may be freighted at the lower TRI if the weight or measurement declared for rating purposes is increased to the minimum level.

(e) *Green salted hides.* The shipping weight for green salted hides shall be either a scale weight or a scale weight minus a deduction, which amount and method of computation are specified in the commodity description. The shipper must furnish the carrier a weight certificate or dock receipt from an inland common carrier for each shipment at or before the time the shipment is tendered for ocean transportation.

(f) *Conference situations.* (1) New members of a conference shall cancel any independent tariffs applicable to the trades served by the conference, within ninety (90) days of membership in the conference. Individual conference members may publish their own separate open rate tariffs. Admission to the conference may be effective on the date notice is published in the conference tariff.

(2) New conference agreements have ninety (90) days within which to publish a new tariff.

(g) *Overcharge claims.* (1) No tariff may limit the filing of overcharge claims with a common carrier to a period of less than three (3) years from the accrual of the cause of action.

(2) The acceptance of any overcharge claim may not be conditioned upon the payment of a fee or charge.

(3) No tariff may require that overcharge claims based on alleged errors in weight, measurement or description

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of cargo be filed before the cargo has left the custody of the common carrier.

(h) *Returned cargo.* When a carrier or conference offers the return shipment of refused, damaged or rejected shipments, or exhibits at trade fairs, shows or expositions, to port of origin at the TRI assessed on the original movement, and such TRI is lower than the prevailing TRI:

(1) The return shipment must occur within one (1) year;

(2) The return movement must be made over the line of the same common carrier performing the original movement, except in the use of a conference tariff, where return may be made by any member line when the original shipment was carried under the conference tariff; and

(3) A copy of the original bill of lading showing the rate assessed must be presented to the return common carrier.

[64 FR 11225, Mar. 8, 1999, as amended at 67 FR 39860, June 11, 2002]

### § 520.8 Effective dates.

(a) *General.* (1) No new or initial rate, charge, or change in an existing rate, that results in an increased cost to a shipper may become effective earlier than thirty (30) calendar days after publication.

(2) An amendment which deletes a specific commodity and applicable rate from a tariff, thereby resulting in a higher "cargo n.o.s." or similar general cargo rate, is a rate increase requiring a 30-day notice period.

(3) Rates for the transportation of cargo for the U.S. Department of Defense may be effective upon publication.

(4) Changes in rates, charges, rules, regulations or other tariff provisions resulting in a decrease in cost to a shipper may become effective upon publication.

(b) *Amendments.* The following amendments may take effect upon publication:

(1) Those resulting in no change in cost to a shipper;

(2) The canceling of a tariff due to cessation of all service by the carrier between the ports or points covered by the tariff;

(3) The addition of a port or point to a previously existing origin or destination grouping; or

(4) Changes in charges for terminal services, canal tolls, additional charges, or other provisions not under the control of the common carriers or conferences, which merely acts as a collection agent for such charges and the agency making such changes does so without notifying the tariff owner.

(c) *Controlled carriers.* Published rates by or for controlled carriers shall be governed by the procedures set forth in part 565 of this chapter.

### § 520.9 Access to tariffs.

(a) *Methods to access.* Carriers and conferences shall provide access to their published tariffs, via a personal computer ("PC"), by:

(1) Dial-up connection via public switched telephone networks ("PSTN"); or

(2) The Internet (Web) by:

(i) Web browser; or

(ii) Telnet session.

(b) *Dial-up connection via PSTN.* (1) This connection option requires that tariffs provide:

(i) A minimum of a 14.4Kbps modem capable of receiving incoming calls;

(ii) Smart terminal capability for VT-100 terminal or terminal emulation access; and

(iii) Telephone line quality for data transmission.

(2) The modem may be included in a collection (bank) of modems as long as all modems in the bank meet the minimum speed.

(c) *Internet connection.* (1) This connection option requires that systems provide:

(i) A universal resource locator ("URL") Internet address (e.g., <http://www.tariffsrus.com> or <http://1.2.3.4>); and/or

(ii) A URL Internet address (e.g., <telnet://tariffsrus> or <telnet://1.2.3.4>), for Telnet session access over the Internet.

(2) Carriers or conferences shall ensure that their Internet service providers provide static Internet addresses.

(d) *Commission access.* Commission telecommunications access to systems must include connectivity via a dial-up connection over PSTNs or a connection

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over the Internet. Connectivity will be provided at the expense of the publishers. Any recurring connection fees, hardware rental fees, usage fees or any other charges associated with the availability of the system are the responsibility of the publisher. The Commission shall only be responsible for the long-haul charges for PSTN calls to a tariff initiated by the FMC.

(e) *Limitations.* (1) Tariffs must be made available to any person without time, quantity, or other limitations.

(2) Carriers are not required to provide remote terminals for access under this section.

(3) Carriers and conferences may assess a reasonable fee for access to their tariff publication systems and such fees shall not be discriminatory.

(4) Tariff publication systems shall provide user instructions for access to tariff information.

(f) *Federal agencies.* Carriers and conferences may not assess any access charges against the Commission or any other Federal agency.

(g) *User identifications.* Carriers and conferences shall provide the Commission with the documentation it requires and the number of user identifications and passwords it requests to facilitate the Commission's access to their systems, if they require such identifications and passwords.

### § 520.10 Integrity of tariffs.

(a) *Historical data.* Carriers and conferences shall maintain the data that appeared in their tariff publication systems for a period of five (5) years from the date such information is superseded, canceled or withdrawn, and shall provide on-line access to such data for two (2) years. After two (2) years, such data may be retained on-line or in other electronic form, and shall be made available to any person or the Commission upon request in a reasonable period of time. Carriers and conferences may charge a reasonable fee for the provision of historical data, not to exceed the fees for obtaining such data on-line. No fee shall apply to federal agencies.

(b) *Access date capability.* Each tariff shall provide the capability for a retriever to enter an access date, *i.e.*, a specific date for the retrieval of tariff

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data, so that only data in effect on that date would be directly retrievable. This capability would also align any rate adjustments and assessorial charges that were effective on the access date for rate calculations and designation of applicable surcharges. The access date shall also apply to the alignment of tariff objects for any governing tariffs.

(c) *Periodic review.* The Commission will periodically review published tariff systems and will prohibit the use of any system that fails to meet the requirements of this part.

(d) *Access to systems.* Carriers and conferences shall provide the Commission reasonable access to their automated systems and records in order to conduct reviews.

### § 520.11 Non-vessel-operating common carriers.

(a) *Financial responsibility.* An ocean transportation intermediary that operates as a non-vessel-operating common carrier shall state in its tariff publication:

(1) That it has furnished the Commission proof of its financial responsibility in the manner and amount required by part 515 of this chapter;

(2) The manner of its financial responsibility;

(3) Whether it is relying on coverage provided by a group or association to which it is a member;

(4) The name and address of the surety company, insurance company or guarantor issuing the bond, insurance policy, or guaranty;

(5) The number of the bond, insurance policy or guaranty; and

(6) Where applicable, the name and address of the group or association providing coverage.

(b) *Agent for service.* Every NVOCC not in the United States shall state the name and address of the person in the United States designated under part 515 of this chapter as its legal agent for service of process, including subpoenas. The NVOCC shall further state that in any instance in which the designated legal agent cannot be served because of death, disability or unavailability, the Commission's Secretary will be deemed to be its legal agent for service of process.

(c) *Co-Loading.* (1) NVOCCs shall address the following situations in their tariffs:

(i) If an NVOCC does not tender cargo for co-loading, this shall be noted in its tariff.

(ii) If two or more NVOCCs enter into an agreement which establishes a carrier-to-carrier relationship for the co-loading of cargo, then the existence of such agreement shall be noted in the tariff.

(iii) If two NVOCCs enter into a co-loading arrangement which results in a shipper-to-carrier relationship, the tendering NVOCC shall describe its co-loading practices and specify its responsibility to pay any charges for the transportation of the cargo. A shipper-to-carrier relationship shall be presumed to exist where the receiving NVOCC issues a bill of lading to the tendering NVOCC for carriage of the co-loaded cargo.

(2) *Documentation requirements.* An NVOCC which tenders cargo to another NVOCC for co-loading, whether under a shipper-to-carrier or carrier-to-carrier relationship, shall annotate each applicable bill of lading with the identity of any other NVOCC to which the shipment has been tendered for co-loading. Such annotation shall be shown on the face of the bill of lading in a clear and legible manner.

(3) *Co-loading rates.* No NVOCC may offer special co-loading rates for the exclusive use of other NVOCCs. If cargo is accepted by an NVOCC from another NVOCC which tenders that cargo in the capacity of a shipper, it must be rated and carried under tariff provisions which are available to all shippers.

#### § 520.12 Time/Volume rates.

(a) *General.* Common carriers or conferences may publish in their tariffs rates which are conditioned upon the receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time.

(b) *Publication requirements.* (1) All rates, charges, classifications rules and practices concerning time/volume rates must be set forth in the carrier's or conference's tariff.

(2) The tariff shall identify:

(i) The shipment records that will be maintained to support the rate; and

(ii) The method to be used by shippers giving notice of their intention to use a time/volume rate prior to tendering any shipments under the time/volume arrangement.

(c) *Accepted rates.* Once a time/volume rate is accepted by one shipper, it shall remain in effect for the time specified, without amendment. If no shipper gives notice within 30 days of publication, the time/volume rate may be canceled.

(d) *Records.* Shipper notices and shipment records supporting a time/volume rate shall be maintained by the offering carrier or conference for at least 5 years after a shipper's use of a time/volume rate has ended.

(e) *Liquidated damages.* Time/volume rates may not impose or attempt to impose liquidated damages on any shipper that moves cargo under the rate. Carriers and agreements shall rerate cargo moved at the applicable tariff rate, if a shipper fails to meet the requirements of the time/volume offer.

#### § 520.13 Exemptions and exceptions.

(a) *General.* Exemptions from the requirements of this part are governed by section 16 of the Act (46 U.S.C. 40103) and Rule 67 of the Commission's Rules of Practice and Procedure, §502.67 of this chapter.

(b) *Services.* The following services are exempt from the requirements of this part:

(1) *Equipment interchange agreements.* Equipment-interchange agreements between common carriers subject to this part and inland carriers, where such agreements are not referred to in the carriers' tariffs and do not affect the tariff rates, charges or practices of the carriers.

(2) *Controlled carriers in foreign commerce.* A controlled common carrier shall be exempt from the provisions of this part exclusively applicable to controlled carriers when:

(i) The vessels of the controlling state are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

(ii) The controlled carrier operates in a trade served exclusively by controlled carriers.

(3) *Terminal barge operators in Pacific Slope states.* Transportation provided by

terminal barge operators in Pacific Slope states barging containers and containerized cargo by barge between points in the United States are exempt from the tariff publication requirements of Act and the rules of this part, where:

(i) The cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States;

(ii) The transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading; and

(iii) Such terminal operator is a Pacific Slope state, municipality, or other public body or agency subject to the jurisdiction of the Commission, and the only one furnishing the particular circumscribed barge service in question as of January 2, 1975.

(c) *Cargo types.* The following cargo types are not subject to the requirements of this part:

(1) *Bulk cargo, forest products, etc.* This part does not apply to bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper and paper waste. Carriers or conferences which voluntarily publish tariff provisions covering otherwise exempt transportation thereby subject themselves to the requirements of this part, including the requirement to adhere to the tariff provisions.

(2) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries.

(3) *Used military household goods.* Transportation of used military household goods and personal effects by ocean transportation intermediaries.

(4) *Department of Defense cargo.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions negotiated and approved by the Military Transportation Management Command ("MTMC") and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, shall be filed in paper format with the Commission as soon as it becomes available.

(5) *Used household goods—General Services Administration.* Transportation of used household goods and personal effects by ocean transportation intermediaries shipped for federal civilian executive agencies under the International Household Goods Program administered by the General Services Administration.

(d) *Services involving foreign countries.* The following transportation services involving foreign countries are not subject to the requirements of this part:

(1) *Between foreign countries.* This part does not apply to transportation of cargo between foreign countries, including that which is transshipped from one ocean common carrier to another (or between vessels of the same common carrier) at a U.S. port or transferred between an ocean common carrier and another transportation mode at a U.S. port for overland carriage through the United States, where the ocean common carrier accepts custody of the cargo in a foreign country and issues a through bill of lading covering its transportation to a foreign point of destination.

(2) *Between Canada and U.S.* The following services are exempt from the filing requirements of the Act and the rules of this part:

(i) *Prince Rupert and Alaska.* (A) *Vehicles.* Transportation by vessels operated by the State of Alaska between Prince Rupert, Canada and ports in southeastern Alaska, if all the following conditions are met:

(1) Carriage of property is limited to vehicles;

(2) Tolls levied for vehicles are based solely on space utilized rather than the weight or contents of the vehicle and are the same whether the vehicle is loaded or empty;

(3) The vessel operator does not move the vehicles on or off the ship; and

(4) The common carrier does not participate in any joint rate establishing through routes or in any other type of agreement with any other common carrier.

(B) *Passengers.* Transportation of passengers, commercial buses carrying passengers, personal vehicles and personal effects by vessels operated by the State of Alaska between Seattle, Washington and Prince Rupert, Canada,



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only if such vehicles and personal effects are the accompanying personal property of the passengers and are not transported for the purpose of sale.

(ii) *British Columbia and Puget Sound Ports; rail cars*—(A) *Through rates.* Transportation by water of cargo moving in rail cars between British Columbia, Canada and United States ports on Puget Sound, and between British Columbia, Canada and ports or points in Alaska, only if the cargo does not originate in or is not destined to foreign countries other than Canada, but only if:

(1) The through rates are filed with the Surface Transportation Board and/or the Canadian Transport Commission; and

(2) Certified copies of the rate divisions and of all agreements, arrangements or concurrences, entered into in connection with the transportation of such cargo, are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

(B) *Bulk; port-to-port.* Transportation by water of cargo moving in bulk without mark or count in rail cars on a local port-to-port rate basis between ports in British Columbia, Canada and United States ports on Puget Sound, only if the rates charged for any particular bulk type commodity on any one sailing are identical for all shippers, except that:

(1) This exemption shall not apply to cargo originating in or destined to foreign countries other than Canada; and

(2) The carrier will remain subject to all other provisions of the Act.

(iii) *Incan Superior, Ltd.* Transportation by Incan Superior, Ltd. of cargo moving in railroad cars between Thunder Bay, Ontario, and Superior, Wisconsin, only if the cargo does not originate in or is not destined to foreign countries other than Canada, and if:

(A) The through rates are filed with the Surface Transportation Board and/or the Canadian Transport Commission; and

(B) Certified copies of the rate divisions and all agreements, arrangements or concurrences entered into in connection with the transportation of such cargo are filed with the Commission within 30 days of the effectiveness

of such rate divisions, agreements, arrangements or concurrences.

(e) NVOCC Negotiated Rate Arrangements. An NVOCC that satisfies the requirements of part 532 of this chapter is exempt from the requirement in this part that it include rates in a tariff open to public inspection in an automated tariff system.

[64 FR 11225, Mar. 8, 1999, as amended at 74 FR 50722, Oct. 1, 2009; 76 FR 11360, Mar. 2, 2011; 78 FR 42888, July 18, 2013]

### § 520.14 Special permission.

(a) *General.* Section 8(d) of the Act (46 U.S.C. 40501(e)) authorizes the Commission, in its discretion and for good cause shown, to permit increases or decreases in rates, or the issuance of new or initial rates, on less than the statutory notice. Section 9(c) of the Act (46 U.S.C. 40703, 40704(a)) authorizes the Commission to permit a controlled carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part.

(b) *Clerical errors.* Typographical and/or clerical errors constitute good cause for the exercise of special permission authority but every application based thereon must plainly specify the error and present clear evidence of its existence, together with a full statement of the attending circumstances, and shall be submitted with reasonable promptness after publishing the defective tariff material.

(c) *Application.* (1) Applications for special permission to establish rate increases or decreases on less than statutory notice or for waiver of the provisions of this part, shall be made by the common carrier, conference or agent for publishing. Every such application must be submitted to the Bureau of Trade Analysis and be accompanied by a filing fee of \$313.

(2) Applications for special permission shall be made only by letter, except that in emergency situations, application may be made by telephone or facsimile if the communication is promptly followed by a letter and the filing fee.

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(3) Applications for special permission shall contain the following information:

(i) Organization name, number and trade name of the conference or carrier;

(ii) Tariff number and title; and

(iii) The rate, commodity, or rules related to the application, and the special circumstances which the applicant believes constitute good cause to depart from the requirements of this part or to warrant a tariff change upon less than the statutory notice period.

(d) *Implementation.* The authority granted by the Commission shall be used in its entirety, including the prompt publishing of the material for which permission was requested. Applicants shall use the special case number assigned by the Commission with the symbol "S".

[64 FR 11225, Mar. 8, 1999, as amended at 67 FR 39860, June 11, 2002; 70 FR 10330, Mar. 3, 2005; 74 FR 50722, Oct. 1, 2009; 81 FR 59144, Aug. 29, 2016; 83 FR 50294, Oct. 5, 2018]

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

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with the Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072-0064.

APPENDIX A TO PART 520—STANDARD TERMINOLOGY AND CODES

I—PUBLISHING/AMENDMENT TYPE CODES

Code	Definition
A .....	Increase.
C .....	Change resulting in neither increase nor decrease in rate or charges.
E .....	Expiration (also use "A" if the deletion results in the application of a higher "cargo, n.o.s." or similar rate).
I .....	New or initial matter.
K .....	Rate or change filed by a controlled common carrier member of a conference under independent action.
M .....	Transportation of U.S. Department of Defense cargo by American-flag common carriers.
P .....	Addition of a port or point.
R .....	Reduction.

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I—PUBLISHING/AMENDMENT TYPE CODES—  
Continued

Code	Definition
S .....	Special Case matter filed pursuant to Special Permission, Special Docket or other Commission direction, including filing of tariff data after suspension, such as for controlled carriers. Requires "Special Case Number."
T .....	Terminal Rates, charges or provisions or canal tolls over which the carrier has no control.
W .....	Withdrawal of an erroneous publication on the same publication date.
X .....	Exemption for controlled carrier data in trades served exclusively by controlled carriers or by controlled carriers of states receiving most-favored-nation treatment.

II—UNIT CODES

A. Weight Units:	
Kilograms .....	KGS
1000 Kgs (Metric Ton) .....	KT
Pounds .....	LBS
Long Ton (2240 LBS) .....	LT
Short Ton (2000 LBS) .....	ST
B. Volume Units:	
Cubic meter .....	CBM
Cubic feet .....	CFT
C. Length Units:	
Centimeters .....	CM
Feet .....	FT
Inches .....	IN
Meters .....	M
D. Measure Board Feet:	
Thousand Board Feet .....	MBF
E. Distance Units:	
Kilometers .....	KM
Miles .....	MI
F. Rate Basis:	
Ad Valorem .....	AV
Each .....	EA
Lump Sum .....	LS
Measure .....	M
Thousand Board Feet .....	MBF
Per Container .....	PC
Weight .....	W
Weight/Measure .....	WM
G. Container Size Codes:	
Not Applicable .....	N/A
Less Than Load .....	LTL
10 FT Any Height .....	10X
20 FT 8'6" .....	20
20 FT 9'0" High Cube .....	20A
20 FT 9'6" High Cube .....	20B
20 FT 8'0" .....	20S
20 FT Any Height .....	20X
24 FT 8'6" .....	24
24 FT 9'0" High Cube .....	24A
24 FT 9'6" High Cube .....	24B
24 FT 8'0" .....	24S
24 FT Any Height .....	24X
35 FT 8'6" .....	35
35 FT 9'0" High Cube .....	35A
35 FT 9'6" High Cube .....	35B
35 FT 8'0" .....	35S
35 FT Any Height .....	35X
40 FT 8'6" .....	40
40 FT 9'0" High Cube .....	40A
40 FT 9'6" High Cube .....	40B
40 FT 8'0" .....	40S
40 FT Any Height .....	40X
42 FT 8'6" .....	42
42 FT 9'0" High Cube .....	42A

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II—UNIT CODES—Continued

42 FT 9'6" High Cube .....	42B
42 FT 8'0" .....	42S
42 FT Any Height .....	42X
43 FT 8'6" .....	43
43 FT 9'0" High Cube .....	43A
43 FT 9'6" High Cube .....	43B
43 FT 8'0" .....	43S
43 FT Any Height .....	43X
45 FT 8'6" .....	45
45 FT 9'0" High Cube .....	45A
45 FT 9'6" High Cube .....	45B
45 FT 8'0" .....	45S
45 FT Any Height .....	45X
48 FT 8'6" .....	48
48 FT 9'0" High Cube .....	48A
48 FT 9'6" High Cube .....	48B
48 FT 8'0" .....	48S
48 FT Any Height .....	48X
53 FT 8'6" .....	53
53 FT 9'0" High Cube .....	53A
53 FT 9'6" High Cube .....	53B
53 FT 8'0" .....	53S
53 FT Any Height .....	53X
H. Container Type Codes:	
Not Applicable .....	N/A
Atmosphere Control .....	AC
Collapsible Flatrack .....	CF
Drop Frame .....	DF
Flat Bed .....	FB
Flat Rack .....	FR
Garment Container .....	GC
Half-Height .....	HH
Hardtop .....	HT
Insulated .....	IN
Open Top .....	OT
Dry .....	PC
Platform .....	PL
Reefer .....	RE
Tank .....	TC
Top Loader .....	TL
Trailer .....	TR
Vehicle Racks .....	VR
I. Container Temperature Codes:	
Not Appl/Operating .....	N/A
Artificial Atmo Ctrl .....	AC
Chilled .....	CLD
Frozen .....	FRZ
Heated .....	HTD
Refrigerated .....	RE
Ventilated .....	VEN
J. Packaging Codes:	
Bag .....	BAG
Bale .....	BAL
Bar .....	BAR
Barrel .....	BBL
Bundle .....	BDL
Beam .....	BEM
Bing Chest .....	BIC
Bin .....	BIN
Bulk .....	BLK
Bobbin .....	BOB
Box .....	BOX
Barge .....	BRG
Basket/Hamper .....	BSK
Bushel .....	BUS
Box, with Inner Cntn .....	BXI
Bucket .....	BXT
Cabinet .....	CAB
Cage .....	CAG
Can .....	CAN
Carrier .....	CAR
Case .....	CAS
Cntnrs of Bulk Cargo .....	CBC
Carboy .....	CBY

II—UNIT CODES—Continued

Can Case .....	CCS
Cheeses .....	CHE
Core .....	COR
Cradle .....	CRD
Crate .....	CRT
Cask .....	CSK
Carton .....	CTN
Cylinder .....	CYL
Dry Bulk .....	DBK
Double-length Rack .....	DRK
Drum .....	DRM
Double-length Skid .....	DSK
Double-length .....	DTB
Firkin .....	FIR
Flo-Bin .....	FLO
Frame .....	FRM
Flask .....	FSK
Forward Reel .....	FWR
Garment on Hanger .....	GOH
Heads of Beef .....	HED
Hogshead .....	HGH
Hopper Car .....	HPC
Hopper Truck .....	HPT
On Hanger/Rack in bx .....	HRB
Half-Standard Rack .....	HRK
Half-Stand. Tote Bin .....	HTB
Jar .....	JAR
Keg .....	KEG
Kit .....	KIT
Knockdown Rack .....	KRK
Knockdown Wood Crates .....	KWC
Knockdown Tote Bin .....	KTB
Liquid Bulk .....	LBK
Lifts .....	LIF
Log .....	LOG
Loose .....	LSE
Lug .....	LUG
Lift Van .....	LVN
Multi-roll Pak .....	MRP
Noil .....	NOL
Nested .....	NST
Pail .....	PAL
Packed—NOS .....	PCK
Pieces .....	PCS
Pirns .....	PIR
Package .....	PKG
Platform .....	PLF
Pipe Line .....	PLN
Pallet .....	PLT
Private Vehicle .....	POV
Pipe Rack .....	PRK
Quarters of Beef .....	QTR
Rail (semiconductor) .....	RAL
Rack .....	RCK
Reel .....	REL
Roll .....	ROL
Reverse Reel .....	RVR
Sack .....	SAK
Shook .....	SHK
Sides of Beef .....	SID
Skid .....	SKD
Skid, Elev, Lift Trk .....	SKE
Sleeve .....	SLV
Spin Cylinders .....	SPI
Spool .....	SPL
Tube .....	TBE
Tote Bin .....	TBN
Tank Car Rail .....	TKR
Tank Truck .....	TKT
Intermdl Trlr/Cntnr .....	TLD
Tank .....	TNK
Tierce .....	TRC
Trunk and Chest .....	TRK
Tray .....	TRY

II—UNIT CODES—Continued

Trunk, Salesmen Samp .....	TSS
Tub .....	TUB
Unpacked .....	UNP
Unit .....	UNT
Vehicles .....	VEH
Van Pack .....	VPK
On Own Wheels .....	WHE
Wheeled Carrier .....	WLC
Wood Crates .....	WC
Wrapped .....	WRP
Not Applicable .....	N/A
K. Shipment Stowage Location Codes:	
Not Applicable .....	N/A
On Deck .....	OD
Bottom Stowage .....	BS
L. Hazard Codes:	
Not Applicable .....	N/A
IMD Stow Category A .....	A
IMD Stow Category B .....	B
IMD Stow Category C .....	C
IMD Stow Category D .....	D
IMD Stow Category E .....	E
Hazardous .....	HAZ
Non-Hazardous .....	NHZ
M. Stuffing/Stripping Modes:	
Not Applicable .....	N/A
Mechanical .....	MECH
Hand Loading .....	HAND
N. Inland Transportation Modes:	
Not Applicable .....	N/A
Motor .....	M
Rail .....	R
Barge .....	B
Motor/Rail .....	MR
Rail/Motor .....	RM
Motor/Barge .....	MB
Barge/Motor .....	BM
Rail/Barge .....	RB
Barge/Rail .....	BR
O. Shipment Service Types:	
Barge .....	B
Door .....	D
House .....	H
Motor .....	M
Ocean Port .....	O
Pier .....	P
Rail Yard .....	R
Container Station .....	S
Terminal .....	T
Container Yard .....	Y
Rail Siding .....	U
Team Tracks .....	X
P. Freight Forwarder/Broker Type Codes:	
Not Applicable .....	N/A
Freight Forwarder .....	FF
Customs House Broker .....	CB
Other .....	OTH
Q. Tariff Type Codes:	
Bill of Lading Tariff .....	BL
Equipment Interchange Agreement Tariff .....	EI
Essential Terms Publication .....	ET
Foreign Commodity Tariff .....	FC
Foreign Rules Tariff .....	FR
Terminal Tariff .....	TM
Service Contracts .....	SC

**PART 525—MARINE TERMINAL OPERATOR SCHEDULES**

- Sec.  
525.1 Purpose and scope.  
525.2 Terminal schedules.

525.3 Availability of marine terminal operator schedules.

525.4 OMB Control number assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 46 U.S.C. 40102, 40501, 41101-41106.

SOURCE: 64 FR 9283, Feb. 25, 1999, unless otherwise noted.

**§ 525.1 Purpose and scope.**

(a) *Purpose.* This part implements the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998. The form and manner requirements of this part are necessary to enable the Commission to meet its responsibilities with regard to identifying and preventing unreasonable preference or prejudice and unjust discrimination pursuant to section 10 of the Act (46 U.S.C. 41101-41106).

(b) *Scope.* This part sets forth the regulations for the publication of terminal schedules by marine terminal operators. Information made available under this part may be used to determine marine terminal operators' compliance with shipping statutes and regulations.

(c) *Definitions.* The following definitions apply to the regulations of this part:

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

(2) *Bulk cargo* means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is, therefore, subject to the requirements of this part.

(3) *Checking* means the service of counting and checking cargo against appropriate documents for the account of the cargo or the vessel, or other person requesting same.

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

(5) *Dockage* means the charge assessed against a vessel for berthing at a wharf, pier, bulkhead structure, or bank or for mooring to a vessel so berthed.

(6) *Effective date* means the date a schedule or an element of a schedule

becomes effective. Where there are multiple publications on the same day, the last schedule or element of a schedule published with the same effective date is the one effective for that day.

(7) *Expiration date* means the last day, after which the entire schedule or a single element of the schedule, is no longer in effect.

(8) *Forest products* means forest products including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper and paper board in rolls or in pallet or skid-sized sheets, liquid or granular by-products derived from pulping and papermaking, and engineering wood products.

(9) *Free time* means the period specified in the terminal schedule during which cargo may occupy space assigned to it on terminal property, including off-dock facilities, free of wharf demurrage or terminal storage charges immediately prior to the loading or subsequent to the discharge of such cargo on or off the vessel.

(10) *Handling* means the service of physically moving cargo between point of rest and any place on the terminal facility, other than the end of ship's tackle.

(11) *Heavy lift* means the service of providing heavy lift cranes and equipment for lifting cargo.

(12) *Loading and unloading* means the service of loading or unloading cargo between any place on the terminal and railroad cars, trucks, lighters or barges or any other means of conveyance to or from the terminal facility.

(13) *Marine terminal operator* means a person engaged in the United States or a commonwealth, territory, or possession thereof, in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to Subchapter II of Chapter 135 of Title 49, United States Code. A marine terminal operator includes, but is not limited to, terminals owned or operated by states and their political subdivisions; railroads who

perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities. For the purposes of this part, marine terminal operator includes conferences of marine terminal operators.

(14) *Organization name* means an entity's name on file with the Commission and for which the Commission assigns an organizational number.

(15) *Person* includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees and personal representatives.

(16) *Rate* means a price quoted in a schedule for providing a specified level of marine terminal service or facility for a stated cargo quantity, on and after a stated effective date or within a defined time frame.

(17) *Schedule* means a publication containing the actual rates, charges, classifications, regulations and practices of a marine terminal operator. The term "practices" refers to those usages, customs or modes of operation which in any way affect, determine or change the rates, charges or services provided by a marine terminal operator.

(18) *Terminal facilities* means one or more structures comprising a terminal unit, which include, but are not limited to, wharves, warehouses, covered and/or open storage spaces, cold storage plants, cranes, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers in the interchange of same between land and water carriers or between two water carriers.

(19) *Terminal services* includes checking, dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage, as defined in this section. The definitions of terminal services set forth in this section shall be set forth in terminal schedules, except that other definitions of terminal services may be used if they are correlated by footnote, or other appropriate method, to the definitions set forth herein. Any additional services

## § 525.2

which are offered shall be listed and charges therefor shall be shown in the terminal schedule.

(20) *Terminal storage* means the service of providing warehouse or other terminal facilities for the storage of inbound or outbound cargo after the expiration of free time, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage and refrigerated storage.

(21) *Usage* means the use of a terminal facility by any rail carrier, lighter operator, trucker, shipper or consignee, its agents, servants, and/or employees, when it performs its own car, lighter or truck loading or unloading, or the use of said facilities for any other gainful purpose for which a charge is not otherwise specified.

(22) *Wharf demurrage* means a charge assessed against cargo remaining in or on terminal facilities after the expiration of free time, unless arrangements have been made for storage.

(23) *Wharfage* means a charge assessed against the cargo or vessel on all cargo passing or conveyed over, onto, or under wharves or between vessels (to or from barge, lighter, or water), when berthed at wharf or when moored in slip adjacent to a wharf. Wharfage is solely the charge for use of a wharf and does not include charges for any other service.

[64 FR 9283, Feb. 25, 1999, as amended at 74 FR 50723, Oct. 1, 2009]

### § 525.2 Terminal schedules.

(a) *Marine terminal operator schedules.* A marine terminal operator, at its discretion, may make available to the public, subject to section 10(d) of the Act (46 U.S.C. 41102(c), 41103, 41106), a schedule of its rates, regulations, and practices.

(1) *Limitations of liability.* Any limitations of liability for cargo loss or damage pertaining to receiving, delivering, handling, or storing property at the marine terminal contained in a terminal schedule must be consistent with domestic law and international conventions and agreements adopted by the United States; such terminal schedules cannot contain provisions that exculpate or relieve marine terminal operators from liability for their own negli-

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gence, or that impose upon others the obligation to indemnify or hold-harmless the terminals from liability for their own negligence.

(2) *Enforcement of terminal schedules.* Any schedule that is made available to the public by the marine terminal operator shall be enforceable by an appropriate court as an implied contract between the marine terminal operator and the party receiving the services rendered by the marine terminal operator, without proof that such party has actual knowledge of the provisions of the applicable terminal schedule.

(3) *Contracts for terminal services.* If the marine terminal operator has an actual contract with a party covering the services rendered by the marine terminal operator to that party, an existing terminal schedule covering those same services shall not be enforceable as an implied contract.

(b) *Cargo types not subject to this part.*  
(1) Except as set forth in paragraph (b)(2) of this section, this part does not apply to bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper and paper waste in terminal schedules.

(2) Marine terminal operators which voluntarily make available terminal schedules covering any of the commodities identified in paragraph (b)(1) of this section thereby subject their services with respect to those commodities to the requirements of this part.

(c) *Marine terminal operator agreements.* The regulations relating to agreements to which a marine terminal operator is a party are located at part 535 of this chapter.

[64 FR 9283, Feb. 25, 1999, as amended at 74 FR 50723, Oct. 1, 2009]

### § 525.3 Availability of marine terminal operator schedules.

(a) *Availability of terminal schedules—*  
(1) *Availability to the Commission.* A complete and current set of terminal schedules used by a marine terminal operator, or to which it is a party, shall be maintained in its office(s) for a period of five (5) years, whether or not made available to the public, and shall promptly be made available to the Commission upon request.

(2) *Availability to the public.* Any terminal schedule that is made available

to the public shall be available during normal business hours and in electronic form. The public may be assessed a reasonable nondiscriminatory charge for access to the terminal schedules; no charge will be assessed against the Commission.

(b) *Access to electronically published schedules.* Marine terminal operators shall provide access to their terminal schedules via a personal computer (PC) by:

(1) Dial-up connection via public switched telephone networks (PSTN); or

(2) The Internet (Web) by:

(i) Web browser; or

(ii) Telnet session.

(c) *Dial-up connection via PSTN.* (1) This connection option requires that terminal schedules provide:

(i) A minimum of a 14.4Kbps modem capable of receiving incoming calls,

(ii) Smart terminal capability for VT-100 terminal or terminal emulation access, and

(iii) Telephone line(s) quality for data transmission.

(2) The modem may be included in a collection (bank) of modems as long as all modems in the bank meet the minimum speed. Smart terminal emulation provides for features such as bold, blinking, underlining and positioning to specific locations on the display screen.

(d) *Internet connection.* (1) This connection option requires that systems provide:

(i) A universal resource locator (URL) Internet address (*e.g.*, <http://www.tariffsrus.com> or <http://1.2.3.4>), and/or

(ii) A universal resource locator (URL) Internet address (*e.g.*, <telnet://tariffsrus> or <telnet://1.2.3.4>), for Telnet session access over the Internet.

(2) Marine terminal operators shall ensure that their Internet service providers shall provide static Internet addresses.

(e) *Commission access.* Commission telecommunications access to systems must include connectivity via a dial-up connection over public switched telephone networks (PSTN) or a connection over the Internet. Connectivity will be provided at the expense of the publishers. Any recurring connection

fees, hardware rental fees, usage fees or any other charges associated with the availability of the system are the responsibility of the publisher. The Commission shall only be responsible for the long-haul charges for PSTN calls to a terminal schedule initiated by the Commission.

(f) *Notification.* Each marine terminal operator shall notify the Commission's Bureau of Tariffs, Certification and Licensing ("BTCL"), prior to the commencement of marine terminal operations, of its organization name, organization number, home office address, name and telephone number of firm's representative, the location of its terminal schedule(s), and the publisher, if any, used to maintain its terminal schedule, by electronically submitting Form FMC-1 via the Commission's website at [www.fmc.gov](http://www.fmc.gov). Any changes to the above information shall be immediately transmitted to BTCL. The Commission will publish a list on its website of the location of any terminal schedule made available to the public.

(g) *Form and manner.* Each terminal schedule made available by a marine terminal operator shall contain an individual identification number, effective date, expiration date, if any, and the complete terminal schedule in full text and/or data format showing all its rates, charges, and regulations relating to or connected with the receiving, handling, storing, and/or delivering of property at its terminal facilities.

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

The Commission has received Office of Management and Budget approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. In this regard, the valid control number for this collection of information is 3072-0061.

## **PART 530—SERVICE CONTRACTS**

### **Subpart A—General Provisions**

Sec.

530.1 Purpose.

530.2 Scope and applicability.

**§ 530.1**

- 530.3 Definitions.
- 530.4 Confidentiality.
- 530.5 Duty to file.
- 530.6 Certification of shipper status.
- 530.7 Duty to labor organizations.

**Subpart B—Filing Requirements**

- 530.8 Service contracts.
- 530.9 Notices.
- 530.10 Amendment, correction, cancellation, and electronic transmission errors.
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**Subpart C—Publication of Essential Terms**

- 530.12 Publication.

**Subpart D—Exceptions and Implementation**

- 530.13 Exceptions and exemptions.
- 530.14 Implementation.

**Subpart E—Recordkeeping and Audit**

- 530.15 Recordkeeping and audit.
- 530.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

APPENDIX A TO PART 530—INSTRUCTIONS FOR THE FILING OF SERVICE CONTRACTS  
EXHIBIT 1 TO PART 530—SERVICE CONTRACT REGISTRATION [FORM FMC-83]

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. 305, 40301–40306, 40501–40503, 41307.

SOURCE: 64 FR 11206, Mar. 8, 1999, unless otherwise noted.

**Subpart A—General Provisions****§ 530.1 Purpose.**

The purpose of this part is to facilitate the filing of service contracts and the publication of certain essential terms of those service contracts as required by section 8(c) of the Shipping Act of 1984 (“the Act”) (46 U.S.C. 40502). This part enables the Commission to review service contracts to ensure that these contracts and the parties to them comport with the requirements of the Act. This part also implements electronic filing provisions for service contracts to facilitate compliance and minimize the filing burdens on the oceanborne commerce of the United States.

[64 FR 11206, Mar. 8, 1999, as amended at 74 FR 50723, Oct. 1, 2009]

**§ 530.2 Scope and applicability.**

An individual ocean common carrier or an agreement between or among ocean common carriers may enter into a service contract with one or more shippers subject to the requirements of the Act.

**§ 530.3 Definitions.**

When used in this part:

(a) *Act* means the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998.

(b) *Agreement* means an understanding, arrangement, or association (written or oral) and any modification or cancellation thereof which has been filed and effective under part 535 of this chapter with the Commission. The term does not include a maritime labor agreement.

(c) *Authorized person* means a carrier or a duly appointed agent who is authorized to file service contracts on behalf of the carrier party to a service contract and to publish the corresponding statement of essential terms and is registered by the Commission to file under § 530.5(d) and appendix A to this part.

(d) *BTCL* means the Commission’s Bureau of Tariffs, Certification and Licensing or its successor bureau.

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

(f) *Common carrier* means a 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, or 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



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owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities and

(ii) Only with respect to those commodities.

(g) *Conference* means an agreement between or among two or more ocean common carriers which provides for the fixing of and adherence to uniform rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members. The term does not include joint service, pooling, sailing, space charter, or transshipment agreements.

(h) *Controlled carrier* means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government. Ownership or control by a government shall be deemed to exist with respect to any ocean common carrier if:

(1) A majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the carrier.

(i) *Effective date* means the date upon which a service contract or amendment is scheduled to go into effect by the parties to the contract. For an original service contract, the effective date cannot be prior to the filing date with the Commission. For a service contract amendment, the effective date can be no more than thirty (30) calendar days prior to the filing date with the Commission. A service contract or amendment thereto becomes effective at 12:01 a.m. Eastern Standard Time on the beginning of the effective date.

(j) *Expiration date* means the last day after which the entire service contract is no longer in effect.

(k) *File* or *filing* (of service contracts or amendments thereto) means the use of the Commission's electronic filing system for receipt of a service contract or an amendment thereto by the Commission, consistent with the method set forth in appendix A of this part,

and the recording of its receipt by the Commission.

(l) *Labor agreement* means a collective-bargaining agreement between an employer subject to the Act, or group of such employers, and a labor organization or an agreement preparatory to such a collective-bargaining agreement among members of a multi-employer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing, or administration of a multi-employer bargaining group, but the term does not include an assessment agreement.

(m) *Motor vehicle* means a wheeled vehicle whose primary purpose is ordinarily the non-commercial transportation of passengers, including an automobile, pickup truck, minivan or sport utility vehicle.

(n) *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.

(o) *OIRM* means the Commission's Office of Information and Resources Management.

(p) *Non-vessel-operating common carrier* ("NVOCC") means an ocean transportation intermediary as defined by section 3(17)(B) of the Act (46 U.S.C. 40102(16)).

(q) *Service contract* means a written contract, other than a bill of lading or receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the individual ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as, assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of any party.

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(r) *Shipper* means a cargo owner; the person for whose account the ocean transportation is provided; the person to whom delivery is to be made; a shippers' association; or an NVOCC that accepts responsibility for payment of all applicable charges under the service contract.

(s) *Statement of essential terms* means a concise statement of the essential terms of a service contract required to be published under § 530.12 of this part.

[64 FR 11206, Mar. 8, 1999, as amended at 64 FR 23792, May 4, 1999; 64 FR 41042, July 29, 1999; 65 FR 26513, May 8, 2000; 74 FR 50723, Oct. 1, 2009; 82 FR 16296, Apr. 4, 2017]

#### § 530.4 Confidentiality.

All service contracts and amendments to service contracts filed with the Commission shall, to the full extent permitted by law, be held in confidence. Nothing contained in this part shall preclude the Commission from providing certain information from or access to service contracts to another agency of the Federal government of the United States.

#### § 530.5 Duty to file.

(a) The duty under this part to file service contracts, amendments and notices, and to publish statements of essential terms shall be upon the individual carrier party or parties participating or eligible to participate in the service contract.

(b) Filing may be accomplished by any duly agreed-upon agent, as the parties to the service contract may designate, and subject to conditions as the parties may agree.

(c) *Registration*—(1) *Application*. Authority to file or delegate the authority to file must be requested by a responsible official of the service contract carrier in writing by submitting to BTCL the Registration Form (FMC-83) in Exhibit 1 to this part.

(2) *Approved registrations*. OIT shall provide approved Registrants a log-on ID and password for filing and amending service contracts and notify Registrants of such approval.

[64 FR 11206, Mar. 8, 1999, as amended at 64 FR 41042, July 29, 1999; 76 FR 11680, Mar. 3, 2011]

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#### § 530.6 Certification of shipper status.

(a) *Certification*. The shipper contract party shall sign and certify on the signature page of the service contract its shipper status (e.g., owner of the cargo, shippers' association, NVOCC, or specified other designation), and the status of every affiliate of such contract party or member of a shippers' association entitled to receive service under the contract.

(b) *Proof of tariff and financial responsibility*. If the certification completed by the contract party under paragraph (a) of this section identifies the contract party or an affiliate or member of a shippers' association as an NVOCC, the ocean common carrier, conference or agreement shall obtain proof that such NVOCC has a published tariff and proof of financial responsibility as required under sections 8 (46 U.S.C. 40501–40503) and 19 (46 U.S.C. 40901–40904) of the Act before signing the service contract. An ocean common carrier, conference or agreement can obtain such proof by the same methods prescribed in § 515.27 of this chapter.

(c) *Joining shippers' association during term of contract*. If an NVOCC joins a shippers' association during the term of a service contract and is thereby entitled to receive service under the contract, the NVOCC shall provide to the ocean common carrier, agreement or conference the proof of compliance required by paragraph (b) of this section prior to making any shipments under the contract.

(d) *Reliance on NVOCC proof; independent knowledge*. An ocean common carrier, agreement or conference executing a service contract shall be deemed to have complied with section 10(b)(12) of the Act (46 U.S.C. 41104(12)) upon meeting the requirements of paragraphs (a) and (b) of this section, unless the carrier party had reason to know such certification or documentation of NVOCC tariff and bonding was false.

[64 FR 11206, Mar. 8, 1999, as amended at 74 FR 50723, Oct. 1, 2009]

#### § 530.7 Duty to labor organizations.

(a) *Terms*. When used in this section, the following terms will have these meanings:

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(1) *Dock area and within the port area* shall have the same meaning and scope as defined in the applicable collective bargaining agreement.

(2) *Reasonable period of time* ordinarily means:

(i) If the cargo in question is due to arrive in less than five (5) days from the date of receipt of the request as defined in paragraph (b) of this section, two (2) days from the date of receipt of the request; but

(ii) If cargo in question is due to arrive in more than five (5) days from the date of receipt of the request as defined in paragraph (b) of this section, four (4) days from the date of receipt of the request.

(3) *Movement* includes, but is not necessarily limited to, the normal and usual aspects of the loading and discharging of cargo in containers; placement, positioning and re-positioning of cargo or of containers; the insertion and removal of cargo into and from containers; and the storage and warehousing of cargo.

(4) *Assignment* includes, but is not limited to, the carrier's direct or indirect control over the parties which, the manner by which, or the means by which the shipper's cargo is moved, regardless of whether such movement is completed within or outside of containers.

(5) *Transmit* means communication by first-class mail, facsimile, telegram, hand-delivery, or electronic mail ("e-mail").

(b) *Procedure*. In response to a written request transmitted from a labor organization with which it is a party or is subject to the provisions of a collective bargaining agreement with a labor organization, an ocean common carrier shall state, within a reasonable period of time, whether it is responsible for the following work at dock areas and within port areas in the United States with respect to cargo transported under a service contract:

(1) The movement of the shipper's cargo on a dock area or within the port area or to or from railroad cars on a dock area or within a port area;

(2) The assignment of intraport carriage of the shipper's cargo between areas on a dock or within the port area;

(3) The assignment of the carriage of the shipper's cargo between a container yard on a dock area or within the port area and a rail yard adjacent to such container yard; or

(4) The assignment of container freight station work and maintenance and repair work performed at a dock area or within the port area.

(c) *Applicability*. This section requires the disclosure of information by an ocean common carrier only if there exists an applicable and otherwise lawful collective bargaining agreement which pertains to that carrier.

(d) *Disclosure not deemed admission or agreement*. No disclosure made by an ocean common carrier shall be deemed to be an admission or agreement that any work is covered by a collective bargaining agreement.

(e) *Dispute resolution*. Any dispute regarding whether any work is covered by a collective bargaining agreement and the responsibility of the ocean common carrier under such agreement shall be resolved solely in accordance with the dispute resolution procedures contained in the collective bargaining agreement and the National Labor Relations Act, and without reference to this section.

(f) *Jurisdiction and lawfulness*. Nothing in this section has any effect on the lawfulness or unlawfulness under the Shipping Act of 1984, the National Labor Relations Act, the Taft-Hartley Act, the Federal Trade Commission Act, the antitrust laws, or any other federal or state law, or any revisions or amendments thereto, of any collective bargaining agreement or element thereof, including any element that constitutes an essential term of a service contract under section 8(c) of the Act (46 U.S.C. 40502).

[64 FR 11206, Mar. 8, 1999, as amended at 74 FR 50723, Oct. 1, 2009]

### Subpart B—Filing Requirements

#### § 530.8 Service Contracts.

(a) Authorized persons shall file with BTA, in the manner set forth in appendix A of this part, a true and complete copy of:

(1) Every service contract before any cargo moves pursuant to that service contract; and

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(2) Every amendment to a filed service contract no later than thirty (30) days after any cargo moves pursuant to that service contract amendment.

(b) Every service contract filed with the Commission shall include the complete terms of the service contract including, but not limited to, the following:

(1) The origin port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(2) The destination port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(3) The commodity or commodities involved;

(4) The minimum volume or portion;

(5) The service commitments;

(6) The line-haul rate;

(7) Liquidated damages for non-performance (if any);

(8) Duration, including the

(i) Effective date; and

(ii) Expiration date;

(9) The legal names and business addresses of the contract parties; the legal names of affiliates entitled to access the contract; the names, titles and addresses of the representatives signing the contract for the parties; and the date upon which the service contract was signed, except that in the case of a contract entered under the authority of an agreement or by a shippers' association, individual members need not be named unless the contract includes or excludes specific members. Subsequent references in the contract to the contract parties shall be consistent with the first reference (e.g., (exact name), "carrier," "shipper," or "association," etc.). Carrier parties which enter into contracts that include affiliates must either:

(i) List the affiliates' business addresses; or

(ii) Certify that this information will be provided to the Commission upon request within ten (10) business days of such request. However, the requirements of this section do not apply to amendments to contracts that have been filed in accordance with the requirements of this section unless the amendment adds new parties or affiliates;

(10) A certification of shipper status;

(11) A description of the shipment records which will be maintained to support the service contract and the address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under § 530.15 of this part; and

(12) All other provisions of the contract.

(c) *Certainty of terms.* The terms described in paragraph (b) of this section may not:

(1) Be uncertain, vague or ambiguous; or

(2) Make reference to terms not explicitly contained in the service contract itself unless those terms are readily available to the parties and the Commission.

(3) Pursuant to § 530.15(c), the carrier party to the service contract must, upon written request by the Commission, provide the Commission with the associated records of the referenced terms. For the purpose of paragraph (c)(2) of this section, the referenced terms will be deemed readily available to the Commission if the carrier party to the service contract provides the Commission with the associated records of the terms within thirty (30) days of the Commission's written request.

(d) *Other requirements.* Every service contract filed with BTCL shall include, as set forth in appendix A to this part by:

(1) A unique service contract number of more than one (1) but less than ten (10) alphanumeric characters in length ("SC Number"); and

(2) A consecutively numbered amendment number no more than three digits in length, with initial service contracts using "0" ("Amendment number");

(3) The filed FMC Agreement Number(s) assigned by the Commission under 46 CFR part 535 (if applicable); and

(4) An indication of the method by which the statement of essential terms will be published.

(e) *Exception in case of malfunction of Commission filing system.* (1) In the event that the Commission's filing systems are not functioning and cannot receive service contract filings for twenty-four

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(24) continuous hours or more, affected parties will not be subject to the requirements of paragraph (a) of this section and §530.14(a) that a service contract be filed before cargo is shipped under it.

(2) However, service contracts which go into effect before they are filed, pursuant to paragraph (e)(1) of this section, must be filed within twenty-four (24) hours of the Commission's filing systems' return to service.

(3) Failure to file a service contract that goes into effect before it is filed, pursuant to paragraph (e)(1) of this section, within twenty-four (24) hours of the Commission's filing systems' return to service will be considered a violation of Commission regulations.

[64 FR 11206, Mar. 8, 1999, as amended at 64 FR 23793, May 4, 1999; 64 FR 41042, July 29, 1999; 77 FR 13510, Mar. 7, 2012; 82 FR 16296, Apr. 4, 2017]

### § 530.9 Notices.

Within thirty (30) days of the occurrence of any event listed below, there shall be filed with the Commission, pursuant to the same procedures as those followed for the filing of an amendment pursuant to §530.10 and appendix A to this part, a detailed notice of:

(a) Correction (clerical or administrative errors);

(b) Cancellation (as defined in §530.10(a)(3));

(c) Adjustment of accounts, by re-rating, liquidated damages, or otherwise;

(d) Final settlement of any account adjusted as described in paragraph (c) of this section; and

(e) Any change to:

(1) The name of a basic contract party; or

(2) The list of affiliates under §530.8(b)(9), including changes to legal names and business addresses, of any contract party entitled to receive or authorized to offer services under the contract.

### §530.10 Amendment, correction, cancellation, and electronic transmission errors.

(a) *Terms.* When used in this section, the following terms will have these meanings:

(1) *Amendment* means any change to a service contract which has prospective effect and which is mutually agreed upon by the service contract parties.

(2) *Correction* means any change to a service contract which has retroactive effect.

(3) *Cancellation* means an event which is unanticipated by the service contract, in liquidated damages or otherwise, and is due to the failure of the shipper party to tender minimum cargo as set forth in the contract, unless such tender was made impossible by an action of the carrier party.

(b) *Amendment.* Service contracts may be amended by mutual agreement of the parties to the contract. Amendments shall be filed electronically with the Commission in the manner set forth in §530.8 and appendix A to this part.

(1) Where feasible, service contracts should be amended by amending only the affected specific term(s) or subterms.

(2) Each time any part of a service contract is amended, the filer shall assign a consecutive amendment number (up to three digits), beginning with the number "1."

(3) Each time any part of the service contract is amended, the "Filing Date" will be the date of filing of the amendment.

(c) *Corrections.* Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within one-hundred eighty (180) days of the contract's filing with the Commission, accompanied by remittance of a \$99 service fee, and must include:

(1) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify the initial or amended service contract to be corrected;

(2) A paper copy of the proposed correct terms. Corrections shall be indicated as follows:

(i) Matter being deleted shall be struck through; and

(ii) Matter to be added shall immediately follow the language being deleted and be underscored;

(3) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with

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reference to any supporting documentation;

(4) Documents supporting the clerical or administrative error; and

(5) A brief statement from the other party to the contract concurring in the request for correction.

(6) If the request for correction is granted, the carrier, agreement or conference shall file the corrected contract provisions using a special case number as described in appendix A to this part.

(d) *Electronic transmission errors.* An authorized person who experiences a purely technical electronic transmission error or a data conversion error in transmitting a service contract filing or amendment thereto is permitted to file a Corrected Transmission (“CT”) of that filing within 30 days of the date and time of receipt recorded in SERVCON. This time-limited permission to correct an initial defective service contract filing is not to be used to make changes in the original service contract rates, terms or conditions that are otherwise provided for in paragraphs 530.10(b) and (c) of this section. The CT tab box in SERVCON must be checked at the time of resubmitting a previously filed service contract, and a description of the corrections made must be stated at the beginning of the corrected service contract in a comment box. Failure to check the CT box and enter a description of the correction will result in the rejection of a file with the same name, since documents with duplicate file names or service contract and amendment numbers are not accepted by SERVCON.

(e) *Cancellation.* (1) An account may be adjusted for events and damages covered by the service contract. This shall include adjustment necessitated by either liability for liquidated damages appearing in the service contract as filed with the Commission under § 530.8(b)(7), or the occurrence of an event described below in paragraph (d)(2) of this section.

(2) In the event of cancellation as defined in § 530.10(a)(3):

(i) Further or continued implementation of the service contract is prohibited; and

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(ii) The cargo previously carried under the contract shall be re-rated according to the otherwise applicable tariff provisions.

(f) If the amendment, correction or cancellation affects an essential term required to be published under § 530.12 of this part, the statement of essential terms shall be changed as soon as possible after the filing of the amendment to accurately reflect the change to the contract terms.

[64 FR 11206, Mar. 8, 1999, as amended at 64 FR 23793, May 4, 1999; 67 FR 39860, June 11, 2002; 68 FR 43327, July 22, 2003; 70 FR 10330, Mar. 3, 2005; 81 FR 59144, Aug. 29, 2016; 82 FR 16296, Apr. 4, 2017; 83 FR 50294, Oct. 5, 2018]

## § 530.11 [Reserved]

### Subpart C—Publication of Essential Terms

## § 530.12 Publication.

(a) *Contents.* All authorized persons who have a duty to file service contracts under § 530.5 are also required to make available to the public, contemporaneously with the filing of each service contract with the Commission, and in tariff format, a concise statement of the following essential terms:

(1) The port ranges:

(i) Origin; and

(ii) Destination;

(2) The commodity or commodities involved;

(3) The minimum volume or portion; and

(4) The duration.

(b) *Certainty of terms.* The terms described in paragraph (a) of this section may not:

(1) Be uncertain, vague or ambiguous; or

(2) Make reference to terms not explicitly detailed in the statement of essential terms, unless those terms are contained in a publication widely available to the public and well known within the industry.

(c) *Location*—(1) *Generally.* The statement of essential terms shall be published as a separate part of the individual carrier’s automated tariff system.

(2) *Multi-party service contracts.* For service contracts in which more than one carrier participates or is eligible to

participate, the statement of essential terms shall be published:

(i) If the service contract is entered into under the authority of a conference agreement, then in that conference's automated tariff system;

(ii) If the service contract is entered into under the authority of a non-conference agreement, then in each of the participating or eligible-to-participate carriers' individual automated tariff systems, clearly indicating the relevant FMC-assigned agreement number.

(d) *References.* The statement of essential terms shall contain a reference to the "SC Number" as described in § 530.8(d)(1).

(e) *Terms.* (1) The publication of the statement of essential terms shall accurately reflect the terms as filed confidentially with the Commission.

(2) If any of the published essential terms include information not required to be filed with the Commission but filed voluntarily, the statement of essential terms shall so note.

(f) *Agents.* Common carriers, conferences, or agreements may use agents to meet their publication requirements under this part.

(g) *Commission listing.* The Commission will publish on its website, *www.fmc.gov*, a listing of the locations of all service contract essential terms publications.

(h) *Updating statements of essential terms.* To ensure that the information contained in a published statement of essential terms is current and accurate, the statement of essential terms publication shall include a prominent notice indicating the date of its most recent publication or revision. When the published statement of essential terms is affected by filed amendments, corrections, or cancellations, the current terms shall be changed and published as soon as possible in the relevant statement of essential terms.

[64 FR 11206, Mar. 8, 1999, as amended at 64 FR 23793, May 4, 1999]

## Subpart D—Exceptions and Implementation

### § 530.13 Exceptions and exemptions.

(a) *Statutory exceptions.* Service contracts for the movement of the following, as defined in section 3 of the Act (46 U.S.C. 40102), § 530.3 or § 520.2 of this chapter, are excepted by section 8(c) of the Act (46 U.S.C. 40502) from the requirements of that section, and are therefore not subject to the requirements of this part:

- (1) Bulk cargo;
- (2) Forest products;
- (3) Recycled metal scrap;
- (4) New assembled motor vehicles; and
- (5) Waste paper or paper waste.

(b) *Commission exemptions.* Exemptions from the requirements of this part are governed by section 16 of the Act (46 U.S.C. 40103) and Rule 67 of the Commission's Rules of Practice and Procedure, § 502.67 of this chapter. The following commodities and/or services are exempt from the requirements of this part:

(1) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries.

(2) *Department of Defense cargo.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions negotiated and approved by the Military Transportation Management Command and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, shall be filed with the Commission as soon as it becomes available.

(c) *Inclusion of excepted or exempted matter.* (1) The Commission will not accept for filing service contracts which exclusively concern the commodities or services listed in paragraph (a) or (b) of this section.

(2) Service contracts filed with the Commission may include the commodities or services listed in paragraph (a) or (b) of this section only if:

- (i) There is a tariff of general applicability for the transportation, which contains a specific commodity rate for the commodity or service in question; or

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(ii) The service contract itself sets forth a rate or charge which will be applied if the contract is canceled, as defined in § 530.10(a)(3).

(d) *Waiver.* Upon filing a service contract pursuant to paragraph (c) of this section, the service contract shall be subject to the same requirements as those for service contracts generally.

[64 FR 23793, May 4, 1999, as amended at 74 FR 50724, Oct. 1, 2009]

### § 530.14 Implementation.

(a) *Generally.* Performance under an original service contract may not begin before the day it is effective and filed with the Commission. Performance under a service contract amendment may not begin until the day it is effective, provided that the amendment is filed with the Commission no later than thirty (30) calendar days after the effective date.

(b) *Prohibition or suspension.* When the filing parties receive notice that an initial or amended service contract has been prohibited under section 9(d) (46 U.S.C. 40704) or suspended under section 11 of the Act (46 U.S.C. 41301–41302, 41305–41307(a));

(1) Further or continued implementation of the service contract is prohibited;

(2) All services performed under the contract shall be re-rated in accordance with the otherwise applicable tariff provisions for such services with notice to the shipper within five (5) days of the date of prohibition or suspension; and

(3) Detailed notice shall be given to the Commission under § 530.9 within thirty (30) days of:

(i) The re-rating or other account adjustment resulting from prohibition or suspension under paragraph (b)(2) of this section; or

(ii) Final settlement of the account adjusted under § 530.10.

(c) *Agreements.* If the prohibited or suspended service contract was that of an agreement with no common tariff, the re-rating shall be in accordance with the published tariff rates of the carrier which transported the cargo in effect at the time.

[64 FR 11206, Mar. 8, 1999, as amended at 74 FR 50724, Oct. 1, 2009; 82 FR 16297, Apr. 4, 2017]

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### Subpart E—Recordkeeping and Audit

#### § 530.15 Recordkeeping and audit.

(a) *Records retention for five years.* Every common carrier, conference or agreement shall maintain original signed service contracts, amendments, and their associated records in an organized, readily accessible or retrievable manner for a period of five (5) years from the termination of each contract.

(b) (paragraph (b) is stayed until further notice.) *Where maintained.* (1) Service contract records shall be maintained in the United States, except that service contract records may be maintained outside the United States if the Chairman or Secretary of an agreement or President or Chief Executive Officer of the carrier certifies annually by January 1, on a form to be supplied by the Commission, that service contract records will be made available as provided in paragraph (c) of this section.

(2) *Penalty.* If service contract records are not made available to the Commission as provided in paragraph (c) of this section, the Commission may cancel any carrier's or agreement's right to maintain records outside the United States pursuant to the certification procedure of paragraph (b) of this section.

(c) *Production for audit within 30 days of request.* Every carrier or agreement shall, upon written request of the FMC's Director, Bureau of Enforcement, any Area Representative or the Director, Bureau of Economics and Agreements Analysis, submit copies of requested original service contracts or their associated records within thirty (30) days of the date of the request.

(d) *Agreement service contracts.* In the case of service contracts made by agreements, the penalties for a failure to maintain records pursuant to this section shall attach jointly and severally on all of the agreement members participating in the service contract in question.



**§ 530.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072-0065.

APPENDIX A TO PART 530—INSTRUCTIONS FOR THE FILING OF SERVICE CONTRACTS

Service contracts shall be filed in accordance with the instructions found on the Commission's home page, <http://www.fmc.gov>.

*A. Registration, Log-on ID and Password*

To register for filing, a carrier, conference, agreement or publisher must submit the Service Contract Registration Form (Form FMC-83) to BTCL. A separate Service Contract Registration Form is required for each individual that will file service contracts. BTCL will direct OIRM to provide approved filers with a log-on ID and password. Filers

who wish a third party (publisher) to file their service contracts must so indicate on Form FMC-83. Authority for organizational filing can be transferred by submitting an amended registration form requesting the assignment of a new log-on ID and password. The original log-on ID will be canceled when a replacement log-on ID is issued. Log-on IDs and passwords may not be shared with, loaned to or used by any individual other than the individual registrant. The Commission reserves the right to disable any log-on ID that is shared with, loaned to or used by parties other than the registrant.

*B. Filing*

After receiving a log-on ID and a password, a filer may log-on to the service contract filing area on the Commission's home page and file service contracts. The filing screen will request such information as: filer name, Registered Persons Index ("RPI") number and carrier RPI number (if different); Service Contract and amendment number; and effective date. The filer will attach the entire service contract file and submit it into the system. When the service contract has been submitted for filing, the system will assign a filing date and an FMC control number, both of which will be included in the acknowledgment/confirmation message.

[64 FR 41042, July 29, 1999]

EXHIBIT 1 TO PART 530—SERVICE CONTRACT REGISTRATION [FORM FMC-83]

EXHIBIT 1 -- SERVICE CONTRACT REGISTRATION [FORM FMC-83]

ORGANIZATION NO. \_\_\_\_\_

PLEASE TYPE OR PRINT

SERVICE CONTRACT REGISTRATION

(SEE ATTACHED INSTRUCTIONS)

1. This Registration is: [ ] Initial [ ] Amendment (Specify change) \_\_\_\_\_
[ ] Dial-up [ ] Internet-based

2. Registrant

Full Legal Name of firm (or individual, if not a firm)
(Doing Business As)

3. Address of Home Office

(Number and Street) Telephone
(Number and Street) Fax
(City/State/Country) (Federal TIN Number) E - M a i l (optional)

4. Billing Address If Different

(Number and Street) Telephone
(Number and Street) Fax
(City/State/Country) E - M a i l (optional)

5. Organization Number (If known) \_\_\_\_\_

6. Registrant Type [ ] VOCC [ ] Tariff Publisher/Agent/Other
[ ] Agreement [ ] Conference/Joint Service

7. Permissions Requested and Person granted these permissions (Check permissions that apply)

Full Legal Name
[ ] Maintenance of organization record [ ] File Service Contracts

8. Registered for Batch Filing Prior to May 1, 1999? (Y/N) \_\_\_\_ If Yes, show date \_\_\_\_
If the person to perform the filing already has an existing Log-on, list only the Log-on for that person.

Existing Log-on \_\_\_\_\_

Signature of Authorized Official date

Print or Type name of Authorized Official

FMC USE ONLY
Logon Initial Password ID Directory
DateAsg / / AsgBy 3/01

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INSTRUCTIONS FOR FORM FMC-83

*Instructions*

*Line 1. Registration.* Indicate whether this is the initial (first time) registration or an amendment to an existing Service Contract Registration.

*Line 2. Registrant.* This must be the full legal name of the firm or individual registering for the FMC's Service Contract Filing System and any trade names. The registrant name should match the corporate charter or business license, conference membership, etc. It should be noted that the registrant name cannot be changed by the registrant after the registration without submission of an amended registration fee.

*Line 3. Address of Home Office.* The complete street address should be shown in addition to the post office box. Also, provide the registrant's Federal Taxpayer Identification Number ("TIN" Number).

*Line 4. Billing Address if Different.* This should be completed if the billing address differs from the home office address. Show the firm name (if different from the registrant), street address and post office box (if applicable).

*Line 5. Organization Number.* Complete if known. (Regulated Persons Index or "RPT" number.)

*Line 6. Registrant Type.* Indicate the type of organization. A registrant cannot be more than one type. This data cannot be changed by the registrant after registration without submission of an amended registration form.

*Line 7. Permissions Requested and Person Granted These Permissions.* Delegation of the authority to file should be noted here.

*Maintenance of Organization Record*—The person listed in line 8 is authorized to access the organization maintenance functions (i.e., modify organization information, assign publishers, affiliations, and d/b/as).

*Service Contract Filing*—The person listed in line 8 is authorized only to submit filings.

*Line 8. Certified for Batch Filing.* Indicate whether the registrant was registered with software certified to perform batch filings prior to May 1, 1999. Otherwise, the registrant must first be certified for batch filing as outlined in 46 CFR part 530. After certification, the registrant can submit an amended registration form to request permission for a person in their organization to perform the batch filing. If the person already has an existing log-on, the log-on (not the password) should be listed on the registration form. Also, the certification date received from the FMC should be listed on the registration form.

**PART 531—NVOCC SERVICE ARRANGEMENTS**

**Subpart A—General Provisions**

- Sec.
- 531.1 Purpose.
- 531.2 Scope and applicability.
- 531.3 Definitions.
- 531.4 NVOCC rules tariff.
- 531.5 [Reserved]

**Subpart B—Requirements**

- 531.6 NVOCC service arrangements.
- 531.7 [Reserved]
- 531.8 Amendment.

**Subpart C [Reserved]**

**Subpart D—Exceptions and Implementation**

- 531.10 Excepted and exempted commodities.
- 531.11 Implementation.

**Subpart E—Recordkeeping and Audit**

- 531.12 Recordkeeping and audit.
- 531.13–531.98 [Reserved]
- 531.99 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 46 U.S.C. 40103.

SOURCE: 69 FR 75853, Dec. 20, 2004, unless otherwise noted.

**Subpart A—General Provisions**

**§ 531.1 Purpose.**

The purpose of this part is to facilitate NVOCC Service Arrangements ("NSAs") as they are exempt from the otherwise applicable provisions of the Shipping Act of 1984 ("the Act").

[83 FR 34791, July 23, 2018]

**§ 531.2 Scope and applicability.**

Only individual NVOCCs compliant with the requirements of section 19 of the Act (46 U.S.C. 40901–40904) and the Commission's regulations at 46 CFR part 515 may enter into an NSA with one or more NSA shippers subject to the requirements of these rules. Any NVOCC who has failed to maintain its bond or license or had its tariff suspended or cancelled by the Commission is ineligible to offer and file NSAs.

[69 FR 75853, Dec. 20, 2004, as amended at 74 FR 50724, Oct. 1, 2009]

### § 531.3

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#### § 531.3 Definitions.

When used in this part:

(a) *Act* means the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998;

(b) *Affiliate* means two or more entities which are under common ownership or control by reason of being parent and subsidiary or entities associated with, under common control with, or otherwise related to each other through common stock ownership or common directors or officers.

(c) *Amendment* means any change to an NSA which has prospective effect and which is mutually agreed upon by all parties to the NSA.

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

(e) *Common carrier* means a 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, or 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) *Effective date* means the date upon which an NSA or amendment is scheduled to go into effect by the parties to the NSA. An NSA or amendment becomes effective at 12:01 a.m. Eastern Standard Time on the beginning of the effective date. The effective date cannot be prior to the date of the NSA or amendment.

(g) *Expiration date* means the last day after which the entire NSA is no longer in effect.

(h) *NSA shipper* means a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, a shippers' association, or an ocean transportation intermediary, as defined in section 3(17)(B) of the Act (46 U.S.C. 40102(16)), that accepts responsibility for payment of all applicable charges under the NSA.

(i) *NVOCC Service Arrangement* ("NSA") means a written contract, other than a bill of lading or receipt, between one or more NSA shippers and an individual NVOCC or two or more affiliated NVOCCs, in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level. The NSA may also specify provisions in the event of nonperformance on the part of any party.

(j) *Rules tariff* means a tariff or the portion of a tariff, as defined by 46 CFR 520.2, containing the terms and conditions governing the charges, classifications, rules, regulations and practices of an NVOCC, but does not include a rate.

[83 FR 34791, July 23, 2018]

#### § 531.4 NVOCC rules tariff.

(a) Before entering into NSAs under this part, an NVOCC must provide electronic access to its rules tariffs to the public free of charge.

(b) An NVOCC wishing to invoke an exemption pursuant to this part must indicate that intention to the Commission and the public by a prominent notice in its rules tariff.

[83 FR 34791, July 23, 2018]

#### § 531.5 [Reserved]

### Subpart B—Requirements

#### § 531.6 NVOCC Service Arrangements.

(a) Every NSA shall include the complete terms of the NSA including, but not limited to, the following:

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(1) The origin port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(2) The destination port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(3) The commodity or commodities involved;

(4) The minimum volume or portion;

(5) The service commitments;

(6) The line-haul rate;

(7) Liquidated damages for non-performance (if any);

(8) Duration, including the

(i) Effective date; and

(ii) Expiration date;

(9) The legal names and business addresses of the NSA parties; the legal names of all affiliates of the NSA shipper entitled to access the NSA; the names, titles and addresses of the representatives signing the NSA for the parties, except that in the case of an NSA entered into by a shippers' association, individual members need not be named unless the contract includes or excludes specific members; and the date upon which the NSA was signed. Subsequent references in the NSA to the signatory parties shall be consistent with the first reference. An NVOCC party which enters into an NSA that includes affiliates must either:

(i) list the affiliates' business addresses; or

(ii) certify that this information will be provided to the Commission upon request within ten (10) business days of such request.

(10) A description of the shipment records which will be maintained to support the NSA and the address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under § 531.12 of this part; and

(11) All other provisions of the NSA.

(b) *Certainty of terms.* The terms described in paragraph (b) of this section may not:

(1) Be uncertain, vague or ambiguous; or

(2) Make reference to terms not explicitly contained in the NSA itself unless those terms are readily available

to the parties and the Commission. Reference may not be made to a tariff of a common carrier other than the NVOCC acting as carrier party to the NSA.

(3) Pursuant to § 531.12(b), the carrier party to the NSA must, upon written request by the Commission, provide the Commission with the associated records of the referenced terms. For the purpose of paragraph (c)(2) of this section, the referenced terms will be deemed readily available to the Commission if the carrier party to the NSA provides the Commission with the associated records of the terms within thirty (30) days of the Commission's written request.

(c) *Other requirements.* (1) For service pursuant to an NSA, no NVOCC may, either alone or in conjunction with any other person, directly or indirectly, provide service in the liner trade that is not in accordance with the rates, charges, classifications, rules and practices contained in an NSA.

(2) For service pursuant to an NSA, no NVOCC, may, either alone or in conjunction with any other person, directly or indirectly, engage in any unfair or unjustly discriminatory practice in the matter of rates or charges with respect to any port; and

(3) For service under an NSA, no NVOCC may, either alone or in conjunction with any other person, directly or indirectly, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port.

(4) No NVOCC may knowingly and willfully enter into an NSA with an ocean transportation intermediary that does not have a tariff and a bond, insurance, or other surety as required by sections 8 (46 U.S.C. 40501-40503) and 19 (46 U.S.C. 40901-40904) of the Act.

(5) Except for the carrier party's rules tariff, the requirement in 46 U.S.C. 40501(a)-(c) that the NVOCC include its rates in a tariff open to public inspection in an automated tariff system and the Commission's corresponding regulations at 46 CFR part 520 shall not apply.

(d) *Format requirements.* Every NSA shall include:

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(1) A unique NSA number of more than one (1) but less than ten (10) alphanumeric characters in length (“NSA Number”); and

(2) A consecutively numbered amendment number no more than three digits in length, with initial NSAs using “0” (“Amendment number”).

[69 FR 75853, Dec. 20, 2004, as amended at 70 FR 56580, Sept. 28, 2005; 74 FR 50724, Oct. 1, 2009; 77 FR 13510, Mar. 7, 2012; 82 FR 16297, Apr. 4, 2017; 83 FR 34792, July 23, 2018]

## § 531.7 [Reserved]

## § 531.8 Amendment.

(a) NSAs may be amended by mutual agreement of the parties.

(b) Where feasible, NSAs should be amended by amending only the affected specific term(s) or subterms.

(c) Each time any part of an NSA is amended, a consecutive amendment number (up to three digits), beginning with the number “1” shall be assigned.

(d) Each time any part of an NSA is amended, the “Effective Date” will be the date of the amendment or a future date agreed to by the parties.

[83 FR 34792, July 23, 2018]

## Subpart C [Reserved]

## Subpart D—Exceptions and Implementation

### § 531.10 Excepted and exempted commodities.

(a) *Statutory exceptions.* NSAs for the movement of the following, as defined in section 3 of the Act (46 U.S.C. 40102) and § 530.3 or § 520.2 of this chapter, are not subject to the conditions of this exemption:

- (1) Bulk cargo;
- (2) Forest products;
- (3) Recycled metal scrap;
- (4) New assembled motor vehicles; and
- (5) Waste paper or paper waste.

(b) *Commission exemptions.* The following commodities and/or services are

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not subject to the conditions of this exemption:

(1) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries.

(2) *Department of Defense cargo.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions approved by the Military Transportation Management Command and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, shall be filed with the Commission as soon as it becomes available.

[69 FR 75853, Dec. 20, 2004, as amended at 74 FR 50725, Oct. 1, 2009; 83 FR 34792, July 23, 2018]

### § 531.11 Implementation.

*Generally.* Performance under an NSA or amendment thereto may not begin before the day it is effective.

[83 FR 34792, July 23, 2018]

## Subpart E—Recordkeeping and Audit

### § 531.12 Recordkeeping and audit.

(a) *Records retention for five years.* Every NVOCC shall maintain original signed NSAs, amendments, and their associated records in an organized, readily accessible or retrievable manner for a period of five (5) years from the termination of each NSA. These records must be kept in a form that is readily available and usable to the Commission; electronically maintained records shall be no less accessible than if they were maintained in paper form.

(b) *Production for audit within 30 days of request.* Every NVOCC shall, upon written request of the FMC’s Director, Bureau of Enforcement, any Area Representative or the Director, Bureau of Trade Analysis, submit copies of requested original NSAs or their associated records within thirty (30) days of the date of the request.

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§§ 531.13–531.98 [Reserved]

### § 531.99 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072–0070.

[83 FR 34792, July 23, 2018]

## PART 532—NVOCC NEGOTIATED RATE ARRANGEMENTS

### Subpart A—General Provisions

Sec.

532.1 Purpose.

532.2 Scope and applicability.

532.3 Definitions.

### Subpart B—Procedures Related to NVOCC Negotiated Rate Arrangements

532.4 Duties of the NVOCC rules tariff.

532.5 Requirements for NVOCC negotiated rate arrangements.

532.6 Notices.

### Subpart C—Recordkeeping Requirements

532.7 Recordkeeping and audit.

532.91 OMB control number assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 46 U.S.C. 40103.

SOURCE: 76 FR 11360, Mar. 2, 2011, unless otherwise noted.

### Subpart A—General Provisions

#### § 532.1 Purpose.

The purpose of this part, pursuant to the Commission's statutory authority, is to exempt non-vessel-operating common carriers (NVOCCs) from the tariff rate publication and adherence requirements of the Shipping Act of 1984, as enumerated herein.

[78 FR 42888, July 18, 2013]

#### § 532.2 Scope and applicability.

This part exempts NVOCCs duly licensed pursuant to 46 CFR 515.3 or registered pursuant to 46 CFR 515.19, holding adequate proof of financial respon-

sibility pursuant to 46 CFR 515.21, and meeting the requirements of 46 CFR 532.4 through 532.7, from the following requirements and prohibitions of the Shipping Act and the Commission's regulations:

(a) The requirement in 46 U.S.C. 40501(a)–(c) that the NVOCC include its rates in a tariff open to public inspection in an automated tariff system;

(b) 46 U.S.C. 40501(d);

(c) 46 U.S.C. 40501(e)

(d) 46 U.S.C. 40503;

(e) the prohibition in 46 U.S.C. 41104(2)(A);

(f) the Commission's corresponding regulation at 46 CFR 520.3(a) that the NVOCC include its rates in a tariff open for public inspection in an automated tariff system; and

(g) the Commission's corresponding regulations at 46 CFR 520.4(a)(4), 520.4(f), 520.6(e), 520.7(c), (d), 520.8(a), 520.12, and 520.14. Any NVOCC failing to maintain its bond or license or registration as set forth above, or who has had its tariff suspended by the Commission, shall not be eligible to invoke this exemption.

[76 FR 11360, Mar. 2, 2011, as amended at 78 FR 42888, July 18, 2013]

#### § 532.3 Definitions.

When used in this part,

(a) “NVOCC Negotiated Rate Arrangement” or “NRA” means a written and binding arrangement between an NRA shipper and an eligible NVOCC to provide specific transportation service for a stated cargo quantity, from origin to destination, on and after receipt of the cargo by the NVOCC. For purposes of this part, “receipt of cargo by the NVOCC” includes receipt by the NVOCC's agent, or the originating carrier in the case of through transportation.

(b) “Rate” means a price stated for providing a specified level of transportation service for a stated cargo quantity, from origin to destination, on and after a stated date or within a defined time frame.

(c) “Rules tariff” means a tariff or the portion of a tariff, as defined by 46 CFR 520.2, containing the terms and

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conditions governing the charges, classifications, rules, regulations and practices of an NVOCC, but does not include a rate.

(d) “NRA shipper” means a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, a shippers’ association, or an ocean transportation intermediary, as defined in section 3(17)(B) of the Act (46 U.S.C. 40102(16)), that accepts responsibility for payment of all applicable charges under the NRA.

(e) “Affiliate” means two or more entities which are under common ownership or control by reason of being parent and subsidiary or entities associated with, under common control with or otherwise related to each other through common stock ownership or common directors or officers.

[76 FR 11360, Mar. 2, 2011, as amended at 83 FR 34792, July 23, 2018]

## Subpart B—Procedures Related to NVOCC Negotiated Rate Arrangements

### § 532.4 NVOCC rules tariff.

Before entering into NRAs under this Part, an NVOCC must provide electronic access to its rules tariffs to the public free of charge.

### § 532.5 Requirements for NVOCC negotiated rate arrangements.

In order to qualify for the exemptions to the general rate publication requirement as set forth in § 532.2, an NRA must meet the following requirements:

(a) *Writing.* The NRA must be in writing.

(b) *Parties.* The NRA must contain the names of the parties and the names of the representatives agreeing to the NRA.

(c) *Agreement.* The terms of the NRA must be agreed to by both NRA shipper and NVOCC, prior to receipt of cargo by the NVOCC. The shipper is considered to have agreed to the terms of the NRA if the shipper:

(1) Provides the NVOCC with a signed agreement;

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(2) Sends the NVOCC a written communication, including an email, indicating acceptance of the NRA terms; or

(3) Books a shipment after receiving the NRA terms from the NVOCC, if the NVOCC incorporates in the NRA terms the following text in bold font and all uppercase letters: “**THE SHIPPER’S BOOKING OF CARGO AFTER RECEIVING THE TERMS OF THIS NRA OR NRA AMENDMENT CONSTITUTES ACCEPTANCE OF THE RATES AND TERMS OF THIS NRA OR NRA AMENDMENT.**”

(d) *Rates and terms—(1) General.* The NRA must clearly specify the rate and terms, as well as the shipment or shipments to which such rate will apply.

(2) *Surcharges, assessorial charges, and GRIs.* (i) If the rate is not an “all-in rate,” the NRA must specify whether additional surcharges, additional assessorial charges, or ocean common carrier general rate increases (“GRIs”) will apply.

(ii) The NRA may list the additional surcharges or assessorial charges, including pass-through charges, or reference specific surcharges or assessorial charges in the NVOCC’s rules tariff.

(iii) If the additional surcharges or assessorial charges are included in the NVOCC’s rules tariff, those additional surcharges or assessorial charges and the corresponding amounts specified in the rules tariff must be fixed once the first shipment has been received by the NVOCC until the last shipment is delivered, subject to an amendment of the NRA.

(iv) For any pass-through charge for which a specific amount is not included in the NRA or the rules tariff, the NVOCC may only invoice the shipper for charges the NVOCC incurs, with no markup.

(3) *Non-rate economic terms.* The NRA may include non-rate economic terms.

(e) *Amendment.* The NRA may be amended after the time the initial shipment is received by the NVOCC, but such changes may only apply prospectively to shipments not yet received by the NVOCC.

[83 FR 34792, July 23, 2018]



**§ 532.6 Notices.**

An NVOCC wishing to invoke an exemption pursuant to this part must indicate that intention to the Commission and the public by a prominent notice in its rules tariff.

[77 FR 33972, June 8, 2012]

**Subpart C—Recordkeeping****§ 532.7 Recordkeeping and audit.**

(a) An NVOCC invoking an exemption pursuant to this part must maintain original NRAs in an organized, readily accessible or retrievable manner for 5 years from the completion date of performance of the NRA by an NVOCC, in a format easily produced to the Commission.

(b) NRAs are subject to inspection and reproduction requests by the Commission. An NVOCC shall produce the requested NRAs promptly in response to a Commission request. All records produced must be in English or be accompanied by a certified English translation.

(c) Failure to keep or timely produce original NRAs will disqualify an NVOCC from the operation of the exemption provided pursuant to this part, regardless of whether it has been invoked by notice as set forth above, and may result in a Commission finding of a violation of 46 U.S.C. 41104(1), 41104(2)(A) or other acts prohibited by the Shipping Act.

[77 FR 33972, June 8, 2012, as amended at 78 FR 42889, July 18, 2013]

**§ 532.91 OMB control number issued pursuant to the Paperwork Reduction Act.**

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072-0071.

**PART 535—OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984****Subpart A—General Provisions**

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#### APPENDIX A TO PART 535—INFORMATION FORM AND INSTRUCTIONS

#### APPENDIX B TO PART 535—MONITORING REPORT AND INSTRUCTIONS

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. 305, 40101–40104, 40301–40307, 40501–40503, 40901–40904, 41101–41109, 41301–41302, and 41305–41307.

SOURCE: 69 FR 64414, Nov. 4, 2004, unless otherwise noted.

### Subpart A—General Provisions

#### § 535.101 Authority.

The rules in this part are issued pursuant to the authority of section 4 of the Administrative Procedure Act (5 U.S.C. 553), sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17, and 19 of the Shipping Act of 1984 (“the Act”) (46 U.S.C. 305, 40101–40104, 40301–40307, 40501–40503, 40901–40904, 41101–41109, 41301–41302, and 41305–41307), and the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50727, Oct. 1, 2009]

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#### § 535.102 Purpose.

This part implements those provisions of the Act that govern agreements by or among ocean common carriers and agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers. This part also sets forth more specifically certain procedures provided for in the Act.

#### § 535.103 Policies.

(a) The Act requires that agreements be processed and reviewed, upon their initial filing, according to strict statutory deadlines. This part is intended to establish procedures for the orderly and expeditious review of filed agreements in accordance with the statutory requirements.

(b) The Act requires that agreements be reviewed, upon their initial filing, to ensure compliance with all applicable provisions of the Act and empowers the Commission to obtain information to conduct that review. This part identifies those types of agreements that must be accompanied by information submissions when they are first filed, and sets forth the kind of information for certain agreements that the Commission believes relevant to that review. Only information that is relevant to such a review is requested. It is the policy of the Commission to keep the costs of regulation to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

(c) To further the goal of expedited processing and review of agreements upon their initial filing, agreements are required to meet certain minimum requirements as to form. These requirements are intended to ensure expedited review and should assist parties in preparing agreements. These requirements as to form do not affect the substance of an agreement and are intended to allow parties the freedom to develop innovative commercial relationships and provide efficient and economic transportation systems.

(d) The Act itself excludes certain agreements from the filing requirements and authorizes the Commission to exempt other classes of agreements from any requirement of the Act or

this part. To minimize delay in the implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, certain classes of agreements are exempt from the filing requirements of this part.

(e) Under the regulatory framework established by the Act, the role of the Commission as a monitoring agency has been enhanced. The Act favors greater freedom in allowing parties to form their commercial arrangements. This, however, requires greater monitoring of agreements after they have become effective to assure their continued compliance with all applicable provisions of the Act. The Act empowers the Commission to impose certain recordkeeping and reporting requirements. This part identifies those agreements that require specific record retention and reporting to the Commission and prescribes the applicable period of record retention, the form and content of such reporting, and the applicable time periods for filing with the Commission. Only information that is necessary to assure that the Commission's monitoring responsibilities will be fulfilled is requested.

(f) The Act requires that conference agreements contain certain mandatory provisions. Each conference agreement must:

- (1) State its purpose;
  - (2) Provide reasonable and equal terms and conditions for admission and readmission to membership;
  - (3) Allow for withdrawal from membership upon reasonable notice without penalty;
  - (4) Require an independent neutral body to police the conference, if requested by a member;
  - (5) Prohibit conduct specified in sections 10(c)(1) or 10(c)(3) of the Act (46 U.S.C. 41105(1) or 41105(3));
  - (6) Provide for a consultation process;
  - (7) Establish procedures for considering shippers' requests and complaints; and
  - (8) Provide for independent action.
- (g) To promote competitive and efficient transportation and a greater reliance on the marketplace, the Act places limits on carriers' agreements regarding service contracts. Carriers may not enter into an agreement to

prohibit or restrict members from engaging in contract negotiations, may not require members to disclose service contract negotiations or terms and conditions (other than those required to be published), and may not adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate and enter into contracts. However, agreement members may adopt voluntary guidelines covering the terms and procedures of members' contracts.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50727, Oct. 1, 2009]

#### § 535.104 Definitions.

When used in this part:

(a) *Agreement* means an understanding, arrangement, or association, written or oral (including any modification, cancellation or appendix) entered into by or among ocean common carriers and/or marine terminal operators, but does not include a maritime labor agreement.

(b) *Antitrust laws* means the Act of July 2, 1890 (ch. 647, 26 Stat. 209), 15 U.S.C. 1, as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), 15 U.S.C. 12, as amended; the Federal Trade Commission Act (38 Stat. 717), 15 U.S.C. 41, as amended; sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), 15 U.S.C. 8, 9, as amended; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), 15 U.S.C. 13, as amended; the Antitrust Civil Process Act (76 Stat. 548), 15 U.S.C. 1311, note as amended; and amendments and Acts supplementary thereto.

(c) *Appendix* means a document containing additional material of limited application and appended to an agreement, distinctly differentiated from the main body of the basic agreement.

(d) *Assessment agreement* means an agreement, whether part of a collective bargaining agreement or negotiated separately, that provides for collectively bargained fringe benefit obligations on other than a uniform man-hour basis regardless of the cargo handled or type of vessel or equipment utilized.

(e) *Capacity rationalization* means a concerted reduction, stabilization, withholding, or other limitation in any manner whatsoever by ocean common

carriers on the size or number of vessels or available space offered collectively or individually to shippers in any trade or service.

(f) *Common carrier* means a 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, or chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

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

(ii) Only with respect to those commodities.

(g) *Conference agreement* means an agreement between or among two or more ocean common carriers that provides for the fixing of and adherence to uniform tariff rates, charges, practices, and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members. The term does not include joint service, pooling, sailing, space charter, or transshipment agreements.

(h) *Consultation* means a process whereby a conference and a shipper confer for the purpose of promoting the commercial resolution of disputes and/or the prevention and elimination of the occurrence of malpractices.

(i) *Cooperative working agreement* means an agreement that establishes exclusive, preferential, or cooperative working relationships that are subject to the Act, but that do not fall precisely within the parameters of any specifically defined agreement.

(j) *Effective agreement* means an agreement effective under the Act.

(k) *Equal access agreement* means an agreement between ocean common carriers of different nationalities, as determined by the incorporation or domicile of the carriers' operating companies, whereby such ocean common carriers associate for the purpose of gaining reciprocal access to cargo that is otherwise reserved by national decree, legislation, statute or regulation to carriage by the merchant marine of the carriers' respective nations.

(l) *Independent neutral body* means a disinterested third party, authorized by a conference and its members to review, examine, and investigate alleged breaches or violations of the conference agreement and/or the conference's properly promulgated tariffs, rules, or regulations by any member of the conference.

(m) *Information Form* means the form containing economic information that must accompany the filing of certain agreements and modifications.

(n) *Interconference agreement* means an agreement between conferences.

(o)(1) *Joint service agreement* means an agreement between ocean common carriers operating as a joint venture whereby a separate service is established that:

(i) Holds itself out in its own distinct operating name;

(ii) Independently fixes its own rates, charges, practices, and conditions of service or chooses to participate under its operating name in another agreement that is duly authorized to determine and implement such activities;

(iii) Independently publishes its own tariff or chooses to participate under its operating name in an otherwise established tariff;

(iv) Issues its own bills of lading; and

(v) Acts generally as a single carrier.

(2) The common use of facilities in a joint service may occur, and there is no competition between members for cargo in the agreement trade; but they otherwise maintain their separate identities.

(p) *Marine terminal facilities* means one or more structures (and services connected therewith) comprising a terminal unit, including, but not limited to docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage space, cold storage plants,

grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers or the interchange of same between land and ocean common carriers or between two ocean common carriers. This term is not limited to waterfront or port facilities and includes so-called off-dock container freight stations at inland locations and any other facility from which inbound waterborne cargo may be tendered to the consignee or outbound cargo may be received from shippers for vessel or container loading.

(q) *Marine terminal operator* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49 U.S.C. This term does not include shippers or consignees who exclusively furnish marine terminal facilities or services in connection with tendering or receiving proprietary cargo from a common carrier or water carrier.

(r) *Maritime labor agreement* means a collective-bargaining agreement between an employer subject to the Act or group of such employers, and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multi-employer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing or administration of a multi-employer bargaining group; but the term does not include an assessment agreement.

(s) *Modification* means any change, alteration, correction, addition, deletion, or revision of an existing effective agreement or to any appendix to such an agreement.

(t) *Monitoring Report* means the report containing economic information that must be filed at defined intervals with regard to certain agreements that are effective under the Act.

(u) *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.

(v) *Ocean freight forwarder* means a person in the United States that dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and processes the documentation or performs related activities incident to those shipments.

(w) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(x) *Pooling agreement* means an agreement between ocean common carriers that provides for the division of cargo carryings, earnings, or revenue and/or losses between the members in accordance with an established formula or scheme.

(y) *Port* means the place at which an ocean common carrier originates or terminates (and/or transships) its actual ocean carriage of cargo or passengers as to any particular transportation movement.

(z) *Rate*, for purposes of this part, includes both the basic price paid by a shipper to an ocean common carrier for a specified level of transportation service for a stated quantity of a particular commodity, from origin to destination, on or after a stated effective date or within a defined time frame, and also any accessorial charges or allowances that increase or decrease the total transportation cost to the shipper.

(aa) *Rate agreement* means an agreement between ocean common carriers that authorizes the discussion of or agreement on, either on a binding basis under a common tariff or on a non-binding basis, any kind of rate or charge.

(bb) *Sailing agreement* means an agreement between ocean common carriers to provide service by establishing a schedule of ports that each carrier will serve, the frequency of each carrier's calls at those ports, and/or the

size and capacity of the vessels to be deployed by the parties. The term does not include joint service agreements, or capacity rationalization agreements.

(cc) *Service contract* means a written contract, other than a bill of lading or a receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper or shippers makes a commitment to provide a certain volume or portion of cargo over a fixed time period, and the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of non-performance on the part of any party.

(dd) *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 (*i.e.*, 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) that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(ee) *Shippers' association* means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

(ff) *Shippers' requests and complaints* means a communication from a shipper to a conference requesting a change in tariff rates, rules, regulations, or service; protesting or objecting to existing rates, rules, regulations or service; objecting to rate increases or other tariff changes; protesting allegedly erroneous service contract or tariff implementation or application, and/or requesting to enter into a service contract. Routine information requests are not included in the term.

(gg) *Space charter agreement* means an agreement between ocean common car-

riers whereby a carrier (or carriers) agrees to provide vessel space for use by another carrier (or carriers) in exchange for compensation or services. The arrangement may include arrangements for equipment interchange and receipt/delivery of cargo, but may not include capacity rationalization as defined in this subpart.

(hh) *Sub-trade* means the scope of ocean liner cargo carried between each U.S. port range and each foreign country within the scope of the agreement. U.S. port ranges are defined as follows:

(1) Atlantic and Gulf shall encompass ports along the eastern seaboard and the Gulf of Mexico from the northern boundary of Maine to Brownsville, Texas. It also includes all ports bordering on the Great Lakes and their connecting waterways, all ports in the State of New York on the St. Lawrence River, and all ports in Puerto Rico and the U.S. Virgin Islands; and

(2) Pacific shall encompass all ports in the States of Alaska, Hawaii, California, Oregon, and Washington. It also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island, and Wake Island.

(ii) *Through transportation* means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is an ocean common carrier, between a United States point or port and a foreign point or port.

(jj) *Transshipment agreement* means an agreement between an ocean common carrier serving a port or point of origin and another such carrier serving a port or point of destination, whereby cargo is transferred from one carrier to another carrier at an intermediate port served by direct vessel call of both such carriers in the conduct of through transportation and the publishing carrier performs the transportation on one leg of the through transportation on its own vessel or on a vessel on which it has rights to space under a filed and effective agreement. Such an agreement does not provide for the concerted discussion, publication or otherwise fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than

the tariff description of the transshipment service offered, the port of transshipment and the participation of the nonpublishing carrier. An agreement that involves the movement of cargo in a domestic offshore trade as part of a through movement of cargo via transshipment involving the foreign commerce of the United States shall be considered to be in the foreign commerce of the United States and, therefore, subject to the Act and this part.

(kk) *Vessel-operating costs* means any of the following expenses incurred by an ocean common carrier: salaries and wages of officers and unlicensed crew, including relief crews and others regularly employed aboard the vessel; fringe benefits; expenses associated with consumable stores, supplies and equipment; vessel fuel and incidental costs; vessel maintenance and repair expense; hull and machinery insurance costs; protection and indemnity insurance costs; costs for other marine risk insurance not properly chargeable to hull and machinery insurance or to protection and indemnity insurance accounts; and charter hire expenses.

### Subpart B—Scope

#### § 535.201 Subject agreements.

(a) *Ocean common carrier agreements.* This part applies to agreements by or among ocean common carriers to:

- (1) Discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;
- (2) Pool or apportion traffic, revenues, earnings, or losses;
- (3) Allot ports or restrict or otherwise regulate the number and character of sailings between ports;
- (4) Limit or regulate the volume or character of cargo or passenger traffic to be carried;
- (5) Engage in exclusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators;
- (6) Control, regulate, or prevent competition in international ocean transportation; or
- (7) Discuss and agree on any matter related to service contracts.

(b) *Marine terminal operator agreements.* This part applies to agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean carriers to:

- (1) Discuss, fix, or regulate rates or other conditions of service; or
- (2) Engage in exclusive, preferential, or cooperative working arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States.

#### § 535.202 Non-subject agreements.

This part does not apply to the following agreements:

- (a) Any acquisition by any person, directly or indirectly, of any voting security or assets of any other person;
- (b) Any maritime labor agreement;
- (c) Any agreement related to transportation to be performed within or between foreign countries;
- (d) Any agreement among common carriers to establish, operate, or maintain a marine terminal in the United States; and
- (e) Any agreement among marine terminal operators that exclusively and solely involves transportation in the interstate commerce of the United States.

### Subpart C—Exemptions

#### § 535.301 Exemption procedures.

(a) *Authority.* The Commission, upon application or its own motion, may by order or rule exempt for the future any class of agreement involving ocean common carriers and/or marine terminal operators from any requirement of the Act if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce.

(b) *Optional filing.* Notwithstanding any exemption from filing, or other requirements of the Act and this part, any party to an exempt agreement may file such an agreement with the Commission.

(c) *Application for exemption.* Applications for exemptions shall conform to the general filing requirements for exemptions set forth at § 502.67 of this title.

## § 535.302

(d) *Retention of agreement by parties.* Any agreement that has been exempted by the Commission pursuant to section 16 of the Act (46 U.S.C. 40103) shall be retained by the parties and shall be available upon request by the Bureau of Trade Analysis for inspection during the term of the agreement and for a period of three years after its termination.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50727, Oct. 1, 2009]

### § 535.302 Exemptions for certain modifications of effective agreements.

(a) Non-substantive modifications to effective agreements. A non-substantive modification to an effective agreement between ocean common carriers and/or marine terminal operators, acting individually or through approved agreements, is one which:

(1) Reflects changes in the name of any geographic locality stated therein, the name of the agreement or the name of a party to the agreement, the names and/or numbers of any other section 4 agreement (46 U.S.C. 40301(a)–(c)) or designated provisions thereof referred to in an agreement;

(2) Corrects typographical and grammatical errors in the text of the agreement or renumbers or reletters articles or sub-articles of agreements and references thereto in the text; or

(3) Reflects changes in the titles of persons or committees designated therein or transfers the functions of such persons or committees to other designated persons or committees or which merely establishes a committee.

(b) Other Miscellaneous Modifications to effective agreements. A miscellaneous modification to an effective agreement is one that:

(1) Cancels the agreement or a portion thereof;

(2) Deletes an agreement party;

(3) Changes the parties to a conference agreement or a discussion agreement among passenger vessel operating common carriers that is open to all ocean common carriers operating passenger vessels of a class defined in the agreements and that does not contain ratemaking, pooling, joint service, sailing or space chartering authority; or

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(4) Changes the officials of the agreement and delegations of authority.

(c) A copy of a modification described in (a) or (b) of this section shall be submitted to the Commission but is otherwise exempt from the waiting period requirement of the Act and this part.

(d) Parties to agreements may seek a determination from the Director of the Bureau of Trade Analysis as to whether a particular modification is a non-substantive or other miscellaneous modification within the meaning of this section.

(e) The filing fee for non-substantive or other miscellaneous modifications is provided in § 535.401(g).

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50727, Oct. 1, 2009]

### § 535.303 Husbanding agreements—exemption.

(a) A husbanding agreement is an agreement between an ocean common carrier and another ocean common carrier or marine terminal operator, acting as the former's agent, under which the agent handles routine vessel operating activities in port, such as notifying port officials of vessel arrivals and departures; ordering pilots, tugs, and linehandlers; delivering mail; transmitting reports and requests from the Master to the owner/operator; dealing with passenger and crew matters; and providing similar services related to the above activities. The term does not include an agreement that provides for the solicitation or booking of cargoes, signing contracts or bills of lading and other related matters, nor does it include an agreement that prohibits the agent from entering into similar agreements with other carriers.

(b) A husbanding agreement is exempt from the filing requirements of the Act and of this part.

(c) The filing fee for optional filing of husbanding agreements is provided in § 535.401(g).

### § 535.304 Agency agreements—exemption.

(a) An agency agreement is an agreement between an ocean common carrier and another ocean common carrier or marine terminal operator, acting as the former's agent, under which the agent solicits and books cargoes and



signs contracts of affreightment and bills of lading on behalf of the ocean common carrier. Such an agreement may or may not also include husbanding service functions and other functions incidental to the performance of duties by agents, including processing of claims, maintenance of a container equipment inventory control system, collection and remittance of freight and reporting functions.

(b) An agency agreement as defined above is exempt from the filing requirements of the Act and of this part, except those:

(1) Where a common carrier is to be the agent for a competing ocean common carrier in the same trade; or

(2) That permit an agent to enter into similar agreements with more than one ocean common carrier in a trade.

(c) The filing fee for optional filing of agency agreements is provided in § 535.401(g).

**§ 535.305 Equipment interchange agreements—exemption.**

(a) An equipment interchange agreement is an agreement between two or more ocean common carriers for:

(1) The exchange of empty containers, chassis, empty LASH/SEABEE barges, and related equipment; and

(2) The transportation of the equipment as required, payment therefor, management of the logistics of transferring, handling and positioning equipment, its use by the receiving carrier, its repair and maintenance, damages thereto, and liability incidental to the interchange of equipment.

(b) An equipment interchange agreement is exempt from the filing requirements of the Act and of this part.

(c) The filing fee for optional filing of equipment interchange agreements is provided in § 535.401(g).

**§ 535.306 Nonexclusive transshipment agreements—exemption.**

(a) A nonexclusive transshipment agreement is a transshipment agreement by which one ocean common carrier serving a port of origin by direct vessel call and another such carrier serving a port of destination by direct vessel call provide transportation between such ports via an intermediate

port served by direct vessel call of both such carriers and at which cargo will be transferred from one to the other and which agreement does not:

(1) Prohibit either carrier from entering into similar agreements with other carriers;

(2) Guarantee any particular volume of traffic or available capacity; or

(3) Provide for the discussion or fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the service offered as being by means of transshipment, the port of transshipment and the participation of the nonpublishing carrier.

(b) A nonexclusive transshipment agreement is exempt from the filing requirements of the Act and of this part, provided that the tariff provisions set forth in paragraph (c) of this section and the content requirements of paragraph (d) of this section are met.

(c) The applicable tariff or tariffs shall provide:

(1) The through rate;

(2) The routings (origin, transshipment and destination ports); additional charges, if any (*i.e.* port arbitrary and/or additional transshipment charges); and participating carriers; and

(3) A tariff provision substantially as follows:

The rules, regulations, and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating, connecting or feeder carrier. Every participating connecting or feeder carrier which is a party to transshipment arrangements has agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(d) Nonexclusive transshipment agreements must contain the entire arrangement between the parties, must contain a declaration of the nonexclusive character of the arrangement and may provide for:

(1) The identification of the parties and the specification of their respective roles in the arrangement;

(2) A specification of the governed cargo;

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(3) The specification of responsibility for the issuance of bills of lading (and the assumption of common carriage-associated liabilities) to the cargo interests;

(4) The specification of the origin, transshipment and destination ports;

(5) The specification of the governing tariff(s) and provision for their succession;

(6) The specification of the particulars of the nonpublishing carrier's concurrence/participation in the tariff of the publishing carrier;

(7) The division of revenues earned as a consequence of the described carriage;

(8) The division of expenses incurred as a consequence of the described carriage;

(9) Termination and/or duration of the agreement;

(10) Intercarrier indemnification or provision for intercarrier liabilities consequential to the contemplated carriage and such documentation as may be necessary to evidence the involved obligations;

(11) The care, handling and liabilities for the interchange of such carrier equipment as may be consequential to the involved carriage;

(12) Such rationalization of services as may be necessary to ensure the cost effective performance of the contemplated carriage; and

(13) Such agency relationships as may be necessary to provide for the pickup and/or delivery of the cargo.

(e) No subject other than as listed in paragraph (d) of this section may be included in exempted nonexclusive transshipment agreements.

(f) The filing fee for optional filing of nonexclusive transshipment agreements is provided in § 535.401(g).

### § 535.307 Agreements between or among wholly-owned subsidiaries and/or their parent—exemption.

(a) An agreement between or among wholly-owned subsidiaries and/or their parent means an agreement under section 4 of the Act (46 U.S.C. 40301(a)-(c)) between or among an ocean common carrier or marine terminal operator subject to the Act and any one or more ocean common carriers or marine terminal operators which are ultimately

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owned 100 percent by that ocean common carrier or marine terminal operator, or an agreement between or among such wholly-owned carriers or terminal operators.

(b) All agreements between or among wholly-owned subsidiaries and/or their parent are exempt from the filing requirements of the Act and this part.

(c) Ocean common carriers are exempt from section 10(c) of the Act (46 U.S.C. 41105) to the extent that the concerted activities proscribed by that section result solely from agreements between or among wholly-owned subsidiaries and/or their parent.

(d) The filing fee for optional filing of these agreements is provided in § 535.401(g).

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50728, Oct. 1, 2009]

### § 535.309 Marine terminal services agreements—exemption.

(a) *Marine terminal services agreement* means an agreement, contract, understanding, arrangement, or association, written or oral, (including any modification or appendix) between a marine terminal operator and an ocean common carrier that applies to marine terminal services that are provided to and paid for by an ocean common carrier. These services include: checking, dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage and including any marine terminal facilities that may be provided incidentally to such marine terminal services. The term *marine terminal services agreement* does not include any agreement that conveys to the involved carrier any rights to operate any marine terminal facility by means of a lease, license, permit, assignment, land rental, or similar other arrangement for the use of marine terminal facilities or property.

(b) All marine terminal services agreements as defined in § 535.309(a) are exempt from the filing and waiting period requirements of the Act and this part on condition that:

(1) They do not include rates, charges, rules, and regulations that are determined through a marine terminal conference agreement. *Marine terminal*

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*conference agreement* means an agreement between or among two or more marine terminal operators and/or ocean common carriers for the conduct or facilitation of marine terminal operations that provides for the fixing of and adherence to uniform maritime terminal rates, charges, practices and conditions of service relating to the receipt, handling, and/or delivery of passengers or cargo for all members; and

(2) No antitrust immunity is conferred under the Act with regard to terminal services provided to an ocean common carrier under a marine terminal services agreement that is not filed with the Commission.

(c) The filing fee for optional filing of terminal services agreements is provided in § 535.401(g).

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 65036, Dec. 9, 2009]

### § 535.310 Marine terminal facilities agreement—exemption.

(a) *Marine terminal facilities agreement* means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more ocean common carriers, to the extent that the agreement involves ocean transportation in the foreign commerce of the United States, that conveys to any of the involved parties any rights to operate any marine terminal facility by means of lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.

(b) All marine terminal facilities agreements as defined in § 535.310(a) are exempt from the filing and waiting period requirements of the Act and this part.

(c) Parties to marine terminal facilities agreements currently in effect shall provide copies to any requesting party for a reasonable copying and mailing fee.

(d) The filing fee for optional filing of terminal facilities agreements is provided in § 535.401(g).

### § 535.311 Low market share agreements—exemption.

(a) Low market share agreement means any agreement among ocean

common carriers which contains none of the authorities listed in § 535.502(b) and for which the combined market share, based on cargo volume, of the parties in any of the agreement's sub-trades is either:

(1) Less than 30 percent, if all parties are members of another agreement in the same trade or sub-trade containing any of the authorities listed in § 535.502(b); or

(2) Less than 35 percent, if at least one party is not a member of another agreement in the same trade or sub-trade containing any of the authorities listed in § 535.502(b).

(b) Low market share agreements are exempt from the waiting period requirement of the Act and this part, and are effective on filing.

(c) Parties to agreements may seek a determination from the Director, Bureau of Trade Analysis, as to whether a proposed agreement meets the general definition of a low market share agreement.

(d) The filing fee for low market share agreements is provided in § 535.401(g).

[69 FR 64414, Nov. 4, 2004, as amended at 70 FR 20303, Apr. 19, 2005]

### § 535.312 Vessel charter party-exemption.

(a) For purposes of this section, vessel charter party shall mean a contractual agreement between two ocean common carriers for the charter of the full reach of a vessel, which agreement sets forth the entire terms and conditions (including duration, charter hire, and geographical or operational limitations, if any) under which the vessel will be employed.

(b) Vessel charter parties, as defined in paragraph (a) of this section, are exempt from the filing requirements of the Act and this part.

(c) The filing fee for optional filing of vessel charter parties is provided in § 535.401(g).

## Subpart D—Filing of Agreements

### § 535.401 General requirements.

(a) All agreements (including oral agreements reduced to writing in accordance with the Act) subject to this part and filed with the Commission for

review and disposition pursuant to section 6 of the Act (46 U.S.C. 40304, 40306, 41307(b)–(d)), must be submitted to the Commission either in paper during regular business hours to the Secretary, Federal Maritime Commission, Washington, DC 20573, or electronically using the automated agreement filing system.

(1) *Paper filings.* Paper filings must include:

(i) A true copy and seven additional copies of the executed agreement;

(ii) Where required by this part, an original and five copies of the completed Information Form referenced at subpart E of this part; and

(iii) A letter of transmittal as described in paragraph (b) of this section.

(2) *Electronic filings.* (i) Electronic filings using the automated agreement filing system must be made in accordance with the instructions found on the Commission's home page, <http://www.fmc.gov>.

(ii) Electronic filings must include searchable Portable Document Format (PDF) copies of the following:

(A) A true copy of the executed agreement;

(B) Where required by this part, a completed Information Form referenced at subpart E of this part; and

(C) A letter of transmittal as described in paragraph (b) of this section.

(b) The letter of transmittal shall:

(1) Identify all of the documents being transmitted including, in the instance of a modification to an effective agreement, the full name of the effective agreement, the Commission-assigned agreement number of the effective agreement and the revision, page and/or appendix number of the modification being filed;

(2) Provide a concise, succinct summary of the filed agreement or modification separate and apart from any narrative intended to provide support for the acceptability of the agreement or modification;

(3) Clearly provide the typewritten or otherwise imprinted name, position, business address, and telephone number of the filing party; and

(4) Be signed by the filing party or on the filing party's behalf by an authorized employee or agent of the filing

party. A faxed, photocopied, or scanned signature will be accepted.

(c) To facilitate the timely and accurate publication of the FEDERAL REGISTER Notice, the letter of transmittal shall also provide a current list of the agreement's participants where such information is not provided elsewhere in the transmitted documents.

(d) Any agreement that does not meet the filing requirements of this section, including any applicable Information Form requirements, shall be rejected in accordance with § 535.601(b).

(e) Assessment agreements shall be filed and shall be effective upon filing.

(f) Parties to agreements with expiration dates shall file any modification seeking renewal for a specific term or elimination of a termination date in sufficient time to accommodate the 45-day waiting period required under the Act.

(g) The filing fee is \$3,529 for new agreements and any agreement modifications requiring Commission review and action; \$537 for agreements processed under delegated authority (for types of agreements that can be processed under delegated authority, see § 501.27(e) of this chapter); \$303 for carrier exempt agreements; and \$89 for terminal exempt agreements.

(h) The fee for a request for expedited review of an agreement pursuant to § 535.605 is \$151. This fee must be paid in addition to the carrier agreement filing fee required by paragraph (g) of this section.

[69 FR 64414, Nov. 4, 2004, as amended at 70 FR 10330, Mar. 3, 2005; 74 FR 50728, Oct. 1, 2009; 75 FR 29455, May 26, 2010; 81 FR 24705, Apr. 27, 2016; 81 FR 59145, Aug. 29, 2016; 83 FR 50295, Oct. 5, 2018]

#### § 535.402 Complete and definite agreements.

An agreement filed under the Act must be clear and definite in its terms, must embody the complete, present understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their operations and regulate the relationships among the agreement members, unless those details are matters specifically enumerated as exempt from the filing requirements of this part.

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### § 535.403 Form of agreements.

The requirements of this section apply to all agreements except marine terminal agreements and assessment agreements.

(a) Agreements shall be clearly and legibly written. Agreements in a language other than English shall be accompanied by an English translation.

(b) Every agreement shall include a Title Page indicating:

(1) The full name of the agreement;

(2) Once assigned, the Commission-assigned agreement number;

(3) If applicable, the expiration date of the agreement; and

(4) The original effective date of the agreement whenever the Title Page is revised.

(c) Each agreement page (including modifications and appendices) shall be identified by printing the agreement name (as shown on the agreement title page) and, once assigned, the applicable Commission-assigned agreement number at the top of each page. For agreement modifications, the appropriate amendment number for each modification should also appear on the page along with the basic agreement number.

(d) Each agreement and/or modification filed must be signed by an official or authorized representative of each of the parties and must indicate the type-written full name of the signing party and his or her position, including organizational affiliation. Faxed, photocopied, or scanned signatures will be accepted.

(e) Every agreement shall include a Table of Contents indicating the location of all agreement provisions.

[69 FR 64414, Nov. 4, 2004, as amended at 81 FR 24706, Apr. 27, 2016]

### § 535.404 Agreement provisions.

Generally, each agreement should:

(a) Indicate the full legal name of each party, including any FMC-assigned agreement number associated with that name, and the address of its principal office (not the address of any agent or representative not an employee of the participating party);

(b) State the ports or port ranges to which the agreement applies as well as

any inland points or areas to which it also applies; and

(c) Specify, by organizational title, the administrative and executive officials determined by the agreement parties to be responsible for designated affairs of the agreement and the respective duties and authorities delegated to those officials. At a minimum, the agreement should specify:

(1) The official(s) with authority to file the agreement and any modification thereto and to submit associated supporting materials; and

(2) A statement as to any designated U.S. representative of the agreement required by this chapter.

### § 535.405 Organization of conference agreements.

Each conference agreement shall:

(a) State that, at the request of any member, the conference shall engage the services of an independent neutral body to fully police the obligations of the conference and its members. The agreement must include a description of any such neutral body authority and procedures related thereto.

(b) State affirmatively that the conference parties shall not engage in conduct prohibited by sections 10(c)(1) or 10(c)(3) of the Act (46 U.S.C. 41105(1) or 41105(3)).

(c) Specify the procedures for consultation with shippers and for handling shippers' requests and complaints.

(d) Include provisions for independent action in accordance with § 535.801 of this part.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50728, Oct. 1, 2009]

### § 535.406 Modification of agreements.

The requirements of this section apply to all agreements except marine terminal agreements and assessment agreements.

(a) Agreement modifications shall be filed in accordance with the provisions of §§ 535.401, 535.402, and 535.403.

(b) Agreement modifications shall be made by reprinting the entire page on which the matter being changed is published ("revised page"). The revised page shall indicate the consecutive denomination of the revision (*e.g.*, "1st Revised Page 7"). Additional material

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may be published on a new original page. New original pages inserted between existing effective pages shall be numbered with an alpha suffix (*e.g.*, a page inserted between page 7 and page 8 shall be numbered 7a).

(c) Each revised page shall be accompanied by a duplicate page, submitted for illustrative purposes only, indicating the language being modified in the following manner:

(1) Language being deleted or superseded shall be struck through; and,

(2) New and initial or replacement language shall immediately follow the language being superseded and be underlined.

(d) If a modification requires the relocation of the provisions of the agreement, such modification shall be accompanied by a revised Table of Contents page that shall indicate the new location of the provisions.

**§ 535.407 Application for waiver.**

(a) Upon a showing of good cause, the Commission may waive the requirements of §§ 535.401, 535.403, 535.404, 535.405, and 535.406.

(b) Requests for such a waiver shall be submitted in advance of the filing of the agreement to which the requested waiver would apply and shall state:

(1) The specific provisions from which relief is sought;

(2) The special circumstances requiring the requested relief; and

(3) Why granting the requested waiver will not substantially impair effective review of the agreement.

**§ 535.408 Activities that may be conducted without further filings.**

(a) Agreements that arise from authority of an effective agreement but whose terms are not fully set forth in the effective agreement to the extent required by § 535.402 are permitted without further filing only if they:

(1) Are themselves exempt from the filing requirements of this part (pursuant to subpart C—Exemptions of this part); or

(2) Are listed in paragraph (b) of this section.

(b) Unless otherwise exempt in subpart C of this part, only the following technical or operational matters of an agreement's affairs established pursu-

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ant to express enabling authority in an agreement are considered part of the effective agreement and do not require further filing under section 5 of the Act (46 U.S.C. 40301(d)–(e), 40302–40303, 40305):

(1) Establishment of tariff rates, rules and regulations and their joint publication;

(2) The terms and conditions of space allocation and slot sales, the procedures for allocating space, the establishment of space charter rates, and the terms and conditions of charter parties;

(3) Stevedoring, terminal, and related services including the operation of tonnage centers or other joint container marshaling facilities;

(4) The following administrative matters:

(i) Scheduling of agreement meetings;

(ii) Collection, collation and circulation of data and reports from or to members;

(iii) Procurement, maintenance, or sharing of office facilities, furnishings, equipment and supplies, the allocation and assessment of costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals;

(iv) Procedures for anticipating parties' space requirements;

(v) Maintenance of books and records; and

(vi) Details as to the following matters as between parties to the agreement: insurance, procedures for resolutions of disputes relating to loss and/or damage of cargo, and force majeure clauses;

(5) The following operational matters:

(i) Port rotations and schedule adjustments; and

(ii) Changes in vessel size, number of vessels, or vessel substitution or replacement, if the resulting change is within a capacity range specified in the agreement; and

(6) Neutral body policing (limited to the description of neutral body authority and procedures related thereto).

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50728, Oct. 1, 2009]

### Subpart E—Information Form Requirements

#### § 535.501 General requirements.

(a) Agreements and modifications to agreements identified in § 535.502 shall be accompanied by an Information Form containing information and data on the agreement and the parties' authority under the agreement.

(b) Parties to an agreement subject to this subpart shall complete and submit an original and five copies of the Information Form at the time the agreement is filed. A copy of the Form in *Microsoft Word* and *Excel* format may be downloaded from the Commission's home page at <http://www.fmc.gov>, or a paper copy of the Form may be obtained from the Bureau of Trade Analysis. In lieu of submitting paper copies, parties may complete and submit their Information Form in the Commission's prescribed electronic format, either on diskette or CD-ROM, or submit the Information Form using the automated agreement filing system in accordance with the instructions found on the Commission's home page, <http://www.fmc.gov>.

(c) A complete response in accordance with the instructions on the Information Form shall be supplied to each item. If a party to the agreement is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for non-compliance and the efforts made to obtain the required information.

(d) Agreement parties may supplement the Information Form with any additional information or material to assist the Commission's review of an agreement.

(e) The Information Form and any additional information submitted in conjunction with the filing of an agreement shall not be disclosed by the Commission except as provided in § 535.608.

[69 FR 64414, Nov. 4, 2004, as amended at 81 FR 24706, Apr. 27, 2016]

#### § 535.502 Agreements subject to the Information Form requirements.

Agreements and modifications to agreements between or among ocean common carriers subject to this subpart are:

(a) All agreements identified in § 535.201(a), except for low market share agreements identified in § 535.311;

(b) Modifications to an agreement that add any of the following authorities:

(1) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge;

(2) The discussion of, or agreement on, capacity rationalization;

(3) The establishment of a joint service;

(4) The pooling or division of cargo traffic, earnings, or revenues and/or losses; or

(5) The discussion of, or agreement on, any service contract matter; and

(c) Modifications that expand the geographic scope of an agreement containing any authority identified in § 535.502(b).

#### § 535.503 Information Form.

(a) The Information Form, with instructions, for agreements and modifications to agreements subject to this subpart, are set forth in sections I through V of appendix A of this part. The instructions should be read in conjunction with the Act and this part.

(b) The Information Form shall apply as follows:

(1) Sections I and V shall be completed by parties to all agreements identified in § 535.502;

(2) Section II shall be completed by parties to agreements identified in § 535.502(a) that contain any of the following authorities: the charter or use of vessel space in exchange for compensation or services; or the rationalization of sailings or services relating to a schedule of ports, the frequency of vessel calls at ports, or the size and capacity of vessels for deployment. Such authorities do not include the establishment of a joint service, nor capacity rationalization;

(3) Section III shall be completed by parties to agreements identified in § 535.502 that contain the authority to

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discuss or agree on capacity rationalization; and

(4) Section IV shall be completed by parties to agreements identified in § 535.502 that contain any of the following authorities:

(i) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge;

(ii) The establishment of a joint service;

(iii) The pooling or division of cargo traffic, earnings, or revenues and/or losses; or

(iv) The discussion of, or agreement on, any service contract matter.

### § 535.504 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive any part of the Information Form requirements in this subpart.

(b) A request for such a waiver must be submitted and approved by the Commission in advance of the filing of the Information Form to which the requested waiver would apply. Requests for a waiver shall be submitted in writing to the Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573-0001, and shall state:

(1) The specific requirements from which relief is sought;

(2) The special circumstances requiring the requested relief;

(3) Relevant trade and industry data and information to substantiate and support the special circumstances requiring the requested relief;

(4) Why granting the requested waiver will not substantially impair effective review of the agreement; and

(5) A description of the full membership, geographic scope, and authority of the agreement or the agreement modification that is to be filed with the Commission.

(c) The Commission may take into account the presence or absence of shipper complaints as well as the past compliance of the agreement parties with any reporting requirement under this part in considering an application for a waiver.

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### Subpart F—Action on Agreements

#### § 535.601 Preliminary review-rejection of agreements.

(a) The Commission shall make a preliminary review of each filed agreement to determine whether the agreement is in compliance with the requirements of the Act and this part and, where applicable, whether the accompanying Information Form is complete or, where not complete, whether the deficiency is adequately explained or is excused by a waiver granted by the Commission under § 535.504.

(b)(1) The Commission shall reject any agreement that fails to comply substantially with the filing and Information Form of the Act and this part. The Commission shall notify the filing party in writing of the reason for rejection of the agreement. The original filing, along with any supplemental information or documents submitted, shall be returned to the filing party.

(2) Should a rejected agreement be refiled, the full 45-day waiting period will apply to the refiled agreement.

#### § 535.602 Federal Register notice.

(a) A notice of any filed agreement will be transmitted to the FEDERAL REGISTER within seven days of the date of filing.

(b) The notice will include:

(1) A short title for the agreement;

(2) The identity of the parties to the agreement and the filing party;

(3) The Federal Maritime Commission agreement number;

(4) A concise summary of the agreement's contents;

(5) A statement that the agreement is available for inspection at the Commission's offices; and

(6) The final date for filing comments regarding the agreement.

#### § 535.603 Comment.

(a) Persons may file with the Secretary written comments regarding a filed agreement. Such comments will be submitted in an original and ten (10) copies and are not subject to any limitations except the time limits provided in the FEDERAL REGISTER notice. Late-filed comments will be received only by leave of the Commission and only upon a showing of good cause. If requested,



comments and any accompanying material shall be accorded confidential treatment to the fullest extent permitted by law. Such requests must include a statement of legal basis for confidential treatment including the citation of appropriate statutory authority. Where a determination is made to disclose all or a portion of a comment, notwithstanding a request for confidentiality, the party requesting confidentiality will be notified prior to disclosure.

(b) The filing of a comment does not entitle a person to:

(1) A reply to the comment by the Commission;

(2) The institution of any Commission or court proceeding;

(3) Discussion of the comment in any Commission or court proceeding concerning the filed agreement; or

(4) Participation in any proceeding that may be instituted.

#### § 535.604 Waiting period.

(a) The waiting period before an agreement becomes effective shall commence on the date that an agreement is filed with the Commission.

(b) Unless suspended by a request for additional information or extended by court order, the waiting period terminates and an agreement becomes effective on the later of the 45th day after the filing of the agreement with the Commission or on the 30th day after publication of notice of the filing in the FEDERAL REGISTER.

(c) The waiting period is suspended on the date when the Commission, either orally or in writing, requests additional information or documentary materials pursuant to section 6(d) of the Act (46 U.S.C. 40304(d)). A new 45-day waiting period begins on the date of receipt of all the additional material requested or of a statement of the reasons for noncompliance, and the agreement becomes effective in 45 days unless the waiting period is further extended by court order or the Commission grants expedited review.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50728, Oct. 1, 2009; 74 FR 65036, Dec. 9, 2009]

#### § 535.605 Requests for expedited review.

(a) Upon written request of the filing party, the Commission may shorten the waiting period. In support of a request, the filing party should provide a full explanation, with reference to specific facts and circumstances, of the necessity for a shortened waiting period. In reviewing requests, the Commission will consider the parties' needs and the Commission's ability to complete its review of the agreement's potential impact. In no event, however, may the period be shortened to less than fourteen (14) days after the publication of the notice of the filing of the agreement in the FEDERAL REGISTER. When a request for expedited review is denied, the normal 45-day waiting period will apply. Requests for expedited review will not be granted routinely and will be granted only on a showing of good cause. Good cause would include, but is not limited to, the impending expiration of the agreement; an operational urgency; Federal or State imposed time limitations; or other reasons that, in the Commission's discretion, constitute grounds for granting the request.

(b) A request for expedited review will be considered for an agreement whose 45-day waiting period has begun anew after being stopped by a request for additional information.

#### § 535.606 Requests for additional information.

(a) The Commission may request from the filing party any additional information and documents necessary to complete the statutory review required by the Act. The request shall be made prior to the expiration of the 45-day waiting period. All responses to a request for additional information shall be submitted to the Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573.

(b) Where the Commission has made a request for additional information, the agreement's effective date will be 45 days after receipt of the complete response to the request for additional information. If all questions are not fully answered or requested documents are not supplied, the parties must include a statement of reasons why questions

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were not fully answered or documents supplied. In the event all material is not submitted, the agreement's effective date will be 45 days after receipt of both the documents and information which are submitted, if any, and the statement indicating the reasons for noncompliance. The Commission may, upon notice to the Attorney General, and pursuant to sections 6(i) and 6(k) of the Act (46 U.S.C. 41307(c) and 41307(d)), request the United States District Court for the District of Columbia to further extend the agreement's effective date until there has been substantial compliance.

(c) A request for additional information may be made orally or in writing. In the case of an oral request, a written confirmation of the request shall be mailed to the filing party within seven days of the oral request.

(d) The Commission will publish a notice in the FEDERAL REGISTER that it has requested additional information and serve that notice on any commenting parties. The notice will indicate only that a request was made and will not specify what information is being sought. Interested parties will have fifteen (15) days after publication of the notice to file further comments on the agreement.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50728, Oct. 1, 2009]

## § 535.607 Failure to comply with requests for additional information.

(a) A failure to comply with a request for additional information results when a person filing an agreement, or an officer, director, partner, agent, or employee thereof fails to substantially respond to the request or does not file a satisfactory statement of reasons for noncompliance. An adequate response is one which directly addresses the Commission's request. When a response is not received by the Commission within a specified time, failure to comply will have occurred.

(b) The Commission may, pursuant to section 6(i) of the Act (46 U.S.C. 41307(c)), request relief from the United States District Court for the District of Columbia when it considers that there has been a failure to substantially comply with a request for addi-

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tional information. The Commission may request that the court:

(1) Order compliance with the request;

(2) Extend the review period until there has been substantial compliance; or

(3) Grant other equitable relief that under the circumstances seems necessary or appropriate.

(c) Where there has been a failure to substantially comply, section 6(i)(2) of the Act (46 U.S.C. 41307(c)(2)) provides that the court shall extend the review period until there has been substantial compliance.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50729, Oct. 1, 2009]

## § 535.608 Confidentiality of submitted material.

(a) Except for an agreement filed under section 5 of the Act (46 U.S.C. 40301(d)-(e), 40302-40303, 40305), all information submitted to the Commission by the filing party will be exempt from disclosure under 5 U.S.C. 552. Included in this disclosure exemption is information provided in the Information Form, voluntary submission of additional information, reasons for noncompliance, and replies to requests for additional information.

(b) Information that is confidential pursuant to paragraph (a) of this section may be disclosed, however, to the extent:

(1) It is relevant to an administrative or judicial action or proceeding; or

(2) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(c) Parties may voluntarily disclose or make information publicly available. If parties elect to disclose information they shall promptly inform the Commission.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50729, Oct. 1, 2009]

## § 535.609 Negotiations.

At any time after the filing of an agreement and prior to the conclusion of judicial injunctive proceedings, the filing party or an authorized representative may submit additional factual or legal support for an agreement or may propose modifications of an agreement.

Such negotiations between Commission personnel and filing parties may continue during the pendency of injunctive proceedings. Shippers, other government departments or agencies, and other third parties may not participate in these negotiations.

### Subpart G—Reporting Requirements

#### § 535.701 General requirements.

(a) Parties to agreements identified in § 535.702(a) shall submit quarterly Monitoring Reports on an ongoing basis for as long as the agreement remains in effect, containing information and data on the agreement and the parties' authority under the agreement.

(b) Parties to agreements identified in § 535.704 are required to submit minutes of their meetings for as long as their agreements remain in effect.

(c) If a joint service is a party to an agreement that is subject to the requirements of this subpart, the joint service shall be treated as one member of that agreement for purposes of that agreement's Monitoring Reports.

(d) Monitoring Reports and minutes required to be filed by this subpart should be submitted to: Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573-0001. A copy of the Monitoring Report form in Microsoft Word and Excel format may be downloaded from the Commission's home page at <http://www.fmc.gov>, or a paper copy may be obtained from the Bureau of Trade Analysis. In lieu of submitting paper copies, parties may complete and submit their Monitoring Reports in the Commission's prescribed electronic format, either on diskette or CD-ROM.

(e)(1) The regulations in this paragraph (e) are stayed until further notice.

(2) Reports and minutes required to be filed by this subpart may be filed by direct electronic transmission in lieu of hard copy. Detailed information on electronic transmission is available from the Commission's Bureau of Trade Analysis. Certification and signature requirements of this subpart can be met on electronic transmissions through use of a pre-assigned Personal Identification Number (PIN) obtained

from the Commission. PINs can be obtained by submission by an official of the filing party of a statement to the Commission agreeing that inclusion of the PIN in the transmission constitutes the signature of the official. Only one PIN will be issued for each agreement. Where a filing party has more than one official authorized to file minutes or reports, each additional official must submit such a statement countersigned by the principal official of the filing party. Each filing official will be issued a unique password. A PIN or designation of authorized filing officials may be canceled or changed at any time upon the written request of the principal official of the filing party. Direct electronic transmission filings may be made at any time except between the hours of 8:30 a.m. and 2 p.m. Eastern time on Commission business days.

(f) *Time for filing.* Except as otherwise instructed, Monitoring Reports shall be filed within 75 days of the end of each calendar quarter. Minutes of meetings shall be filed within 21 days after the meeting. Other documents shall be filed within 15 days of the receipt of a request for documents.

(g) A complete response in accordance with the instructions on the Monitoring Report shall be supplied to each item. If a party to an agreement is unable to supply a complete response, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for non-compliance and the efforts made to obtain the required information.

(h) A Monitoring Report for a particular agreement may be supplemented with any other relevant information or documentary material.

(i) *Confidentiality.* (1) The Monitoring Reports, minutes, and any other additional information submitted by a particular agreement will be exempt from disclosure under 5 U.S.C. 552, except to the extent:

(i) It is relevant to an administrative or judicial action or proceeding; or

(ii) It is disclosed to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(2) Parties may voluntarily disclose or make Monitoring Reports, minutes

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or any other additional information publicly available. The Commission must be promptly informed of any such voluntary disclosure.

(j) Monitoring Report or alternative periodic reporting requirements in this subpart shall not be construed to authorize the exchange or use by or among agreement members of information required to be submitted.

EFFECTIVE DATE NOTE: At 69 FR 64414, Nov. 4, 2004, paragraph (e) of § 535.701 was stayed indefinitely.

### § 535.702 Agreements subject to Monitoring Report and alternative periodic reporting requirements.

(a) Agreements subject to the Monitoring Report requirements of this subpart are:

(1) An agreement that contains the authority to discuss or agree on capacity rationalization; or

(2) Where the parties to an agreement hold a combined market share, based on cargo volume, of 35 percent or more in the entire U.S. inbound or outbound geographic scope of the agreement and the agreement contains any of the following authorities:

(i) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge;

(ii) The establishment of a joint service;

(iii) The pooling or division of cargo traffic, earnings, or revenues and/or losses; or

(iv) The discussion of, or agreement on, any service contract matter.

(b) The determination of an agreement's reporting obligation under § 535.702(a)(2) in the first instance shall be based on the market share data reported on the agreement's Information Form pursuant to § 535.503. Thereafter, at the beginning of each calendar year, the Bureau of Trade Analysis will notify the agreement parties of any changes in its reporting requirements based on market share data reported on the agreement's quarterly Monitoring Report for the previous second quarter (April-June).

(c) The Commission may require, as necessary, that the parties to an agreement with market share below the 35 percent threshold, as identified and de-

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finied in § 535.702(a)(2), submit Monitoring Reports pursuant to § 535.703.

(d) In addition to or instead of the Monitoring Report in § 535.703, the Commission may prescribe, as necessary, alternative periodic reporting requirements for parties to any agreement identified in § 535.201.

### § 535.703 Monitoring Report form.

(a) For agreements subject to the Monitoring Report requirements in § 535.702(a), the Monitoring Report form, with instructions, is set forth in sections I through III of appendix B of this part. The instructions should be read in conjunction with the Act and this part.

(b) The Monitoring Report shall apply as follows:

(1) Section I shall be completed by parties to agreements identified in § 535.702(a)(1);

(2) Section II shall be completed by parties to agreements identified in § 535.702(a)(2); and

(3) Section III shall be completed by parties to all agreements identified in § 535.702(a).

(c) In accordance with the requirements and instructions in appendix B of this part, parties to an agreement subject to part 2(C) of section I of the Monitoring Report shall submit a narrative statement on any significant reductions in vessel capacity that the parties will implement under the agreement. The term "a significant reduction" is defined in appendix B. The narrative statement shall be submitted to the Director, Bureau of Trade Analysis, no later than 15 days after a significant reduction in vessel capacity has been agreed upon by the parties but prior to the implementation of the actual reduction under the agreement.

(d)(1) The Commission may require, in its discretion, that the information on the top agreement commodities in part 4 of section II of the Monitoring Report be reported on a sub-trade basis, as defined in appendix B of this part, rather than on an agreement-wide basis. When commodity sub-trade information is required under this section, the Commission shall notify the parties to the agreement.

(2) For purposes of § 535.703(d)(1), the top agreement commodities shall mean

the top 10 liner commodities (including commodities not subject to tariff publication) carried by all the agreement parties in each sub-trade within the geographic scope of the agreement during the calendar quarter. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound sub-trades shall be stated separately. All other instructions, definitions, and terms shall apply as specified and required in appendix B of this part.

**§ 535.704 Filing of minutes.**

(a) *Agreements required to file minutes.*

(1) This section applies to agreements authorized to engage in any of the following activities: discussion or establishment of any type of rates or charges, whether in tariffs or service contracts; pooling or apportionment of cargo traffic; discussion of revenues, losses, or earnings; or discussion or agreement on service contract matters, including the establishment of voluntary service contract guidelines.

(2) Each agreement to which this section applies shall file with the Commission, through a designated official, minutes of all meetings defined in paragraph (b) of this section, except as provided in paragraph (d) of this section.

(b) *Meetings.* For purposes of this subpart, the term meeting shall include all discussions at which any agreement is reached among any number of the parties to an agreement relating to the business of the agreement, and all other discussions among three or more members of the agreement (or all members if fewer than three) relating to the business of the agreement. This includes, but is not limited to, meetings of the members' agents, principals, owners, officers, employees, representatives, committees, or subcommittees, and communications among members facilitated by agreement officials. Discussions conducted by telephone, electronic device, or other means are included.

(c) *Content of minutes.* Minutes shall include the following:

(1) The date, time, and place of the meeting;

(2) A list of participants and companies represented;

(3) A description of discussions detailed enough so that a non-participant reading the minutes could reasonably gain a clear understanding of the nature and extent of the discussions and, where applicable, any decisions reached. Such description need not disclose the identity of the parties that participated in the discussion or the votes taken; and

(4) Any report, circular, notice, statistical compilation, analytical study, survey, or other work distributed, discussed, or exchanged at the meeting, whether presented by oral, written, electronic, or other means. Where the aforementioned materials are reasonably available to the public, a citation to the work or relevant part thereof is acceptable in lieu of the actual work. Any documents submitted to the Commission pursuant to this section need not disclose the identity of the party or parties that circulated the document at the meeting.

(d) *Exemption.* For parties to agreements subject to this section, the following exemptions shall apply:

(1) Minutes of meetings between parties are not required to reflect discussions of matters set forth in § 535.408(b)(2), (b)(3), (b)(4)(iii), (b)(4)(iv), (b)(4)(v), and (b)(4)(vi);

(2) Minutes of meetings between parties are not required to reflect discussion of matters set forth in § 535.408(b)(5) to the extent that such discussions involve minor operational matters that have little or no impact on the frequency of vessel calls at ports or the amount of vessel capacity offered by the parties in the geographic scope of the agreement; and

(3) Minutes of meetings between parties are not required to reflect discussions of or actions taken with regard to rates that, if adopted, would be required to be published in an appropriate tariff. This exemption does not apply to discussions concerning general rate policy, general rate changes, the opening or closing of rates, service contracts, or time/volume rates.

(e) *Serial numbers.* Each set of minutes filed with the Commission shall include the agreement name and FMC number and a unique identification number indicating the sequence in

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which the meeting took place during the calendar year.

[69 FR 64414, Nov. 4, 2004, as amended at 70 FR 20303, Apr. 19, 2005]

**§ 535.705 Application for waiver.**

(a) Upon a showing of good cause, the Commission may waive any requirement of this subpart.

(b) A request for such a waiver must be submitted and approved by the Commission in advance of the filing of the Monitoring Report or minutes to which the requested waiver would apply. Requests for a waiver shall be submitted in writing to the Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573-0001, and shall state and provide the following:

- (1) The specific requirements from which relief is sought;
- (2) The special circumstances requiring the requested relief;
- (3) Relevant trade and industry data and information to substantiate and support the special circumstances requiring the requested relief; and
- (4) Why granting the requested waiver will not substantially impair effective monitoring of the agreement.

(c) The Commission may take into account the presence or absence of shipper complaints as well as the past compliance of the agreement parties with any reporting requirement under this part in considering an application for a waiver.

**Subpart H—Mandatory and Prohibited Provisions**

**§ 535.801 Independent action.**

(a) Each conference agreement shall specify the independent action (“IA”) procedures of the conference, which shall provide that any conference member may take independent action on any rate or service item upon not more than 5 calendar days’ notice to the conference and shall otherwise be in conformance with section 5(b)(8) of the Act (46 U.S.C. 40303(b)(8)).

(b)(1) Each conference agreement that provides for a period of notice for independent action shall establish a fixed or maximum period of notice to the conference. A conference agree-

ment shall not require or permit a conference member to give more than 5 calendar days’ notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the tariff publication requirements of this chapter.

(2) A conference agreement shall not prescribe notice periods for adopting, withdrawing, postponing, canceling, or taking other similar actions on independent actions.

(c) Each conference agreement shall indicate the conference official, single designated representative, or conference office to which notice of independent action is to be provided. A conference agreement shall not require notice of independent action to be given by the proposing member to the other parties to the agreement.

(d) A conference agreement shall not require a member who proposes independent action to attend a conference meeting, to submit any further information other than that necessary to accomplish the publication of the independent tariff item, or to comply with any other procedure for the purpose of explaining, justifying, or compromising the proposed independent action.

(e) A conference agreement shall specify that any new rate or service item proposed by a member under independent action (except for exempt commodities not published in the conference tariff) shall be included by the conference in its tariff for use by that member effective no later than 5 calendar days after receipt of the notice and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date.

(f)(1) As it pertains to this part, “adopt” means the assumption in identical form of an originating member’s independent action rate or service item, or a particular portion of such a rate or service item. If a carrier adopts an IA at a lower rate than the conference rate when there is less than 30 days remaining on the original IA, the adopted IA should be made to expire 30 days after its effectiveness to comply with the statutory 30-day notice requirement. In the case of an independent action time/volume rate (“IA

TVR”), the dates of the adopting IA may vary from the dates of the original IA, so long as the duration of the adopting IA is the same as that of the originating IA. Furthermore, no term other than “adopt” (e.g., “follow,” “match”) can be used to describe the action of assuming as one’s own an initiating carrier’s IA. Additionally, if a party to an agreement chooses to take on an IA of another party, but alters it, such action is considered a new IA and must be published pursuant to the IA publication and notice provisions of the applicable agreement.

(2) An IA TVR published by a member of a ratemaking agreement may be adopted by another member of the agreement, provided that the adopting member takes on the original IA TVR in its entirety without change to any aspect of the original rate offering (except beginning and ending dates in the time period) (*i.e.*, a separate TVR with a separate volume of cargo but for the same duration). Any subsequent IA TVR offering that results in a change in any aspect of the original IA TVR, other than the name of the offering carrier or the beginning date of the adopting IA TVR, is a new independent action and shall be processed in accordance with the provisions of the applicable agreement. The adoption procedures discussed above do not authorize the participation by an adopting carrier in the cargo volume of the originating carrier’s IA TVR. Member lines may publish and participate in joint IA TVRs, if permitted to do so under the terms of their agreement; however, no carrier may participate in an IA TVR already published by another carrier.

(g) A conference agreement shall not require or permit individual member lines to be assessed on a per carrier usage basis the costs and/or administrative expenses incurred by the agreement in processing independent action filings.

(h) A conference agreement may not permit the conference to unilaterally designate an expiration date for an independent action taken by a member line. The right to determine the duration of an IA remains with the member line, and a member line must be given the opportunity to designate whatever duration it chooses for its IA, regard-

less if the duration is for a specified period or open ended. Only in instances where a member line gives its consent to the conference, or where a member line freely elects not to provide for the duration of its IA after having been given the opportunity, can the conference designate an expiration date for the member line’s IA.

(i) Any new conference agreement or any modification to an existing conference agreement that does not comply with the requirements of this section shall be rejected pursuant to § 535.601 of this part.

(j) If ratemaking is by sections within a conference, then any notice to the conference required by § 535.801 may be made to the particular ratemaking section.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50729, Oct. 1, 2009]

#### § 535.802 Service contracts.

(a) Ocean common carrier agreements may not prohibit or restrict a member or members of the agreement from engaging in negotiations for service contracts with one or more shippers.

(b) Ocean common carrier agreements may not require a member or members of the agreement to disclose a negotiation on a service contract, or the terms and conditions of a service contract, other than those terms or conditions required by section 8(c)(3) of the Act (46 U.S.C. 40502(d)).

(c) Ocean common carrier agreements may not adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate or enter into service contracts.

(d) An agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member’s or agreement members’ service contracts if the guidelines explicitly state the right of the members of the agreement not to follow these guidelines.

(e) Voluntary guidelines shall be submitted to the Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573-0001. Voluntary guidelines shall be kept confidential in accordance with § 535.608

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of this part. Use of voluntary guidelines prior to their submission is prohibited.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50729, Oct. 1, 2009]

**§ 535.803 Ocean freight forwarder compensation.**

No conference or group of two or more ocean common carriers may:

(a) Deny to any member of such conference or group the right, upon notice of not more than 5 calendar days, to take independent action on any level of compensation paid to an ocean freight forwarder; or

(b) Agree to limit the payment of compensation to an ocean freight forwarder to less than 1.25 percent of the aggregate of all rates and charges applicable under the tariff assessed against the cargo on which the forwarding services are provided.

**Subpart I—Penalties**

**§ 535.901 Failure to file.**

Any person operating under an agreement, involving activities subject to the Act pursuant to sections 4 and 5(a) of the Act (46 U.S.C. 40301(a)–(c) and 40302) and this part and not exempted pursuant to section 16 of the Act (46 U.S.C. 40103) or excluded from filing by the Act, that has not been filed and that has not become effective pursuant to the Act and this part is in violation of the Act and this part and is subject to the civil penalties set forth in section 13(a) of the Act (46 U.S.C. 41107).

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50729, Oct. 1, 2009]

**§ 535.902 Falsification of reports.**

Knowing falsification of any report required by the Act or this part, including knowing falsification of any item in any applicable agreement information and/or reporting requirements pursuant to subparts E and G of this part, is a violation of the rules of this part and is subject to the civil penalties set forth in section 13(a) of the Act (46 U.S.C. 41107) and may be subject to the criminal penalties provided for in 18 U.S.C. 1001.

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50730, Oct. 1, 2009]

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**Subpart J—Paperwork Reduction**

**§ 535.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

This section displays the control number assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. The Commission intends that this section comply with the requirements of section 3507(a)(3) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement in the following table:

Section	Current OMB control No.
535.101 through 535.902 .....	3072–0045

**APPENDIX A TO PART 535—INFORMATION FORM AND INSTRUCTIONS**

**INFORMATION FORM INSTRUCTIONS**

1. All agreements and modifications to agreements between or among ocean common carriers identified in 46 CFR 535.502 must be accompanied by a completed Information Form to the full extent required in sections I through V of this Form. Sections I and V must be completed by all such agreements. In addition, sections II, III and IV must be completed, as applicable, in accordance with the authority contained in each agreement. Where an agreement containing multiple authorities is subject to duplicate reporting requirements in the various sections of this Form, the parties may provide only one response so long as the reporting requirements within each section are fully addressed. The Information Form specifies the data and information which must be reported for each section and the format in which it must be provided. If a party to an agreement is unable to supply a complete response to any item of this Form, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. For purposes of this Form, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall



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respond to the Form as a single agreement party.

2. For clarification of the agreement terminology used in this Form, the parties may refer to the definitions provided in 46 CFR 535.104. In addition, the following definitions shall apply for purposes of this Form: *liner movement* means the carriage of liner cargo by liner operators; *liner cargo* means cargo carried on liner vessels in a liner service; *liner operator* means a vessel-operating common carrier engaged in liner service; *liner vessel* means a vessel used in a liner service; *liner service* means a definite, advertised schedule of sailings at regular intervals; and *TEU* means a unit of measurement equivalent to one 20-foot shipping container. Further, when used in this Form, the terms "entire geographic scope of the agreement" or "agreement-wide" refer to the combined U.S. inbound trade and/or the combined U.S. outbound trade as such trades apply to the geographic scope of the agreement, as opposed to the term "sub-trade," which is defined for reporting purposes as the scope of all liner movements between each U.S. port range and each foreign country within the scope of the agreement. Whether required on a combined trade basis or a sub-trade basis, the U.S. inbound trade (or sub-trades) and the U.S. outbound trade (or sub-trades) shall always be stated separately.

**SECTION I**

Section I applies to all agreements identified in 46 CFR 535.502. Parties to such agreements must complete parts 1 through 4 of this section. The authorities listed in part 4 of this section do not necessarily include all of the authorities that must be set forth in an agreement filed under the Act. The specific authorities between the parties to an agreement, however, must be set forth, clearly and completely, in a filed agreement in accordance with 46 CFR 535.402.

*Part 1*

State the full name of the agreement.

*Part 2*

Provide a narrative statement describing the specific purpose(s) of the agreement pertaining to the parties' business activities as ocean common carriers in the foreign commerce of the United States, and the commercial or other relevant circumstances within the geographic scope of the agreement that led the parties to enter into the agreement.

*Part 3*

List all effective agreements that cover all or part of the geographic scope of this agreement, and whose parties include one or more of the parties to this agreement.

*Part 4(A)*

Identify whether the agreement authorizes the parties to discuss, or agree upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge.

*Part 4(B)*

Identify whether the agreement authorizes the parties to establish a joint service.

*Part 4(C)*

Identify whether the agreement authorizes the parties to pool cargo traffic or revenues.

*Part 4(D)*

Identify whether the agreement authorizes the parties to discuss, or agree on, any service contract matter.

*Part 4(E)*

Identify whether the agreement authorizes the parties to discuss or agree on capacity rationalization as defined in 46 CFR 535.104(e).

*Part 4(F)*

Identify whether the agreement contains provisions that place conditions or restrictions on the parties' agreement participation, and/or use or offering of competing services within the geographic scope of the agreement.

*Part 4(G)*

Identify whether the agreement authorizes the parties to charter or use vessel space in exchange for compensation or services. This authority does not include capacity rationalization as referred to in part 4(E) of this section.

*Part 4(H)*

Identify whether the agreement authorizes the parties to rationalize sailings or services relating to a schedule of ports, the frequency of vessel calls at ports, or the size and capacity of vessels for deployment. This authority does not include the establishment of a joint service or capacity rationalization as referred to in parts 4(B) and 4(E) of this section.

**SECTION II**

Section II applies to agreements identified in 46 CFR 535.502(a) that contain any of the following authorities: a) the charter or use of vessel space in exchange for compensation or services; or b) the rationalization of sailings or services relating to a schedule of ports, the frequency of vessel calls at ports, or the size and capacity of vessels for deployment. Such authorities do not include the establishment of a "joint service," nor "capacity

rationalization” as these terms are defined in 46 CFR 535.104 (o) and (e). Parties to agreements identified in this section must complete all items in part 1.

*Part 1(A)*

For the most recent 12-month period for which complete data are available, provide the number of vessel calls each party made at each port for its liner services that would be covered by the agreement within the entire geographic scope of the agreement.

*Part 1(B)*

Provide a narrative statement on any significant changes, anticipated or planned to be implemented when the agreement goes into effect, in the number of vessel calls at a port for the parties’ liner services that would be covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of the significant change and its effect on the frequency of vessel calls at the port for the liner service that would be subject to the change. For purposes of this part, a significant change refers to an increase or a decrease in the number of vessel calls at a port for a fixed, seasonally planned, or indefinite period of time. A significant change excludes an incidental or temporary alteration in the number of vessel calls at a port, or an operational change in vessel calls that would have little or no impact on the number of vessel calls at a port. If no significant change is anticipated or planned, it shall be noted with the term “none” in response to part 1(B) of this section.

SECTION III

Section III applies to agreements identified in 46 CFR 535.502 that contain the authority to discuss or agree on capacity rationalization as defined in 46 CFR 535.104(e). Parties to such agreements must complete parts 1 and 2 of this section.

*Part 1(A)*

1. For the most recent calendar quarter for which complete data are available, provide the amount of vessel capacity for each party for each of its liner services that would be covered by the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, vessel capacity means a party’s total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that would be covered by the agreement.

2. When 50 percent or more of the total liner cargo carried by all the parties in the

geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

*Part 1(B)*

Provide the percentage of vessel capacity utilization for each party for each of its liner services that would be covered by the agreement within the entire geographic scope of the agreement, corresponding to the figures and time period used in part 1(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, the percentage of vessel capacity utilization means a party’s total volume of liner cargo, for each of its liner services that would be covered by the agreement, carried on any vessel space counted under part 1(A) of this section, divided by its total vessel capacity as defined and derived in part 1(A) of this section, which quotient is multiplied by 100.

*Part 1(C)*

Provide a narrative statement on any significant changes, anticipated or planned to be implemented when the agreement goes into effect, in the amounts of vessel capacity for the parties’ liner services that would be covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of and the reasons for the significant change and its effects on the liner service and the total amount of vessel capacity for such service that would be subject to the change. For purposes of this part, a significant change refers to the removal from or addition to a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant change excludes instances when vessels may be temporarily repositioned or shifted from one service to another, or when vessel space may be temporarily altered, or when vessels are removed from a liner service and vessels of similar capacity are substituted. It also excludes operational changes in vessels or vessel space that would have little or no impact on the amount of vessel capacity offered in a liner service or a trade. If no significant change is anticipated or planned, it shall be noted with the term “none” in response to part 1(C) of this section.

*Part 2(A)*

For the most recent 12-month period for which complete data are available, provide the number of vessel calls each party made at each port for its liner services that would be covered by the agreement within the entire geographic scope of the agreement.

*Part 2(B)*

Provide a narrative statement on any significant changes, anticipated or planned to be implemented when the agreement goes into effect, in the number of vessel calls at a port for the parties' liner services that would be covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of the significant change and its effect on the frequency of vessel calls at the port for the liner service that would be subject to the change. For purposes of this part, a significant change refers to an increase or a decrease in the number of vessel calls at a port for a fixed, seasonally planned, or indefinite period of time. A significant change excludes an incidental or temporary alteration in the number of vessel calls at a port, or an operational change in vessel calls that would have little or no impact on the number of vessel calls at a port. If no significant change is anticipated or planned, it shall be noted with the term "none" in response to part 2(B) of this section.

## SECTION IV

Section IV applies to agreements identified in 46 CFR 535.502 that contain any of the following authorities: a) the discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; b) the establishment of a joint service; c) the pooling or division of cargo traffic, earnings, or revenues and/or losses; or d) the discussion of, or agreement on, any service contract matter. Parties to such agreements must complete parts 1 through 5 of this section.

*Part 1*

1. For the most recent calendar quarter for which complete data are available, provide the market shares of all liner operators for the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line. Sub-trade is defined as the scope of all liner movements between each U.S. port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares shall be shown separately.

2. U.S. port ranges are defined as follows:

a. Atlantic and Gulf—Includes ports along the eastern seaboard and the Gulf of Mexico from the northern boundary of Maine to Brownsville, Texas. Also includes all ports bordering upon the Great Lakes and their connecting waterways, all ports in the State of New York on the St. Lawrence River, and all ports in Puerto Rico and the U.S. Virgin Islands.

b. Pacific—Includes all ports in the States of Alaska, Hawaii, California, Oregon, and Washington. Also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island, and Wake Island.

3. An application may be filed for a waiver of the definition of "sub-trade" under the procedures described in 46 CFR 535.504. In any such application, the burden shall be on the parties to show that their marketing and pricing practices have been done by ascertainable multi-country regions rather than by individual countries or, in the case of the United States, by broader areas than the port ranges defined herein. The parties must further show that, though operating individually, they were nevertheless applying essentially similar regional practices.

4. The formula for calculating market share in the entire agreement scope or in a sub-trade is as follows: The total amount of liner cargo carried on each liner operator's liner vessels in the entire agreement scope or in the sub-trade during the most recent calendar quarter for which complete data are available, divided by the total liner movements in the entire agreement scope or in the sub-trade during the same calendar quarter, which quotient is multiplied by 100. The calendar quarter used must be clearly identified. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

5. If 50 percent or more of the total liner cargo carried by the parties in the entire agreement scope during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the parties was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measurement used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

*Part 2*

1. For each party that served all or any part of the geographic scope of the agreement during all or any part of the most recent 12-month period for which complete data are available, provide each party's total liner revenues within the geographic scope, total liner cargo carried within the geographic scope, and average revenue. For purposes of this Form, total liner revenues

means the total revenues, in U.S. dollars, of each party corresponding to its total cargo carried for its liner services that would fall under the agreement, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through intermodal basis; accessorial charges; surcharges; and charges for inland cargo carriage. Average revenue shall be calculated as the quotient of each party's total liner revenues within the geographic scope divided by its total cargo carried within the geographic scope.

2. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was containerized, each party shall report only its total carryings of containerized liner cargo (measured in TEUs) within the geographic scope, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was non-containerized, each party shall report only its total carryings of non-containerized liner cargo (specifying the unit of measurement used), total revenues generated by its carriage of non-containerized liner cargo, and average revenue per unit of measurement. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

*Part 3(A)*

For the same 12-month period used in part 2 of this section, provide a list, for the entire geographic scope of the agreement, of the top 10 liner commodities (including commodities not subject to tariff publication) carried by all the parties for their liner services that would fall under the agreement. For purposes of this Form, commodities shall be identified at the 4-digit level of customarily used commodity coding schedules. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was containerized, this list shall include only containerized commodities. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the 12-month period was non-containerized, this list shall include only non-containerized commodities. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

*Part 3(B)*

Provide the cargo volume and revenue results for each party for each of the major commodities listed in part 3(A) of this section, corresponding to the same 12-month pe-

riod and unit of measurement used. For purposes of this Form, revenue results means the revenues, in U.S. dollars, earned by each party on the cargo volume of each major commodity listed in part 3(A) of this section, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through intermodal basis; accessorial charges; surcharges; and charges for inland cargo carriage. If a party has no cargo volume and revenue results for a commodity listed in part 3(A) of this section, it shall be noted by using a zero for that party in response to part 3(B) of this section.

*Part 4(A)*

For the same calendar quarter used in part 1 of this section, provide the amount of vessel capacity for each party for each of its liner services that would fall under the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that would fall under the agreement. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

*Part 4(B)*

Provide the percentage of vessel capacity utilization for each party for each of its liner services that would fall under the agreement within the entire geographic scope of the agreement, corresponding to the figures and time period used in part 4(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Form, the percentage of vessel capacity utilization means a party's total volume of liner cargo, for each of its liner services that would fall under the agreement, carried on any vessel space counted under part 4(A) of this section, divided by its total vessel capacity as defined and derived in part 4(A) of

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this section, which quotient is multiplied by 100.

### *Part 4(C)*

Provide a narrative statement on any significant changes, anticipated or planned for when the agreement goes into effect, in the amounts of vessel capacity for the parties' liner services that would fall under the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of and reasons for the significant change and its effects on the liner service and the total amount of vessel capacity for such service that would be subject to the change. For purposes of this part, a significant change refers to the removal from or addition to a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant change excludes instances when vessels may be temporarily repositioned or shifted from one service to another, or when vessel space may be temporarily altered, or when vessels are removed from a liner service and vessels of similar capacity are substituted. It also excludes operational changes in vessels or vessel space that would have little or no impact on the amount of vessel capacity offered in a liner service or a trade. If no significant change is anticipated or planned, it shall be noted with the term "none" in response to part 4(C) of this section.

### *Part 5(A)*

For the same 12-month period used in parts 2 and 3 of this section, provide the number of vessel calls each party made at each port for its liner services that would fall under the agreement within the entire geographic scope of the agreement.

### *Part 5(B)*

Provide a narrative statement on any significant changes, anticipated or planned for when the agreement goes into effect, in the number of vessel calls at a port for the parties' liner services that would fall under the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of the significant change and its effect on the frequency of vessel calls at the port for the liner service that would be subject to the change. For purposes of this part, a significant change refers to an increase or decrease in the number of vessel calls at a port for a fixed, seasonally planned, or indefinite period of time. A significant change excludes an incidental or temporary alteration in vessel calls at a port, or an operational change in vessel calls that would have little or no impact on the number of vessel calls at a port. If no significant

change is anticipated or planned, it shall be noted with the term "none" in response to part 5(B) of this section.

## SECTION V

Section V applies to all agreements identified in 46 CFR 535.502. Parties to such agreements must complete all items in part 1 of this section.

### *Part 1(A)*

State the name, title, address, telephone and fax numbers, and electronic mail address of a person the Commission may contact regarding the Information Form and any information provided therein.

### *Part 1(B)*

State the name, title, address, telephone and fax numbers, and electronic mail address of a person the Commission may contact regarding a request for additional information or documents.

### *Part 1(C)*

A representative of the parties shall sign the Information Form and certify that the information in the Form and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative also shall indicate his or her relationship with the parties to the agreement.

## PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

1. The collection of this information is authorized generally by section 15 of the Shipping Act of 1984 (46 U.S.C. 40104). The submission of this form is mandatory for parties to agreements that contain certain authorities.

2. You are not required to provide information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. The valid control number for this information collection is 3072-0045.

3. The time needed to complete and submit this form will vary depending on individual circumstances. The total estimated average time to complete this form is about 30 hours. This estimate includes reading the instructions, collecting necessary data, and compiling that data.

4. If you have any comments concerning the accuracy of the above estimate or have any suggestions for simplifying the form, please contact Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001; or by e-mail [secretary@fmc.gov](mailto:secretary@fmc.gov).

FEDERAL MARITIME COMMISSION
INFORMATION FORM FOR
AGREEMENTS BETWEEN OR AMONG OCEAN COMMON CARRIERS

SECTION I

Part 1

Agreement Name: \_\_\_\_\_

Part 2

Narrative statement on agreement purpose, and commercial or other circumstances requiring the agreement: \_\_\_\_\_

Part 3

List all effective agreements covering all or part of the geographic scope of this agreement, whose parties include one or more of the parties to this agreement.

Part 4

This agreement includes:

- (A) Authority to discuss or agree upon rates or charges? Yes No
(B) Joint service? Yes No
(C) Pooling of cargo traffic or revenues? Yes No
(D) Authority to discuss or agree on service contracts and their terms? Yes No
(E) Authority to discuss or agree on capacity rationalization? Yes No
(F) Conditions or restrictions on the parties' agreement participation, and/or use or offering of competing services in the geographic scope? Yes No
(G) Authority to charter vessel space? Yes No
(H) Authority to rationalize sailings or services? Yes No

SECTION II

Part 1

(A) Vessel Calls
Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [12-Months]
[Port Names] Port 1 Port 2 Port 3
Port 4 Etc. . . .
Carrier A [Name]
Carrier B
Carrier C
Etc. . . .

(B) Narrative statement on significant changes in vessel calls: \_\_\_\_\_

SECTION III

Part 1 Vessel Capacity And Utilization

Table with columns for Carrier (A, B), Liner Service (1, 2, 3), and utilization metrics (XX,XXX, XX).

(C) Narrative statement on significant changes in vessel capacity: \_\_\_\_\_

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name
Time Period: [Calendar Quarter]

Time Period: [12-Months]
[Port Names] Port 1 Port 2 Port 3
Port 4 Etc. . . .
Carrier A [Name]
Carrier B
Carrier C
Etc. . . .

Part 2 Vessel Calls

(A) Agreement-Wide Trade: U.S. Inbound (or Outbound) Name

(B) Narrative statement on significant changes in vessel calls: \_\_\_\_\_

SECTION IV

Part 1 Market Share

Agreement-Wide Trade (or Sub-Trade): U.S.  
Inbound (or Outbound) Name  
Time Period: [Calendar Quarter]

Agreement Market Share:		
Line A [Name] .....	X,XXX	XX
Line B .....	X,XXX	XX
Line C .....	X,XXX	XX
Etc. . . .		
Total Agreement .....	X,XXX	XX
Non-Agreement Market Share:		
Line X .....	X,XXX	XX
Line Y .....	X,XXX	XX
Line Z .....	X,XXX	XX
Etc. . . .		
Total Non-Agreement .....	X,XXX	XX
Total Trade [or Sub-Trade] .....	X,XXX	100

Part 2 Total Liner Cargo and Revenues Time Period: [12-Months]

Agreement-Wide Trade: U.S. Inbound (or  
Outbound) Name

Carrier A .....	\$	X,XXX	\$
Carrier B .....	\$	X,XXX	\$
Carrier C .....	\$	X,XXX	\$
Etc. . . .			

Part 3 Top Liner Commodities Time Period: [Same 12-Months in part 2 of  
this section]

Agreement-Wide Trade: U.S. Inbound (or  
Outbound) Name

Commodity 1 [Name and 4-Digit Code]:			
TEUs [or other units] .....	X,XXX	X,XXX	
Revenues .....	\$	\$	
Commodity 2:			
TEUs .....	X,XXX	X,XXX	
Revenues .....	\$	\$	
Etc. . . .			

Part 4 Vessel Capacity and Utilization Time Period: [Same Calendar Quarter in part  
1 of this section]

Agreement-Wide Trade: U.S. Inbound (or  
Outbound) Name

Carrier A [Name]		
Liner Service 1 [Name] .....	XX,XXX	XX
Liner Service 2 .....	XX,XXX	XX
Liner Service 3 .....	XX,XXX	XX
Etc. . . .		
Carrier B		
Liner Service 1 .....	XX,XXX	XX
Liner Service 2 .....	XX,XXX	XX
Liner Service 3 .....	XX,XXX	XX
Etc. . . .		
Etc. . . .		

(C) Narrative statement on significant  
changes in vessel capacity: \_\_\_\_\_

Part 5

(A) Vessel Calls  
Agreement-Wide Trade: U.S. Inbound (or  
Outbound) Name  
Time Period: [Same 12-Months in parts 2 and  
3 of this section]

[Port Names] Port 1 Port 2 Port 3  
 Port 4 Etc. . . .  
 Carrier A [Name]  
 Carrier B  
 Carrier C  
 Etc. . . .  
 (B) Narrative statement on significant changes in vessel calls: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

SECTION V

Part 1 Contact Persons and Certification

(A) Person(s) to Contact Regarding Information Form.

- (1) Name \_\_\_\_\_
- (2) Title \_\_\_\_\_
- (3) Firm Name and Business \_\_\_\_\_
- (4) Business Telephone Number \_\_\_\_\_
- (5) Fax Number \_\_\_\_\_
- (6) E-Mail Address \_\_\_\_\_

(B) Individual Located in the United States Designated for the Limited Purpose of Receiving Notice of an Issuance of a Request for Additional Information or Documents (see 46 CFR 535.606).

- (1) Name \_\_\_\_\_
- (2) Title \_\_\_\_\_
- (3) Firm Name and Business \_\_\_\_\_
- (4) Business Telephone Number \_\_\_\_\_
- (5) Fax Number \_\_\_\_\_
- (6) E-Mail Address \_\_\_\_\_

(C) Certification

This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type) \_\_\_\_\_  
 Title \_\_\_\_\_  
 Relationship with parties to agreement \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Date \_\_\_\_\_

[69 FR 64414, Nov. 4, 2004, as amended at 70 FR 20304, Apr. 19, 2005; 74 FR 50730, Oct. 1, 2009]

APPENDIX B TO PART 535—MONITORING REPORT AND INSTRUCTIONS

MONITORING REPORT INSTRUCTIONS

1. All agreements between or among ocean common carriers identified in 46 CFR 535.702(a) must submit completed Monitoring Reports to the full extent required in sections I through III of this Report. Sections I and II must be completed, as applicable, in

accordance with the authority contained in each agreement. Section III must be completed by all agreements subject to Monitoring Report requirements.

2. Where an agreement containing multiple authorities is subject to duplicate reporting requirements in the various sections of this Report, the parties may provide only one response so long as the reporting requirements within each section are fully addressed. The Monitoring Report specifies the data and information which must be reported for each section and the format in which it must be provided. If a party to an agreement is unable to supply a complete response to any item of this Report, that party shall provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. For purposes of this Report, if one of the agreement signatories is a joint service operating under an effective agreement, that signatory shall respond to the Report as a single agreement party.

3. For clarification of the agreement terminology used in this Report, the parties may refer to the definitions provided in 46 CFR 535.104. In addition, the following definitions shall apply for purposes of this Report: *liner movement* means the carriage of liner cargo by liner operators; *liner cargo* means cargo carried on liner vessels in a liner service; *liner operator* means a vessel-operating common carrier engaged in liner service; *liner vessel* means a vessel used in a liner service; *liner service* means a definite, advertised schedule of sailings at regular intervals; and TEU means a unit of measurement equivalent to one 20-foot shipping container. Further, when used in this Report, the terms "entire geographic scope of the agreement" or "agreement-wide" refer to the combined U.S. inbound trade and/or the combined U.S. outbound trade as such trades apply to the geographic scope of the agreement, as opposed to the term "sub-trade," which is defined for reporting purposes as the scope of all liner movements between each U.S. port range and each foreign country within the scope of the agreement. Whether required on a combined trade basis or a sub-trade basis, the U.S. inbound trade (or sub-trades) and the U.S. outbound trade (or sub-trades) shall always be stated separately.

SECTION I

Section I applies to agreements, identified in 46 CFR 535.702(a)(1), that contain the authority to discuss or agree on capacity rationalization as defined in 46 CFR 535.104(e). Parties to such agreements must complete parts 1 through 3 of this section.



## Federal Maritime Commission

## Pt. 535, App. B

### *Part 1*

State the full name of the agreement and the agreement number assigned by the FMC.

### *Part 2(A)*

1. For the preceding calendar quarter, provide the amount of vessel capacity for each party for each of its liner services that is covered by the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that is covered by the agreement.

2. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

### *Part 2(B)*

For the preceding calendar quarter, provide the percentage of vessel capacity utilization for each party for each of its liner services that is covered by the agreement within the entire geographic scope of the agreement, corresponding to the figures used in part 2(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, the percentage of vessel capacity utilization means a party's total volume of liner cargo, for each of its liner services that is covered by the agreement, carried on any vessel space counted under part 2(A) of this section, divided by its total vessel capacity as defined and derived in part 2(A) of this section, which quotient is multiplied by 100.

### *Part 2(C)*

Provide a narrative statement on any significant reductions, to be implemented under the agreement, in the amounts of vessel capacity for the parties' liner services that are covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of and the reasons for the significant reduction and its effects

on the liner service and the total amount of vessel capacity for such service that would be subject to the reduction. The narrative statement for part 2(C) of this section shall be submitted to the Director, Bureau of Trade Analysis, no later than 15 days after a significant reduction in the amount of vessel capacity has been agreed upon by the parties but prior to the implementation of the actual reduction under the agreement. For purposes of this part, a significant reduction refers to the removal from a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant reduction excludes instances when vessels may be temporarily repositioned or shifted from one service to another, or when vessel space may be temporarily altered, or when vessels are removed from a liner service and vessels of similar or greater capacity are substituted. It also excludes operational changes in vessels or vessel space that would have little or no impact on the amount of vessel capacity offered in a liner service or a trade.

### *Part 2(D)*

Excluding those changes already reported in part 2(C) of this section, provide a narrative statement on any other significant changes, implemented under the agreement during the preceding calendar quarter, in the amounts of vessel capacity for the parties' liner services that are covered by the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of and the reasons for the significant change and its effects on the liner service and the total amount of vessel capacity for such service that was subject to the change. For purposes of this part, a significant change refers to the addition to a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant change excludes instances when vessels were temporarily repositioned or shifted from one service to another, or when vessel space was temporarily altered, or when vessels were removed from a liner service and vessels of similar capacity were substituted. It also excludes operational changes in vessels or vessel space that had little or no impact on the amount of vessel capacity offered in a liner service or a trade. If no significant change was implemented, it shall be noted with the term "none" in response to part 2(D) of this section.

### *Part 3*

Provide a narrative statement on any significant changes, implemented under the agreement during the calendar quarter, in the number of vessel calls at a port for the parties' liner services that are covered by the agreement within the entire geographic scope of the agreement. Specifically, explain

the nature of the significant change and its effect on the frequency of vessel calls at the port for the liner service that was subject to the change. For purposes of this part, a significant change refers to an increase or a decrease in the number of vessel calls at a port for a fixed, seasonally planned, or indefinite period of time. A significant change excludes an incidental or temporary alteration in the number of vessel calls at a port, or an operational change in vessel calls that had little or no impact on the number of vessel calls at a port. If no significant change was implemented, it shall be noted with the term “none” in response to part 3 of this section.

## SECTION II

Section II applies to agreements, identified in 46 CFR 535.702(a)(2), where the parties to the agreement hold a combined market share, based on cargo volume, of 35 percent or more in the entire U.S. inbound or outbound geographic scope of the agreement and the agreement contains any of the following authorities: a) the discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; b) the establishment of a joint service; c) the pooling or division of cargo traffic, earnings, or revenues and/or losses; or d) the discussion of, or agreement on, any service contract matter. Parties to such agreements must complete parts 1 through 6 of this section.

### Part 1

State the full name of the agreement and the agreement number assigned by the FMC.

### Part 2

1. For the preceding calendar quarter, provide the market shares of all liner operators for the entire geographic scope of the agreement and in each sub-trade within the scope of the agreement. A joint service shall be treated as a single liner operator, whether it is an agreement line or a non-agreement line. Sub-trade is defined as the scope of all liner movements between each U.S. port range within the scope of the agreement and each foreign country within the scope of the agreement. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound market shares shall be shown separately.

2. U.S. port ranges are defined as follows:

a. Atlantic and Gulf—Includes ports along the eastern seaboard and the Gulf of Mexico from the northern boundary of Maine to Brownsville, Texas. Also includes all ports bordering upon the Great Lakes and their connecting waterways, all ports in the State of New York on the St. Lawrence River, and all ports in Puerto Rico and the U.S. Virgin Islands.

b. Pacific—Includes all ports in the States of Alaska, Hawaii, California, Oregon, and Washington. Also includes all ports in Guam, American Samoa, Northern Marianas, Johnston Island, Midway Island, and Wake Island.

3. An application may be filed for a waiver of the definition of “sub-trade” under the procedures described in 46 CFR 535.705. In any such application, the burden shall be on the parties to show that their marketing and pricing practices have been done by ascertainable multi-country regions rather than by individual countries or, in the case of the United States, by broader areas than the port ranges defined herein. The Commission will also consider whether the alternative definition of “sub-trade” requested by the waiver application is reasonably consistent with the definition of “sub-trade” applied in the original Information Form for the agreement.

4. The formula for calculating market share in the entire agreement scope or in a sub-trade is as follows: The total amount of liner cargo carried on each liner operator’s liner vessels in the entire agreement scope or in the sub-trade during the most recent calendar quarter for which complete data are available, divided by the total liner movements in the entire agreement scope or in the sub-trade during the same calendar quarter, which quotient is multiplied by 100. The market shares held by non-agreement lines as well as by agreement lines must be provided, stated separately in the format indicated.

5. If 50 percent or more of the total liner cargo carried by the parties in the entire agreement scope during the calendar quarter was containerized, only containerized liner movements (measured in TEUs) must be used for determining market share. If 50 percent or more of the total liner cargo carried by the parties was non-containerized, only non-containerized liner movements must be used for determining market share. The unit of measurement used in calculating amounts of non-containerized cargo must be specified clearly and applied consistently.

### Part 3

1. For the preceding calendar quarter, provide each party’s total liner revenues in the entire geographic scope of the agreement, total liner cargo carried in the entire geographic scope of the agreement, and average revenue. For purposes of this Report, total liner revenues means the total revenues, in U.S. dollars, of each party corresponding to its total cargo carried for its liner services that fall under the agreement, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through inter-modal basis; accessorial charges; surcharges; and charges for inland cargo carriage. Average revenue shall be calculated as the quotient of each party’s total liner revenues

in the entire geographic scope divided by its total cargo carried in the entire geographic scope.

2. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, each party shall report only its total carryings of containerized liner cargo (measured in TEUs) during the calendar quarter, total revenues generated by its carriage of containerized liner cargo, and average revenue per TEU. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, each party shall report only its total carryings of non-containerized liner cargo during the calendar quarter (specifying the unit of measurement used), total revenues generated by its carriage of non-containerized liner cargo, and average revenue per unit of measurement. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

*Part 4(A)*

For the preceding calendar quarter, provide a list, for the entire geographic scope of the agreement, of the top 10 liner commodities (including commodities not subject to tariff publication) carried by all the parties for their liner services that fall under the agreement. For purposes of this Report, commodities shall be identified at the 4-digit level of customarily used commodity coding schedules. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, this list shall include only containerized commodities. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, this list shall include only non-containerized commodities. When the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound data shall be stated separately.

*Part 4(B)*

For the preceding calendar quarter, provide the cargo volume and revenue results for each party for each of the major commodities listed in part 4(A) of this section, corresponding to the same unit of measurement used. For purposes of this Report, revenue results means the revenues, in U.S. dollars, earned by each party on the cargo volume of each major commodity listed in part 4(A) of this section, inclusive of all ocean freight charges, whether assessed on a port-to-port basis or a through intermodal basis; accessorial charges; surcharges; and charges

for inland cargo carriage. If a party has no cargo volume and revenue results for a commodity listed in part 4(A) of this section, it shall be noted by using a zero for that party in response to part 4(B) of this section.

*Part 5(A)*

For the preceding calendar quarter, provide the amount of vessel capacity for each party for each of its liner services that falls under the agreement within the entire geographic scope of the agreement, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, vessel capacity means a party's total commercial liner space on line-haul vessels, whether operated by it or other parties from whom space is obtained, sailing to and/or from the continent of North America for each of its liner services that falls under the agreement. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was containerized, the amount(s) of vessel capacity for each party shall be reported in TEUs. When 50 percent or more of the total liner cargo carried by all the parties in the geographic scope of the agreement during the calendar quarter was non-containerized, the amount(s) of vessel capacity for each party shall be reported in non-containerized units of measurement. The unit of measurement used in calculating the amounts of non-containerized vessel capacity must be specified clearly and consistently applied.

*Part 5(B)*

For the preceding calendar quarter, provide the percentage of vessel capacity utilization for each party for each of its liner services that falls under the agreement within the entire geographic scope of the agreement, corresponding to the figures used in part 5(A) of this section, stated separately for the U.S. inbound and outbound trades as applicable to the geographic scope of the agreement. For purposes of this Report, the percentage of vessel capacity utilization means a party's total volume of liner cargo, for each of its liner services that falls under the agreement, carried on any vessel space counted under part 5(A) of this section, divided by its total vessel capacity as defined and derived in part 5(A) of this section, which quotient is multiplied by 100.

*Part 5(C)*

Provide a narrative statement on any significant changes in the amount of vessel capacity that occurred during the preceding calendar quarter for the parties' liner services that fall under the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of and the

reasons for the significant change and its effects on the liner service and the total amount of vessel capacity for such service that was subject to the change. For purposes of this part, a significant change refers to the removal from or addition to a liner service of vessels or vessel space for a fixed, seasonally planned, or indefinite period of time. A significant change would exclude instances when vessels were temporarily repositioned or shifted from one service to another, or when vessel space was temporarily altered, or when vessels were removed from a liner service and vessels of similar capacity were substituted. It also excludes operational changes in vessels and vessel space that had little or no impact on the amount of vessel capacity offered in a liner service or a trade. If no significant change occurred during the calendar quarter, it shall be noted with the term "none" in response to part 5(C) of this section.

Part 6

Provide a narrative statement on any significant changes in the number of vessel calls at a port that occurred during the preceding calendar quarter for the parties' liner services that fall under the agreement within the entire geographic scope of the agreement. Specifically, explain the nature of the significant change and its effect on the frequency of vessel calls at the port for the liner service that was subject to the change. For purposes of this part, a significant change refers to an increase or a decrease in the number of vessel calls at a port for a fixed, seasonally planned, or indefinite period of time. A significant change excludes an incidental or temporary alteration in the number of vessel calls at a port, or an operational change in vessel calls that had little or no impact on the number of vessel calls at a port. If no significant change occurred during the calendar quarter, it shall be noted with the term "none" in response to part 6 of this section.

SECTION III

Section III applies to all agreements identified in 46 CFR 535.702(a). Parties to such

FMC Form-151

OMB Control No. 3072-0045

FEDERAL MARITIME COMMISSION
MONITORING REPORT FOR
AGREEMENTS BETWEEN OR AMONG OCEAN COMMON CARRIERS

SECTION I

Part 1

Agreement Name: \_\_\_\_\_
FMC Number: \_\_\_\_\_

agreements must complete all items in part 1 of this section.

Part 1(A)

State the name, title, address, telephone and fax numbers, and electronic mail address of a person the Commission may contact regarding the Monitoring Report and any information provided therein.

Part 1(B)

A representative of the parties shall sign the Monitoring Report and certify that the information in the Report and all attachments and appendices are, to the best of his or her knowledge, true, correct and complete. The representative also shall indicate his or her relationship with the parties to the agreement.

Privacy Act and Paperwork Reduction Act
Notice

- 1. The collection of this information is authorized generally by section 15 of the Shipping Act of 1984 (46 U.S.C. 40104). The submission of this form is mandatory for parties to agreements that contain certain authorities.
2. You are not required to provide information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. The valid control number for this information collection is 3072-0045.
3. The time needed to complete and submit this form will vary depending on individual circumstances. The total estimated average time to complete this form is about 63.5 hours. This estimate includes reading the instructions, collecting necessary data, and compiling that data.
4. If you have any comments concerning the accuracy of the above estimate or have any suggestions for simplifying the form, please contact Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001; or by e-mail secretary@fmc.gov.

**Federal Maritime Commission**

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Carrier A [Name]:			
Liner Service 1 [Name] .....	XX,XXX		XX
Liner Service 2 .....	XX,XXX		XX
Liner Service 3 .....	XX,XXX		XX
Etc. . . .			
Carrier B:			
Liner Service 1 .....	XX,XXX		XX
Liner Service 2 .....	XX,XXX		XX
Liner Service 3 .....	XX,XXX		XX
Etc. . . .			
Etc. . . .			

(C) Narrative statement on significant reductions in vessel capacity to be implemented (submit statement no later than 15 days after a reduction has been agreed upon but prior to the implementation of the reduction): \_\_\_\_\_

SECTION II

Part 1

Agreement Name: \_\_\_\_\_  
 FMC Number: \_\_\_\_\_

Part 2 Market Share

Agreement-Wide Trade (or Sub-Trade): U.S.  
 Inbound (or Outbound) Name  
 Time Period: [Calendar Quarter]

Part 3 Vessel Calls

Narrative statement on significant changes in vessel calls implemented during the calendar quarter: \_\_\_\_\_

Agreement Market Share:			
Line A [Name] .....	X,XXX		XX
Line B .....	X,XXX		XX
Line C .....	X,XXX		XX
Etc. . . .			
Total Agreement .....	X,XXX		XX
Non-Agreement Market Share:			
Line X .....	X,XXX		XX
Line Y .....	X,XXX		XX
Line Z .....	X,XXX		XX
Etc. . . .			
Total Non-Agreement .....	X,XXX		XX
Total Trade [or Sub-Trade] .....	X,XXX		100

Part 3 Total Liner Cargo and Revenues

Time Period: [Calendar Quarter]

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name

Carrier A .....	\$	X,XXX	\$
Carrier B .....	\$	X,XXX	\$
Carrier C .....	\$	X,XXX	\$
Etc. . . .			

Part 4 Top Liner Commodities

Time Period: [Calendar Quarter]

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name

Commodity 1 [Name and 4-Digit Code]:			
TEUs [or other units] .....	X,XXX	X,XXX	
Revenues .....	\$	\$	
Commodity 2:			
TEUs .....	X,XXX	X,XXX	
Revenues .....	\$	\$	
Etc. . . .			

Part 5 Vessel Capacity and Utilization

Time Period: [Calendar Quarter]

Agreement-Wide Trade: U.S. Inbound (or Outbound) Name

Table with columns for Carrier (A and B), Liner Service (1, 2, 3), and numerical values (XX.XXX, XX).

(C) Narrative statement on significant changes in vessel capacity that occurred during the calendar quarter:

Part 6 Vessel Calls

Narrative statement on significant changes in vessel calls that occurred during the calendar quarter:

SECTION III

Part 1 Contact Person and Certification

(A) Person(s) To Contact Regarding Monitoring Report.

- (1) Name
(2) Title
(3) Firm Name and Business
(4) Business Telephone Number
(5) Fax Number
(6) E-Mail Address

(B) Certification.

This Monitoring Report, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. The information is, to the best of my knowledge, true, correct, and complete.

Name (please print or type)
Title
Relationship with parties to agreement
Signature
Date

[69 FR 64414, Nov. 4, 2004, as amended at 74 FR 50730, Oct. 1, 2009]

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

- Sec.
540.1 Scope.
540.2 Definitions.
540.3 Proof of financial responsibility, when required.
540.4 Procedure for establishing financial responsibility.
540.5 Insurance, guaranties, and escrow accounts.
540.6 Surety bonds.
540.7 Evidence of financial responsibility.
540.8 Denial, revocation, suspension, or modification.
540.9 Miscellaneous.
FORM FMC-132A TO SUBPART A OF PART 540
FORM FMC-133A TO SUBPART A OF PART 540
APPENDIX A TO SUBPART A OF PART 540—EXAMPLE OF ESCROW AGREEMENT FOR USE UNDER 46 CFR 540.5(b)

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

- 540.20 Scope.
540.21 Definitions.
540.22 Proof of financial responsibility, when required.
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540.24 Insurance, surety bonds, self-insurance, guaranties, and escrow accounts.
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540.26 Denial, revocation, suspension, or modification.
540.27 Miscellaneous.
FORM FMC-132B TO SUBPART B OF PART 540
FORM FMC-133B TO SUBPART B OF PART 540

## Federal Maritime Commission

## § 540.2

### Subpart C—General

540.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 552, 553; 31 U.S.C. 9701; 46 U.S.C. 305, 44101–44106.

SOURCE: 49 FR 36313, Sept. 14, 1984, unless otherwise noted.

### Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

#### § 540.1 Scope.

(a) The regulations contained in this subpart set forth the procedures whereby persons in the United States who arrange, offer, advertise or provide passage on a vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility or, in lieu thereof, file a bond or other security for obligations under the terms of ticket contracts to indemnify passengers for nonperformance of transportation to which they would be entitled. Included also are the qualifications required by the Commission for issuance of a Certificate (Performance) and the basis for the denial, revocation, modification, or suspension of such Certificates.

(b) Failure to comply with this part may result in denial of an application for a certificate. Vessels operating without the proper certificate may be denied clearance by the Department of Homeland Security and their owners may also be subject to a civil penalty of not more than \$5,000 in addition to a civil penalty of \$200 for each passage sold, such penalties to be assessed by the Federal Maritime Commission (46 U.S.C. 44101–44106, 60105).

[49 FR 36313, Sept. 14, 1984, as amended at 74 FR 50730, Oct. 1, 2009; 78 FR 13277, Feb. 27, 2013]

#### § 540.2 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, limited liability companies, corporations,

partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States, or the laws of any foreign country.

(b) *Vessel* means any commercial vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports.

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

(d) *United States* includes the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(e) *Berth or stateroom accommodation or passenger accommodations* includes all temporary and all permanent passenger sleeping facilities.

(f) *Certificate (Performance)* means a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation issued pursuant to this subpart.

(g) *Passenger* means any person who is to embark on a vessel at any U.S. port and who has paid any amount for a ticket contract entitling him to water transportation.

(h) *Passenger revenue* means those monies wherever paid by passengers who are to embark at any U.S. port for water transportation and all other accommodations, services and facilities relating thereto.

(i) *Unearned passenger revenue* means that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed; this includes port fees and taxes paid, but excludes such items as airfare, hotel accommodations, and tour excursions.

(j) *Insurer* means any insurance company, underwriter, corporation, or association or underwriters, ship owners' protection and indemnity association, or other insurer acceptable to the Commission.

(k) *Evidence of insurance* means a policy, certificate of insurance, cover note, or other evidence of coverage acceptable to the Commission.

### § 540.3

(1) *Whole-ship charter* means an arrangement between a passenger vessel operator and a corporate or institutional entity:

(1) Which provides for the purchase of all the passenger accommodations on a vessel for a particular voyage or series of voyages; and

(2) Whereby the involved corporate or institutional entity provides such accommodations to the ultimate passengers free of charge and such accommodations are not resold to the public.

[49 FR 36313, Sept. 14, 1984, as amended at 57 FR 41891, Sept. 14, 1992; 78 FR 13278, Feb. 27, 2013]

#### § 540.3 Proof of financial responsibility, when required.

No person in the United States may arrange, offer, advertise or provide passage on a vessel unless a Certificate (Performance) has been issued to or covers such person.

#### § 540.4 Procedure for establishing financial responsibility.

(a) In order to comply with section 3 of Public Law 89-777 (46 U.S.C. 44101-44102, 44104-44106) enacted November 6, 1966, there must be filed with the Federal Maritime Commission an application on Form FMC-131 for a Certificate of Financial Responsibility for Indemnification of Passengers for Non-performance of Transportation. Copies of Form FMC-131 may be obtained from the Commission's Web site at <http://www.fmc.gov>, or from the Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573.

(b) An application for a Certificate (Performance) shall be filed with the Bureau of Certification and Licensing, Federal Maritime Commission, by the vessel owner or charterer at least 60 days in advance of the arranging, offering, advertising, or providing of any water transportation or tickets in connection therewith except that any person other than the owner or charterer who arranges, offers, advertises, or provides passage on a vessel may apply for a Certificate (Performance). Late filing of the application will be permitted without penalty only for good cause shown.

### 46 CFR Ch. IV (10-1-19 Edition)

(c) All applications and evidence required to be filed with the Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency.

(d) The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart.

(e) An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, must be accompanied by a filing fee remittance of \$3,272. An application for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet must be accompanied by a filing fee remittance of \$1,652. Administrative changes, such as the re-naming of a vessel will not incur any additional fees.

(f) The application shall be signed by a duly authorized officer or representative of the applicant with a copy of evidence of his or her authority.

(g) In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than fifteen (15) days following such change. For the purpose of this subpart, a material change shall be one which:

(1) Results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart, or

(2) Requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility.

(h) Notice of the application for issuance, denial, revocation, suspension, or modification of any such Certificate will be published on the Commission's web site at <http://www.fmc.gov>.

[78 FR 13278, Feb. 27, 2013, as amended at 81 FR 59145, Aug. 29, 2016; 83 FR 50295, Oct. 5, 2018]

#### § 540.5 Insurance, guaranties, and escrow accounts.

Except as provided in § 540.9(j), the amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission



## Federal Maritime Commission

## § 540.5

to be no less than 110 percent of the unearned passenger revenue of the applicant on the date within the two fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue. The Commission, for good cause shown, may consider a time period other than the previous two-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required. Evidence of adequate financial responsibility for the purposes of this subpart may be established by one or a combination (including §540.6 Surety Bonds) of the following methods:

(a) Filing with the Commission evidence of insurance, issued by an insurer, providing coverage for indemnification of passengers in the event of the nonperformance of water transportation.

(1) Termination or cancellation of the evidence of insurance, whether by the assured or by the insurer, and whether for nonpayment of premiums, calls or assessments or for other cause, shall not be effected: (i) Until notice in writing has been given to the assured or to the insurer and to the Bureau of Certification and Licensing at its office in Washington, DC 20573, by certified mail or courier service, (ii) until after 30 days expire from the date notice is actually received by the Commission, or until after the Commission revokes the Certificate (Performance), whichever occurs first. Notice of termination or cancellation to the assured or insurer shall be simultaneous to such notice given to the Commission. The insurer shall remain liable for claims covered by said evidence of insurance arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

(2) The insolvency or bankruptcy of the assured shall not constitute a defense to the insurer as to claims included in said evidence of insurance and in the event of said insolvency or bankruptcy, the insurer agrees to pay any unsatisfied final judgments obtained on such claims.

(3) No insurance shall be acceptable under these rules which restricts the liability of the insurer where privity of the owner or charterer has been shown to exist.

(4) Paragraphs (a)(1) through (a)(3) of this section shall apply to the guaranty as specified in paragraph (c) of this section.

(b) Filing with the Commission evidence of an escrow account, acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. Parties filing escrow agreements for Commission approval may execute such agreements in the form set forth in appendix A of subpart A of this part.

(c) Filing with the Commission a guaranty on Form FMC-133A, by a Protection and Indemnity Association with established assets, reserves and reinsurance acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC-133A, however, may be amended by the Commission in a particular case for good cause. Copies of Form FMC-133A may be obtained from the Commission's Web site at <http://www.fmc.gov> or from the Bureau of Certification and Licensing.

(d) Revenues derived from whole-ship charters, as defined in §540.2(1), may be exempted from consideration as unearned passenger revenues, on condition that, in the case of a new operator or within 30 days of the execution of the whole-ship charter if the operator has a Performance Certificate for the vessel in question: (1) A certified true copy of the contract or charter is furnished with the application; (2) The chartering party attests that it will redistribute the vessel's passenger accommodations without charge; and (3) A document executed by the chartering party's Chief Executive Officer or other responsible corporate officer is submitted by which the chartering party specifically acknowledges that its rights to indemnification under section 3 of Public Law 89-777 (46 U.S.C. 44101-44102, 44104-44106) may be affected by the reduction in section 3, Public Law

## § 540.6

89-777, financial responsibility coverage attributable to the exclusion of such funds from the operator's UPR.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 1824, Jan. 19, 1990; 57 FR 41891, Sept. 14, 1992; 57 FR 62480, Dec. 31, 1992; 67 FR 44776, July 5, 2002; 74 FR 50730, Oct. 1, 2009; 78 FR 13278, Feb. 27, 2013]

### § 540.6 Surety bonds.

(a) Where financial responsibility is not established under § 540.5, a surety bond shall be filed on Form FMC-132A. Such surety bond shall be issued by a bonding company authorized to do business in the United States and acceptable to the Commission for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC-132A, however, may be amended by the Commission in a particular case for good cause. Copies of Form FMC-132A may be obtained from the Commission's Web site at <http://www.fmc.gov> or from the Bureau of Certification and Licensing.

(b) In the case of a surety bond which is to cover all passenger operations of the applicant subject to these rules, such bond shall be in an amount calculated as in the introductory text of § 540.5.

(c) In the case of a surety bond which is to cover an individual voyage, such bond shall be in an amount determined by the Commission to equal the gross passenger revenue for that voyage.

(d) The liability of the surety under the rules of this subpart to any passenger shall not exceed the amount paid by any such passenger, except that, no such bond shall be terminated while a voyage is in progress.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 1824, Jan. 19, 1990; 78 FR 13278, Feb. 27, 2013]

### § 540.7 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been established:

(a) A Certificate (Performance) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to indemnify passengers for nonperformance of water transportation.

## 46 CFR Ch. IV (10-1-19 Edition)

(b) The period covered by the Certificate (Performance) shall be five (5) years, unless another termination date has been specified thereon.

[78 FR 13278, Feb. 27, 2013]

### § 540.8 Denial, revocation, suspension, or modification.

(a) Prior to the denial, revocation, suspension, or modification of a Certificate (Performance), the Commission shall notify the applicant of its intention to deny, revoke, suspend, or modify and shall include with the notice the reason(s) for such action. If the applicant, within 20 days after the receipt of such notice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission. Regardless of a hearing, a Certificate (Performance) shall become null and void upon cancellation or termination of the surety bond, evidence of insurance, guaranty, or escrow account.

(b) A Certificate (Performance) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Performance);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, requests for information, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

(c) If the applicant, within 20 days after notice of the proposed denial, revocation, suspension, or modification under paragraph (b) of this section, requests a hearing to show that such denial, revocation, suspension, or modification should not take place, such hearing shall be granted by the Commission.

[49 FR 36313, Sept. 14, 1984, as amended at 78 FR 13278, Feb. 27, 2013]

**§ 540.9 Miscellaneous.**

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason fails to provide adequate or satisfactory protection to the public, the Commission will notify the applicant stating the deficiencies thereof.

(b) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person to whom the Certificate (Performance) is to be issued, and in case of a partnership, all partners shall be named.

(c) The Commission's bond (Form FMC-132A), guaranty (Form FMC-133A), and application (Form FMC-131) forms may be obtained from the Commission's Web site at <http://www.fmc.gov> or from the Bureau of Certification and Licensing at its office in Washington, DC 20573.

(d) Any securities or assets accepted by the Commission (from applicants, insurers, guarantors, escrow agents, or others) under the rules of this subpart must be physically located in the United States.

(e) Each applicant, insurer, escrow agent and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee and filed with the Commission. In any instance in which the designated agent cannot be served because of death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary in accordance with the above provision must also serve the certificant, insurer, escrow agent, or guarantor, as the case may be, by certified mail or courier service at the last known address of them on file with the Commission.

(f) [Reserved]

(g) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to § 540.8 (a) or (b).

(h) Every person who has been issued a Certificate (Performance) must submit to the Commission a semi-annual statement of any changes with respect to the information contained in the application or documents submitted in support thereof or a statement that no changes have occurred. Negative statements are required to indicate no change. These statements must cover the 6-month period of January through June and July through December, and include a statement of the highest unearned passenger vessel revenue accrued for each month in the 6-month reporting period. Such statements will be due within 30 days after the close of every such 6-month period. The reports required by this paragraph shall be submitted to the Bureau of Certification and Licensing at its office in Washington, DC 20573 by certified mail, courier service, or electronic submission.

(i) [Reserved]

(j) The amount of: the insurance as specified in § 540.5(a), the escrow account as specified in § 540.5(b), the guaranty as specified in § 540.5(c), or the surety bond as specified in § 540.6 shall not be required to exceed \$15 million for one year after April 2, 2013. Twelve (12) months after April 2, 2013, the amount shall not exceed \$22 million, and twenty four (24) months after April 2, 2013, the amount shall not exceed \$30 million. Every two years, on the anniversary after the cap on required financial responsibility reaches \$30 million, the cap shall automatically adjust to the nearest \$1 million based on changes as reflected in the U.S. Bureau of Labor Statistics' Consumer Price Index. The Bureau of Certification and Licensing will determine the amount of each adjustment and transmit that information to the Secretary of the Federal Maritime Commission for publication on the Commission's Web site ([www.fmc.gov](http://www.fmc.gov)) and in the FEDERAL REGISTER with an effective date that is no less than sixty (60) days after FEDERAL REGISTER publication.

(k) Every person in whose name a Certificate (Performance) has been issued shall be deemed to be responsible for any unearned passage money or deposits held by its agents or any other person authorized by the

certificant to sell the certificant's tickets. Certificants shall promptly notify the Commission of any arrangements, including charters and subcharters, made by it or its agent with any person pursuant to which the certificant does not assume responsibility for all passenger fares and deposits collected by such person or organization and held by such person or organization as deposits or payment for services to be performed by the certificant. If responsibility is not assumed by the certificant, the certificant also must inform such person or organization of the certification requirements of Public Law 89-777 and not permit use of its vessel, name or tickets in any manner unless and until such person or organization has obtained the requisite Certificate (Performance) from the Commission. Failure to follow the procedures in this paragraph means the certificant shall retain full financial responsibility for indemnification of passengers for non-performance of the transportation.

(1) *Requests to substitute alternative financial responsibility.* (1) A certificant whose unearned passenger revenue at no time for the two immediately prior fiscal years has exceeded 150% of the required cap may submit a request to the Director, Bureau of Certification and Licensing, to substitute alternative forms of financial protection to evidence the financial responsibility as otherwise provided in this part.

(2) The Commission will consider such requests on a case-by-case basis.

(3) The request must include copies of the requesting PVO's most recently available annual and quarterly financial and income statements. Other documents and information in support of its request may also be submitted.

(4) For requests based upon the already existing protections available to credit card purchases of passenger vessel transportation, the requesting PVO must supply the following information for the most recent twelve months preceding the request: Total deposits and payments received for passenger vessel transportation; Credit card receipt totals; Copy of the PVO's policy(ies) governing payments by passengers (i.e., deposits and the number of days prior

to sailing the passenger must make final payment).

(5) In determining whether and to what level to reduce the required amount, the Commission may consider the extent to which other statutory requirements provide relevant protections, the certificant's financial data, and other specific facts and circumstances.

(6) For PVOs with payment policies that provide for final payment for the passenger vessel transportation no later than 60 days before the vessel's sailing date, requests based upon credit card receipts may be granted by the Commission permitting a reduction in the financial responsibility otherwise required under this Part. The amount of such a reduction will be established by determining the proportion that the PVO's total credit card receipts bears to its total receipts and applying one half of that percentage to the PVO's highest two-year UPR.

(7) The Bureau of Certification and Licensing may request additional information as may assist it in considering the request.

(8) Where a request is granted, the alternative financial responsibility shall remain in effect until the PVO's Certificate (Performance) expires under §540.7(b) or until the Director, Bureau of Certification and Licensing determines otherwise based upon changing information pursuant to this paragraph or paragraph (1)(5) of this section. Additional information may be requested at any time by the Commission or BCL from a PVO whose request under this section has been granted.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 34568, Aug. 23, 1990; 78 FR 13278, Feb. 27, 2013]

FORM FMC-132A TO SUBPART A OF PART 540

FORM FMC-132A

FEDERAL MARITIME COMMISSION

*Passenger Vessel Surety Bond (Performance)*

Surety Co. Bond No. \_\_\_\_\_  
 FMC Certificate No. \_\_\_\_\_

Know all men by these presents, that we \_\_\_\_\_ (Name of applicant), of \_\_\_\_\_ (City), \_\_\_\_\_ (State and country), as Principal (hereinafter called

**Federal Maritime Commission**

**Pt. 540, Subpt. A, Form FMC-133A**

Principal), and \_\_\_\_\_ (Name of surety), a company created and existing under the laws of \_\_\_\_\_ (State and country) and authorized to do business in the United States as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of \_\_\_\_\_, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. Whereas the Principal intends to become a holder of a Certificate (Performance) pursuant to the provisions of subpart A of part 540 of title 46, Code of Federal Regulations and has elected to file with the Federal Maritime Commission such a bond to insure financial responsibility and the supplying transportation and other services subject to subpart A of part 540 of title 46, Code of Federal Regulations, in accordance with the ticket contract between the Principal and the passenger, and

Whereas this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Performance) pursuant to subpart A of part 540 of title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers to whom the Principal may be held legally liable for any of the damages herein described. Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to provide such transportation and other accommodations and services in accordance with the ticket contract made by the Principal and the passenger while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of subpart A of part 540 of title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger shall not exceed the passage price paid by or on behalf of such passenger. 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 amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time termi-

nate this bond by written notice sent by certified mail, courier service, or other electronic means such as email and fax to the other and to the Federal Maritime Commission at its office in Washington, DC, such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any refunds due under ticket contracts made by the Principal for the supplying of transportation and other services after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for refunds arising from ticket contracts made by the Principal for the supplying of transportation and other services prior to the date such termination becomes effective.

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

In witness whereof, the said Principal and Surety have executed this instrument on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**PRINCIPAL**

Name \_\_\_\_\_  
By \_\_\_\_\_  
(Signature and title)  
Witness \_\_\_\_\_

**SURETY**

[SEAL]  
Name \_\_\_\_\_  
By \_\_\_\_\_  
(Signature and title)  
Witness \_\_\_\_\_

Only corporations or associations of individual insurers may qualify to act as surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

[78 FR 13279, Feb. 27, 2013]

**FORM FMC-133A TO SUBPART A OF PART 540**

**FORM FMC-133A**

**FEDERAL MARITIME COMMISSION**

*Guaranty in Respect of Liability for Nonperformance, Section 3 of the Act*

Guaranty No. \_\_\_\_\_  
FMC Certificate No. \_\_\_\_\_

1. Whereas \_\_\_\_\_ (Name of applicant) (Hereinafter referred to as the "Applicant") is the Owner or Charterer of the passenger Vessel(s) specified in the annexed Schedule ("the Vessels"), which are or may become engaged in voyages to or from United States ports, and the Applicant desires to establish its financial responsibility in accordance with section 3 of Pub. L. 89-777, 89th Congress, approved November 6, 1966 ("the Act") then, provided that the Federal Maritime Commission ("FMC") shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Performance) ("Certificate"), the undersigned Guarantor hereby guarantees to discharge the Applicant's legal liability to indemnify the passengers of the Vessels for nonperformance of transportation within the meaning of section 3 of the Act, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger has obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger for such nonperformance.

2. The Guarantor's liability under this Guaranty in respect to any passenger shall not exceed the amount paid by such passenger; and the aggregate amount of the Guarantor's liability under this Guaranty shall not exceed \$ \_\_\_\_\_.

3. The Guarantor's liability under this Guaranty shall attach only in respect of events giving rise to a cause of action against the Applicant, in respect of any of the Vessels, for nonperformance of transportation within the meaning of Section 3 of the Act, occurring after the Certificate has been granted to the Applicant, and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing delivered by certified mail, courier service or other electronic means such as email and fax, that the Guarantor has elected to terminate this Guaranty except that: (i) If, on the date which would otherwise have been the expiration date under the foregoing provisions (a) or (b) of this Clause 3, any of the Vessels is on a voyage whereon passengers have been embarked at a United States port, then the expiration date of this Guaranty shall, in re-

spect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have finally disembarked; and (ii) Such termination shall not affect the liability of the Guarantor for refunds arising from ticket contracts made by the Applicant for the supplying of transportation and other services prior to the date such termination becomes effective.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel owned or operated by the Applicant, and not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing or other electronic means such as email and fax, then, provided that within 30 days of receipt of such notice, FMC shall have granted a Certificate, such Vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates \_\_\_\_\_, with offices at \_\_\_\_\_, as the Guarantor's legal agent for service of process for the purposes of the Rules of the Federal Maritime Commission, subpart A of part 540 of title 46, Code of Federal Regulations, issued under Section 3 of Pub. L. 89-777 (80 Stat. 1357, 1358), entitled "Security for the Protection of the Public."

\_\_\_\_\_  
(Place and Date of Execution)

\_\_\_\_\_  
(Type Name of Guarantor)

\_\_\_\_\_  
(Type Address of Guarantor)

By \_\_\_\_\_  
(Signature and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to This Schedule in  
Accordance With Clause 4

[78 FR 13280, Feb. 27, 2013]

APPENDIX A TO SUBPART A OF PART  
540—EXAMPLE OF ESCROW AGREEMENT FOR USE UNDER 46 CFR  
540.5(b)

*ESCROW AGREEMENT*

THIS ESCROW AGREEMENT, made as of this \_\_\_\_ day of (month & year), by and between (Customer), a corporation/company having a place of business at ("Customer") \_\_\_\_\_ and (Banking Institution name & address) a banking corporation, having a place of business at ("Escrow Agent").

Witnesseth:

WHEREAS, Customer wishes to establish an escrow account in order to provide for the indemnification of passengers in the event of

non-performance of water transportation to which such passengers would be entitled, and to establish Customer's financial responsibility therefore; and

WHEREAS, Escrow Agent wishes to act as Escrow Agent of the escrow account established hereunder;

NOW, THEREFORE, in consideration of the premises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Customer has established on (month, & year) (the "Commencement Date") an escrow account with the Escrow Agent which escrow account shall hereafter be governed by the terms of this Agreement (the "Escrow Account"). Escrow Agent shall maintain the Escrow Account in its name, in its capacity as Escrow Agent.

2. Customer will determine, as of the date prior to the Commencement Date, the amount of unearned passenger revenue, including any funds to be transferred from any predecessor Escrow Agent. Escrow Agent shall have no duty to calculate the amount of unearned passenger revenue. Unearned Passenger Revenues are defined as that passenger revenue received for water transportation and all other accommodations, services and facilities relating thereto not yet performed. 46 CFR 540.2(i).

3. Customer will deposit on the Commencement Date into the Escrow Account cash in an amount equal to the amount of Unearned Passenger Revenue determined under Paragraph 2 above plus a cash amount ("the Fixed Amount") equal to (10 percent of the Customer's highest Unearned Passenger Revenue for the prior two fiscal years. For periods on or after (year of agreement (2009)), the Fixed Amount shall be determined by the Commission on an annual basis, in accordance with 46 CFR Part 540.

4. Customer acknowledges and agrees that until such time as a cruise has been completed and Customer has taken the actions described herein, Customer shall not be entitled, nor shall it have any interest in any funds deposited with Escrow Agent to the extent such funds represent Unearned Passenger Revenue.

5. Customer may, at any time, deposit additional funds consisting exclusively of Unearned Passenger Revenue and the Fixed Amount, into the Escrow Account and Escrow Agent shall accept all such funds for deposit and shall manage all such funds pursuant to the terms of this Agreement.

6. After the establishment of the Escrow Account, as provided in Paragraph 1, Customer shall on a weekly basis on each (identify day of week), or if Customer or Escrow Agent is not open for business on (identify day of week) then on the next business day that Customer and Escrow Agent are open

for business recompute the amount of Unearned Passenger Revenue as of the close of business on the preceding business day (hereinafter referred to as the "Determination Date") and deliver a Recomputation Certificate to Escrow Agent on such date. In each such weekly recomputation Customer shall calculate the amount by which Unearned Passenger Revenue has decreased due to (i) the cancellation of reservations and the corresponding refund of monies from Customer to the persons or entities canceling such reservations; (ii) the amount which Customer has earned as revenue as a result of any cancellation fee charged upon the cancellation of any reservations; (iii) the amount which Customer has earned due to the completion of cruises; and (iv) the amount by which Unearned Passenger Revenue has increased due to receipts from passengers for future water transportation and all other accommodations, services and facilities relating thereto and not yet performed.

The amount of Unearned Passenger Revenue as recomputed shall be compared with the amount of Unearned Passenger Revenue for the immediately preceding period to determine whether there has been a net increase or decrease in Unearned Passenger Revenue. If the balance of the Escrow Account as of the Determination Date exceeds the sum of the amount of Unearned Passenger Revenue, as recomputed, plus the Fixed Amount then applicable, then Escrow Agent shall make any excess funds in the Escrow Account available to Customer. If the balance in the Escrow Account as of the Determination Date is less than the sum of the amount of Unearned Passenger Revenue, as recomputed, plus an amount equal to the Fixed Amount, Customer shall deposit an amount equal to such deficiency with the Escrow Agent. Such deposit shall be made in immediately available funds via wire transfer or by direct transfer from the Customer's U.S. Bank checking account before the close of business on the next business day following the day on which the Recomputation Certificate is received by Escrow Agent. The Escrow Agent shall promptly notify the Commission within two business days any time a deposit required by a Recomputation Certificate delivered to the Escrow Agent is not timely made.

7. Customer shall furnish a Recomputation Certificate, in substantially the form attached hereto as Annex 1, to the Federal Maritime Commission (the "Commission") and to the Escrow Agent setting forth the weekly recomputation of Unearned Passenger Revenue required by the terms of Paragraph 6 above. Customer shall mail or fax to the Commission and deliver to the Escrow Agent the required Recomputation Certificate before the close of business on the business day on which Customer recomputes the amount of Unearned Passenger Revenue.

Notwithstanding any other provision herein to the contrary, Escrow Agent shall not make any funds available to Customer out of the Escrow Account because of a decrease in the amount of Unearned Passenger Revenue or otherwise, until such time as Escrow Agent receives the above described Recomputation Certificate from Customer, which Recomputation Certificate shall include the Customer's verification certification in the form attached hereto as Annex 1. The copies of each Recomputation Certificate to be furnished to the Commission shall be mailed to the Commission at the address provided in Paragraph 25 herein. If copies are not mailed to the Commission, faxed or emailed copies shall be treated with the same legal effect as if an original signature was furnished. No repayment of the Fixed Amount may be made except upon approval of the Commission.

Within fifteen (15) days after the end of each calendar month, Escrow Agent shall provide to Customer and to the Commission at the addresses provided in Paragraph 25 below, a comprehensive statement of the Escrow Account. Such statement shall provide a list of assets in the Escrow Account, the balance thereof as of the beginning and end of the month together with the original cost and current market value thereof, and shall detail all transactions that took place with respect to the assets and investments in the Escrow Account during the preceding month.

8. At the end of each quarter of Customer's fiscal year, Customer shall cause the independent auditors then acting for it to conduct an examination in accordance with generally accepted auditing standards with respect to the weekly Recomputation Certificates furnished by Customer of the Unearned Passenger Revenues and the amounts to be deposited in the Escrow Account and to express their opinion within forty-five (45) days after the end of such quarter as to whether the calculations at the end of each fiscal quarter are in accordance with the provisions of Paragraph 6 of this Agreement. The determination of Unearned Passenger Revenue of such independent auditors shall have control over any computation of Unearned Passenger Revenue by Customer in the event of any difference between such determinations. To the extent that the actual amount of the Escrow Account is less than the amount determined by such independent auditors to be required to be on deposit in the Escrow Account, Customer shall immediately deposit an amount of cash into the Escrow Account sufficient to cause the balance of the Escrow Account to equal the amount determined to be so required. Such deposit shall be completed no later than the business day after receipt by the Escrow Agent of the auditor's opinion containing the amount of such deficiency.

The opinion of such independent auditors shall be furnished by such auditors directly to Customer, to the Commission and to the Escrow Agent at their addresses contained in this Agreement. In the event that a required deposit to the Escrow Agent is not made within one Business Day after receipt of an auditor's report or a Recomputation Certificate, Escrow Agent shall send notification to the Commission within the next two Business Days.

9. Escrow Agent shall invest the funds in the Escrow Account in Qualified Investments as directed by Customer in its sole and absolute discretion. "Qualified Investments" means, to the extent permitted by applicable law:

(a) Government obligations or obligations of any agency or instrumentality of the United States of America;

(b) Commercial paper issued by a United States company rated in the two highest numerical "A" categories (without regard to further gradation or refinement of such rating category) by Standard & Poor's Corporation, or in the two highest numerical "Prime" categories (without regard to further gradation or refinement of such rating) by Moody's Investor Services, Inc.;

(c) Certificates of deposit and money market accounts issued by any United States bank, savings institution or trust company, including the Escrow Agent, and time deposits of any bank, savings institution or trust company, including the Escrow Agent, which are fully insured by the Federal Deposit Insurance Corporation;

(d) Corporate bonds or obligations which are rated by Standard & Poor's Corporation or Moody's Investors Service, Inc. in one of their three highest rating categories (without regard to any gradation or refinement of such rating category by a numerical or other modifier); and

(e) Money market funds registered under the Federal Investment Company Act of 1940, as amended, and whose shares are registered under the Securities Act of 1933, as amended, and whose shares are rated "AAA", "AA + " or "AA" by Standard & Poor's Corporation.

10. All interest and other profits earned on the amounts placed in the Escrow Account shall be credited to Escrow Account.

11. This Agreement has been entered into by the parties hereto, and the Escrow Account has been established hereunder by Customer, to establish the financial responsibility of Customer as the owner, operator or charterer of the passenger vessel(s) (see Exhibit A), in accordance with Section 3 of Public Law 89-777, 89th Congress, approved November 6, 1966 (the "Act"). The Escrow Account shall be held by Escrow Agent in accordance with the terms hereof, to be utilized to discharge Customer's legal liability to indemnify the passengers of the named



vessel(s) for non-performance of transportation within the meaning of Paragraph 3 of the Act. The Escrow Agent shall make indemnification payments pursuant to written instructions from Customer, on which the Escrow Agent may rely, or in the event that such legal liability has not been discharged by Customer within twenty-one (21) days after any such passenger has obtained a final judgment (after appeal, if any) against Customer from a United States Federal or State Court of competent jurisdiction the Escrow Agent is authorized to pay funds out of the Escrow Account, after such twenty-one day period, in accordance with and pursuant to the terms of an appropriate order of a court of competent jurisdiction on receipt of a certified copy of such order.

As further security for Customer's obligation to provide water transportation to passengers holding tickets for transportation on the passenger vessel(s) (see Exhibit A) Customer will pledge to each passenger who has made full or partial payment for future passage on the named vessel(s) an interest in the Escrow Account equal to such payment. Escrow Agent is hereby notified of and acknowledges such pledges. Customers' instructions to Escrow Agent to release funds from the Escrow Account as described in this Agreement shall constitute a certification by Customer of the release of pledge with respect to such funds due to completed, canceled or terminated cruises. Furthermore, Escrow Agent agrees to hold funds in the Escrow Account until directed by Customer or a court order to release such funds as described in this Agreement. Escrow Agent shall accept instructions only from Customer, acting on its own behalf or as agent for its passengers, and shall not have any obligations at any time to act pursuant to instructions of Customer's passengers or any other third parties except as expressly described herein. Escrow Agent hereby waives any right of offset to which it is or may become entitled with regard to the funds on deposit in the Escrow Account which constitute Unearned Passenger Revenue.

12. Customer agrees to provide to the Escrow Agent all information necessary to facilitate the administration of this Agreement and the Escrow Agent may rely upon any information so provided.

13. Customer hereby warrants and represents that it is a corporation in good standing in its State of organization and that is qualified to do business in the State of . Customer further warrants and represents that (i) it possesses full power and authority to enter into this Agreement and fulfill its obligations hereunder and (ii) that the execution, delivery and performance of this Agreement have been authorized and approved by all required corporate actions.

14. Escrow Agent hereby warrants and represents that it is a national banking associa-

tion in good standing. Escrow Agent further warrants and represents that (i) it has full power and authority to enter into this Agreement and fulfill its obligations hereunder and (ii) that the execution, delivery and performance of this Agreement have been authorized and approved by all required corporate actions.

15. This Agreement shall have a term of one (1) year and shall be automatically renewed for successive one (1) year terms unless notice of intent not to renew is delivered to the other party to this Agreement and to the Commission at least 90 days prior to the expiration of the current term of this Agreement. Notice shall be given by certified mail to the parties at the addresses provided in Paragraph 25 below. Notice shall be given by certified mail to the Commission at the address specified in this Agreement.

16. (a) Customer hereby agrees to indemnify and hold harmless Escrow Agent against any and all claims, losses, damages, liabilities, cost and expenses, including litigation, arising hereunder, which might be imposed or incurred on Escrow Agent for any acts or omissions of the Escrow Agent or Customer, not caused by the negligence or willful misconduct of the Escrow Agent. The indemnification set forth herein shall survive the resignation or removal of the Escrow Agent and the termination of this agreement.

(b) In the event of any disagreement between parties which result in adverse claims with respect to funds on deposit with Escrow Agent or the threat thereof, Escrow Agent may refuse to comply with any demands on it with respect thereto as long as such disagreement shall continue and in so refusing, Escrow Agent need not make any payment and Escrow Agent shall not be or become liable in any way to Customer or any third party (whether for direct, incidental, consequential damages or otherwise) for its failure or refusal to comply with such demands and it shall be entitled to continue so to refrain from acting and so refuse to act until such conflicting or adverse demands shall finally terminate by mutual written agreement acceptable to Escrow Agent or by a final, non-appealable order of a court of competent jurisdiction.

17. Escrow Agent shall be entitled to such compensation for its services hereunder as may be agreed upon from time to time by Escrow Agent and Customer and which shall initially be set forth in a separate letter agreement between Escrow Agent and Customer. This Agreement shall not become effective until such letter agreement has been executed by both parties hereto and confirmed in writing to the Commission.

18. Customer may terminate this Agreement and engage a successor escrow agent, after giving at least 90 days written termination notice to Escrow Agent prior to terminating Escrow Agent if such successor

agent is a commercial bank whose passbook accounts are insured by the Federal Deposit Insurance Corporation and such successor agrees to the terms of this agreement, or if there is a new agreement then such termination shall not be effective until the new agreement is approved in writing by the Commission. Upon giving the written notice to Customer and the Commission, Escrow Agent may terminate any and all duties and obligations imposed on Escrow Agent by this Agreement effective as of the date specified in such notice, which date shall be at least 90 days after the date such notice is given. All escrowed funds as of the termination date specified in the notice shall be turned over to the successor escrow agent, or if no successor escrow agent has been named within 90 days after the giving of such notice, then all such escrowed funds for sailing scheduled to commence after the specified termination date shall be returned to the person who paid such passage fares upon written approval of the Commission. In the event of any such termination where the Escrow Agent shall be returning payments to the passengers, then Escrow Agent shall request from Customer a list of passenger names, addresses, deposit/fare amounts and other information needed to make refunds. On receipt of such list, Escrow Agent shall return all passage fares held in the Escrow Account as of the date of termination specified in the notice to the passengers, excepting only amounts Customer is entitled to receive pursuant to the terms of this Agreement for cruises completed through the termination date specified in the notice, and all interest which shall be paid to Customer.

In the event of termination of this Agreement and if alternative evidence of financial responsibility has been accepted by the Commission and written evidence satisfactory to Escrow Agent of the Commission's acceptance is presented to Escrow Agent, then Escrow Agent shall release to Customer all passage fares held in the Escrow Account as of the date of termination specified in the notice. In the event of any such termination where written evidence satisfactory to Escrow Agent of the Commission's acceptance has not been presented to Escrow Agent, then Escrow Agent shall request from Customer a list of passenger names, addresses, deposit/fare amounts and other information needed to make refunds. On receipt of such list, Escrow Agent shall return all passage fares held in the Escrow Account as of the date of termination specified in the notice to the passengers, excepting only amounts Customer is entitled to receive pursuant to the terms of this Agreement for cruises completed through the termination date specified in the notice, and all interest which shall be paid to Customer. Upon termination, Customer shall pay all costs and fees pre-

viously earned or incurred by Escrow Agent through the termination date.

19. Neither Customer nor Escrow Agent shall have the right to sell, pledge, hypothecate, assign, transfer or encumber funds or assets in the Escrow Account except in accordance with the terms of this Agreement.

20. This Agreement is for the benefit of the parties hereto and, accordingly, each and every provision hereof shall be enforceable by any or each or both of them. Additionally, this Agreement shall be enforceable by the Commission. However, this Agreement shall not be enforceable by any other party, person or entity whatsoever.

21. (a) No amendments, modifications or other change in the terms of this Agreement shall be effective for any purpose whatsoever unless agreed upon in writing by Escrow Agent and Customer and approved in writing by the Commission.

(b) No party hereto may assign its rights or obligations hereunder without the prior written consent of the other, and unless approved in writing by the Commission. The merger of Customer with another entity or the transfer of a controlling interest in the stock of Customer shall constitute an assignment hereunder for which prior written approval of the Commission is required, which approval shall not be unreasonably withheld.

22. The foregoing provisions shall be binding upon undersigned, their assigns, successors and personal representative.

23. The Commission shall have the right to inspect the books and records of the Escrow Agent and those of Customer as related to the Escrow Account. In addition, the Commission shall have the right to seek copies of annual audited financial statements and other financial related information.

24. All investments, securities and assets maintained under the Escrow Agreement will be physically located in the United States.

25. Notices relating to this Agreement shall be sent to Customer at (address) and to Escrow Agent at (address) or to such other address as any party hereto may hereafter designate in writing. Any communication sent to the Commission or its successor organization shall be sent to the following address: Bureau of Certification and Licensing, Federal Maritime Commission, 800 North Capitol NW., Washington, DC 20573-0001.

26. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument.

27. This Agreement is made and delivered in, and shall be construed in accordance with the laws of the State \_\_\_\_\_ of without regard to the choice of law rules.

**Federal Maritime Commission**

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IN WITNESS WHEREOF, the undersigned have each caused this Agreement to be executed on their behalf as of the date first above written.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
[78 FR 13281, Feb. 27, 2013]

**Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages**

EXHIBIT A  
ESCROW AGREEMENT, dated \_\_\_\_\_  
by and between (Customer) and (Escrow Agent).

*Passenger Vessels Owned or Chartered*

ANNEX 1

RECOMPUTATION CERTIFICATE

To: Federal Maritime Commission  
And To: (“Bank”)

The undersigned, the Controller of \_\_\_\_\_ hereby furnishes this Re-computation Certificate pursuant to the terms of the Escrow Agreement dated \_\_\_\_\_, between the Customer and (“Bank”). Terms herein shall have the same definitions as those in such Escrow Agreement and Federal Maritime Commission regulations.

I. Unearned Passenger Revenue as of (“Date”) was: \$ \_\_\_\_\_

a. Additions to unearned Passenger Revenue since such date were:

- 1. Passenger Receipts: \$ \_\_\_\_\_
- 2. Other (Specify) \$ \_\_\_\_\_
- 3. Total Additions: \$ \_\_\_\_\_

b. Reductions in Unearned Passenger Revenue since such date were:

- 1. Completed Cruises: \$ \_\_\_\_\_
- 2. Refunds and Cancellations: \$ \_\_\_\_\_
- 3. Other (Specify) \$ \_\_\_\_\_
- 4. Total Reductions: \$ \_\_\_\_\_

II. Unearned Passenger Revenue as of the date of this Re-computation Certificate is: \$ \_\_\_\_\_

a. Excess Escrow Amount \$ \_\_\_\_\_  
III. Plus the Required Fixed Amount: \$ \_\_\_\_\_

IV. Total Required in Escrow: \$ \_\_\_\_\_

V. Current Balance in Escrow Account: \$ \_\_\_\_\_

VI. Amount to be Deposited in Escrow Account: \$ \_\_\_\_\_

VII. Amount of Escrow Account available to Operator: \$ \_\_\_\_\_

VIII. I declare under penalty of perjury that the above information is true and correct.

Dated: \_\_\_\_\_

(Signature) \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

(Signature) \_\_\_\_\_

**§ 540.20 Scope.**

The regulations contained in this subpart set forth the procedures whereby owners or charterers of vessels having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility to meet any liability which may be incurred for death or injury to passengers or other persons on voyages to or from U.S. ports. Included also are the qualifications required by the Commission for issuance of a Certificate (Casualty) and the basis for the denial, revocation, suspension, or modification of such Certificates.

**§ 540.21 Definitions.**

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any state thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States, or the laws of any foreign country.

(b) *Vessel* means any commercial vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports.

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

(d) *United States* includes the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(e) *Berth or stateroom accommodations or passenger accommodations* includes all temporary and all permanent passenger sleeping facilities.

## § 540.22

(f) *Certificate (Casualty)* means a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages issued pursuant to this subpart.

(g) *Voyage* means voyage of a vessel to or from U.S. ports.

(h) *Insurer* means any insurance company, underwriter, corporation or association of underwriters, ship owners' protection and indemnity association, or other insurer acceptable to the Commission.

(i) *Evidence of insurance* means a policy, certificate of insurance, cover note, or other evidence of coverage acceptable to the Commission.

(j) For the purpose of determining compliance with § 540.22, *passengers embarking at United States ports* means any persons, not necessary to the business, operation, or navigation of a vessel, whether holding a ticket or not, who board a vessel at a port or place in the United States and are carried by the vessel on a voyage from that port or place.

### § 540.22 Proof of financial responsibility, when required.

No vessel shall embark passengers at U.S. ports unless a Certificate (Casualty) has been issued to or covers the owner or charterer of such vessel.

### § 540.23 Procedure for establishing financial responsibility.

(a) In order to comply with section 2 of Pub. L. 89-777 (46 U.S.C. 44101, 44103-44106) enacted November 6, 1966, there must be filed an Application on Form FMC-131 for a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages. Copies of Form FMC-131 may be obtained from the Secretary, Federal Maritime Commission, Washington, DC 20573.

(b) An application for a Certificate (Casualty) shall be filed in duplicate with the Secretary, Federal Maritime Commission, by the vessel owner or charterer at least 60 days in advance of the sailing. Late filing of the application will be permitted only for good cause shown. All applications and evidence required to be filed with the

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Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency. The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart. An application for a Certificate (Casualty), excluding an application for the addition or substitution of a vessel to the applicant's fleet, must be accompanied by a filing fee remittance of \$1,441. An application for a Certificate (Casualty) for the addition or substitution of a vessel to the applicant's fleet must be accompanied by a filing fee remittance of \$718.

(c) The application shall be signed by a duly authorized officer or representative of the applicant with a copy of evidence of his authority. In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than five (5) days following such change. For the purpose of this subpart, a material change shall be one which: (1) Results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart, or (2) requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility. Notice of the application for, issuance, denial, revocation, suspension, or modification of any such Certificate shall be published in the FEDERAL REGISTER.

[49 FR 36313, Sept. 14, 1984, as amended at 59 FR 59172, Nov. 16, 1994; 63 FR 50537, Sept. 22, 1998; 67 FR 39861, June 11, 2002; 70 FR 10331, Mar. 3, 2005; 74 FR 50731, Oct. 1, 2009; 81 FR 59145, Aug. 29, 2016; 83 FR 50295, Oct. 5, 2018]

### § 540.24 Insurance, surety bonds, self-insurance, guaranties, and escrow accounts.

Evidence of adequate financial responsibility for the purposes of this subpart may be established by one of the following methods:

(a) Filing with the Commission evidence of insurance issued by an insurer providing coverage for liability which may be incurred for death or injury to passengers or other persons on voyages in an amount based upon the number of

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passenger accommodations aboard the vessel, calculated as follows:

- Twenty thousand dollars for each passenger accommodation up to and including 500; plus
- Fifteen thousand dollars for each additional passenger accommodation between 501 and 1,000; plus
- Ten thousand dollars for each additional passenger accommodation between 1,001 and 1,500; plus
- Five thousand dollars for each passenger accommodation in excess of 1,500;

Except that, if the applicant is operating more than one vessel subject to this subpart, the amount prescribed by this paragraph shall be based upon the number of passenger accommodations on the vessel being so operated which has the largest number of passenger accommodations.

(1) Termination or cancellation of the evidence of insurance, whether by the assured or by the insurer, and whether for nonpayment of premiums, calls or assessments, or for other cause, shall not be effected: (i) Until notice in writing has been given to the assured or to the insurer and to the Secretary of the Commission at its office in Washington, DC 20573, by certified mail, and (ii) until after 30 days expire from the date notice is actually received by the Commissioner, or until after the Commission revokes the Certificate (Casualty), whichever occurs first. Notice of termination or cancellation to the assured or insurer shall be simultaneous to such notice given to the Commission. The insurer shall remain liable for claims covered by said evidence of insurance arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

(2) The insolvency or bankruptcy of the assured shall not constitute a defense to the insurer as to claims included in said evidence of insurance and in the event of said insolvency or bankruptcy, the insurer agrees to pay any unsatisfied final judgments obtained on such claims.

(3) No insurance shall be acceptable under these rules which restricts the liability of the insurer where privity of

the owner or charterer has been shown to exist.

(4) Paragraphs (a)(1) through (a)(3) of this section shall apply to the guaranty as specified in paragraph (d) of this section.

(b) Filing with the Commission a surety bond on Form FMC-132B issued by a bonding company authorized to do business in the United States and acceptable to the Commission. Such surety bond shall evidence coverage for liability which may be incurred for death or injury to passengers or other persons on voyages in an amount calculated as in paragraph (a) of this section, and shall not be terminated while a voyage is in progress. The requirements of Form FMC-132B, however, may be amended by the Commission in a particular case for good cause.

(c) Filing with the Commission for qualification as a self-insurer such evidence acceptable to the Commission as will demonstrate continued and stable passenger operations over an extended period of time in the foreign or domestic trade of the United States. In addition, applicant must demonstrate financial responsibility by maintenance of working capital and net worth, each in an amount calculated as in paragraph (a) of this section. The Commission will take into consideration all current contractual requirements with respect to the maintenance of working capital and/or net worth to which the applicant is bound. Evidence must be submitted that the working capital and net worth required above are physically located in the United States. This evidence of financial responsibility shall be supported by and subject to the following which are to be submitted on a continuing basis for each year or portion thereof while the Certificate (Casualty) is in effect:

(1) A current quarterly balance sheet, except that the Commission, for good cause shown, may require only an annual balance sheet;

(2) A current quarterly statement of income and surplus except that the Commission, for good cause shown, may require only an annual statement of income and surplus;

## § 540.25

(3) An annual current balance sheet and an annual current statement of income and surplus to be certified by appropriate certified public accountants;

(4) An annual current statement of the book value or current market value of any assets physically located within the United States together with a certification as to the existence and amount of any encumbrances thereon;

(5) An annual current credit rating report by Dun and Bradstreet or any similar concern found acceptable to the Commission;

(6) A list of all contractual requirements or other encumbrances (and to whom the applicant is bound in this regard) relating to the maintenance of working capital and net worth;

(7) All financial statements required to be submitted under this section shall be due within a reasonable time after the close of each pertinent accounting period;

(8) Such additional evidence of financial responsibility as the Commission may deem necessary in appropriate cases.

(d) Filing with the Commission a guaranty on Form FMC-133B by a guarantor acceptable to the Commission. Any such guaranty shall be in an amount calculated as in paragraph (a) of this section. The requirements of Form FMC-133B, however, may be amended by the Commission in a particular case for good cause.

(e) Filing with the Commission evidence of an escrow account, acceptable to the Commission, the amount of such account to be calculated as in paragraph (a) of this section.

(f) The Commission will, for good cause shown, consider any combination of the alternatives described in paragraphs (a) through (e) of this section for the purpose of establishing financial responsibility.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 1824, Jan. 19, 1990]

## § 540.25 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been established, a Certificate (Casualty) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to meet any li-

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ability which may be incurred for death or injury to passengers or other persons on voyages. The period covered by the certificate shall be indeterminate unless a termination date has been specified therein.

## § 540.26 Denial, revocation, suspension, or modification.

(a) Prior to the denial, revocation, suspension, or modification of a Certificate (Casualty), the Commission shall advise the applicant of its intention to deny, revoke, suspend, or modify, and shall state the reasons therefor. If the applicant, within 20 days after the receipt of such advice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission, except that a Certificate (Casualty) shall become null and void upon cancellation or termination of evidence of insurance, surety bond, guaranty, or escrow account.

(b) A Certificate (Casualty) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Casualty);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

(c) If the applicant, within 20 days after notice of the proposed denial, revocation, suspension, or modification under paragraph (b) of this section, requests a hearing to show that such denial, revocation, suspension, or modification should not take place, such hearing shall be granted by the Commission.

## § 540.27 Miscellaneous.

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason, fails to provide adequate or satisfactory protection to the public, the

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Commission will notify the applicant stating the deficiencies thereof.

(b) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person to whom the Certificate (Casualty) is to be issued, and in case of a partnership, all partners shall be named.

(c) The Commission's bond (Form FMC-132B), guaranty (Form FMC-133B), and application (Form FMC-131 as set forth in subpart A of this part) forms are hereby incorporated as a part of the rules of this subpart. Any such forms filed with the Commission under this subpart must be in duplicate.

(d) Any securities or assets accepted by the Commission (from applicants, insurers, guarantors, escrow agents, or others) under the rules of this subpart must be physically located in the United States.

(e) Each applicant, insurer, escrow agent, and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary in accordance with the above provision must also serve the certificant, insurer, escrow agent, or guarantor, as the case may be, by registered mail, at its last known address on file with the Commission.

(f) In the case of any charter arrangements involving a vessel subject to the regulations of this subpart, the vessel owner (in the event of a subcharter, the charterer shall file) must within 10 days file with the Secretary of the Commission evidence of any such arrangement.

(g) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to § 540.26(a) or § 540.26(b).

(h) Every person who has been issued a Certificate (Casualty) must submit to the Commission a semiannual statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. Such statements must cover every such 6-month period commencing with the first 6-month period of the fiscal year immediately subsequent to the date of the issuance of the Certificate (Casualty). In addition, the statements will be due within 30 days after the close of every 6-month period.

FORM FMC-132B TO SUBPART B OF PART 540

FORM FMC-132B

(5-67)

FEDERAL MARITIME COMMISSION

Surety Co. Bond No. \_\_\_\_\_  
FMC Certificate No. \_\_\_\_\_

PASSENGER VESSEL SURETY BOND (46 CFR PART 540)

Know all men by these presents, that We \_\_\_\_\_ (Name of applicant), of \_\_\_\_\_ (City), \_\_\_\_\_ (State and country), as Principal (hereinafter called Principal), and \_\_\_\_\_ (Name of surety), a company created and existing under the laws of \_\_\_\_\_ (State and country) and authorized to do business in the United States, as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of \_\_\_\_\_, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal intends to become a holder of a Certificate (Casualty) pursuant to the provisions of subpart B of part 540 of title 46, Code of Federal Regulations, and has elected to file with the Federal Maritime Commission such a bond to insure financial responsibility to meet any liability it may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, and

Whereas, this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Casualty) pursuant to

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subpart B of part 540 of title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers or other persons to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers or other persons any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to meet any liability the Principal may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, while this bond is in effect pursuant to and in accordance with the provisions of subpart B of part 540 of title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger or other persons shall in no event exceed the amount of the Principal's legal liability under any final judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of Pub. L. 89-777 (46 U.S.C. 44103(b)), then the Surety's total liability under this surety bond shall be limited to an amount computed in accordance with such formula.

The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, 12:01 a.m., standard time, at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice sent by certified mail to the other and to the Federal Maritime Commission at its Office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for such liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports prior to the date such termination becomes effective.

In witness whereof, the said Principal and Surety have executed this instrument on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

**PRINCIPAL**

Name \_\_\_\_\_  
By \_\_\_\_\_  
(Signature and title)

Witness \_\_\_\_\_

**SURETY**

Name \_\_\_\_\_  
By [SEAL] \_\_\_\_\_  
(Signature and title)

Witness \_\_\_\_\_

Only corporations or associations of individual insurers may qualify to act as Surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

[49 FR 36313, Sept. 14, 1984, as amended at 74 FR 50732, Oct. 1, 2009]

**FORM FMC-133B TO SUBPART B OF PART 540**

**FORM FMC-133B**

(5-67)

**FEDERAL MARITIME COMMISSION**

Guaranty No. \_\_\_\_\_  
FMC Certificate No. \_\_\_\_\_

**GUARANTY IN RESPECT OF LIABILITY FOR DEATH OR INJURY, SECTION 2 OF THE ACT (46 U.S.C. 44101, 44103-44106)**

1. Whereas \_\_\_\_\_ (Name of Applicant) (Hereinafter referred to as the "Applicant") is the Owner or Charterer of the passenger Vessel(s) specified in the annexed Schedule ("the Vessels"), which are or may become engaged in voyages to or from U.S. ports, and the Applicant desires to establish its financial responsibility in accordance with section 2 of Public Law 89-777, 89th Congress, approved November 6, 1966 ("the Act") then, provided that the Federal Maritime Commission ("FMC") shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Casualty) ("Certificate"), the undersigned Guarantor hereby guarantees to discharge the applicant's legal liability in respect of claims for damages for death or injury to passengers or other persons on voyages of the Vessels to or from U.S. ports, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger or other person, or, in the event of death, his or her personal representative, has obtained a final judgment (after appeal, if any) against the Applicant from a U.S. Federal or State Court



**Federal Maritime Commission**

**§ 540.91**

of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger or other person, or to such personal representative, with respect to such claim.

2. The Guarantor's liability under this Guaranty shall in no event exceed the amount of the Applicant's legal liability under any such judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of the Act (46 U.S.C. 44103(b)), then the Guarantor's total liability under this Guaranty shall be limited to an amount computed in accordance with such formula.

3. The Guarantor's liability under this Guaranty shall attach only in respect of events giving rise to causes of action against the Applicant in respect of any of the Vessels for damages for death or injury within the meaning of section 2 of the Act, occurring after the Certificate has been granted to the Applicant and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing (including telex or cable) that the Guarantor has elected to terminate this Guaranty, except that if, on the date which would otherwise have been the expiration date of this Guaranty under the foregoing provisions of this Clause 3, any of the Vessels is on a voyage in respect of which such Vessel would not have received clearance in accordance with section 2(e) of the Act (46 U.S.C. 44105) without the Certificate, then the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have fully disembarked.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel owned or operated by the Applicant, and not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing (including telex or cable), then provided that, within 30 days of receipt of such notice FMC shall have granted a Certificate, such vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates \_\_\_\_\_, with offices at \_\_\_\_\_, as the Guarantor's legal agent for Service of

process for the purposes of the Rules of the Federal Maritime Commission, subpart B of part 540 of title 46, Code of Federal Regulations, issued under section 2 of the Pub. L 89-777 (80 Stat. 1357, 1358), entitled "Security for the Protection of the Public."

\_\_\_\_\_  
(Place and Date of Execution)

\_\_\_\_\_  
(Name and Guarantor)

\_\_\_\_\_  
(Address of Guarantor)

By \_\_\_\_\_  
(Name and Title)

*Schedule of Vessels Referred to in Clause 1*

*Vessels Added to This Schedule in Accordance With Clause 4*

[49 FR 36313, Sept. 14, 1984, as amended at 74 FR 50732, Oct. 1, 2009]

**Subpart C—General**

**§ 540.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB Control No.
540.4 (Form FMC-131) .....	3072-0012
540.5 .....	3072-0011
540.6 .....	3072-0011
540.8 .....	3072-0011
540.9 .....	3072-0011
540.23 (Form FMC-131) .....	3072-0012
540.24 .....	3072-0011
540.26 .....	3072-0011
540.27 .....	3072-0011

**PART 545—INTERPRETATIONS AND STATEMENTS OF POLICY**

Sec.

545.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.

545.2 Interpretation of Shipping Act of 1984—Unpaid ocean freight charges.

545.3 Interpretation of §515.23(b) of this chapter—Payment pursuant to a claim against an ocean transportation intermediary.

545.4 Interpretation of Shipping Act of 1984—Unjust and unreasonable practices.

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. 305, 40307, 40501–40503, 41101–41106, and 40901–40904; 46 CFR 515.23

**§545.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.**

(a) 8(c) of the Shipping Act of 1984 (“the Act”) (46 U.S.C. 40502) authorizes ocean common carriers and agreements between or among ocean common carriers to enter into a service contract with a shippers' association, subject to the requirements of the Act. Section 10(b)(10) of the Act (46 U.S.C. 41104(10)) prohibits carriers from unreasonably refusing to deal or negotiate. Section 7(a)(2) of the Act (46 U.S.C. 40307(a)(3)) exempts from the antitrust laws any activity within the scope of that Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

(b) The Federal Maritime Commission interprets these provisions to establish that a common carrier or conference may not require a shippers' association to obtain or apply for a Business Review Letter from the Department of Justice prior to or as part of a service contract negotiation process.

[53 FR 43698, Oct. 28, 1988. Redesignated and amended at 64 FR 7813, Feb. 17, 1999; 64 FR 9922, Mar. 1, 1999; 74 FR 50732, Oct. 1, 2009]

**§545.2 Interpretation of Shipping Act of 1984—Unpaid ocean freight charges.**

Section 10(a)(1) of the Shipping Act of 1984 (46 U.S.C. 41102(a)) states that it is unlawful for any person to obtain or attempt to obtain transportation for property at less than the properly applicable rates, by any “unjust or unfair device or means.” An essential element

of the offense is use of an “unjust or unfair device or means.” In the absence of evidence of bad faith or deceit, the Federal Maritime Commission will not infer an “unjust or unfair device or means” from the failure of a shipper to pay ocean freight. An “unjust or unfair device or means” could be inferred where a shipper, in bad faith, induced the carrier to relinquish its possessory lien on the cargo and to transport the cargo without prepayment by the shipper of the applicable freight charges.

[58 FR 7194, Feb. 5, 1993. Redesignated at 64 FR 7813, Feb. 17, 1999, as amended at 74 FR 50732, Oct. 1, 2009]

**§545.3 Interpretation of §515.23(b) of this chapter—Payment pursuant to a claim against an ocean transportation intermediary.**

A claimant seeking to settle a claim in accordance with §515.23(b)(1) of this chapter should promptly provide to the financial responsibility provider all documents and information relating to and supporting its claim for the purpose of evaluating the validity and subject matter of the claim.

[65 FR 33480, May 24, 2000]

**§545.4 Interpretation of Shipping Act of 1984—Unjust and unreasonable practices.**

46 U.S.C. 41102(c) is interpreted to require the following elements in order to establish a successful claim for reparations:

(a) The respondent is an ocean common carrier, marine terminal operator, or ocean transportation intermediary;

(b) The claimed acts or omissions of the regulated entity are occurring on a normal, customary, and continuous basis;

(c) The practice or regulation relates to or is connected with receiving, handling, storing, or delivering property;

(d) The practice or regulation is unjust or unreasonable; and

(e) The practice or regulation is the proximate cause of the claimed loss.

[83 FR 64480, Dec. 17, 2018]