

ESTTA Tracking number: **ESTTA766298**

Filing date: **08/23/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219179
Party	Plaintiff Spliethoff's Bevrachtungskantoor B.V.
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Date	08/23/2016
Attachments	Spliethoff Motion for Summary Judgment.pdf(124995 bytes) Spliethoff MSJ Composite Exhibit 1.pdf(1594323 bytes) Spliethoff MSJ Composite Exhibit 2.pdf(256237 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V.,)	
)	
Opposer,)	
)	
v.)	
)	Opposition No. 91219179
)	
)	
UNITED YACHT TRANSPORT LLC.,)	U.S. Appl. Serial No. 86031633
)	
Applicant.)	

OPPOSER'S MOTION FOR SUMMARY JUDGMENT
AND SUPPORTING MEMORANDUM OF LAW

Opposer, SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V. ("Spliethoff"), by and through its undersigned counsel, pursuant to Fed. R. Civ. P. 56, moves for summary judgment against Applicant United Yacht Transport LLC and seeks a decision of the Trademark Trial and Appeal Board (the "Board") granting this Motion and refusing registration of Application Serial No. 86031633 on the following grounds: (1) Applicant's use of the mark in providing yacht transport services prior to February 8, 2016 was unlawful under the Shipping Act of 1984 and does not establish "use in commerce" or priority over Opposer as a matter of law, (2) Applicant committed fraud on the United States Patent and Trademark Office ("PTO") in its Application and Response to Office Action with regard to its use of the mark in commerce; and (3) the Application was void *ab initio* and cannot be cured by Applicant's Motion to Amend Basis to Section 1(b) in that Applicant lacked a continuing valid basis for registration.

In support of this Motion, Spliethoff respectfully submits the following Memorandum of Law and the separately-filed Declaration of Sandra I. Tart and exhibits thereto. This Motion is also supported by the PTO's file relating to the subject Application which is of record by operation of Trademark Rule 2.122, 37 C.F.R. § 2.122.

MEMORANDUM OF LAW

I. SUMMARY JUDGMENT STANDARD

The purpose of summary judgment under Rule 56 is one of judicial economy – to save the time and expense of a useless trial where no genuine issue of material fact remains and more evidence than is already available in connection with the summary judgment motion could not reasonably be expected to change the result. *See Pure Gold, Inc. v. Syntex (U.S.A.), Inc.*, 739 F.2d 624, 222 USPQ 741, 743 (Fed. Cir. 1984); *See also* TBMP § 528.01 and cases cited therein.

Generally, summary judgment is appropriate in cases where the moving party establishes that there are no genuine issues of material fact which require resolution at trial and that it is entitled to judgment as a matter of law. *Fed. R. Civ. P. 56(c)*. An issue is material when its resolution would affect the outcome of the proceeding under governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505 (1986); and *Octocom Systems Inc. v. Houston Computers Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1786 (Fed. Cir. 1990). A fact is genuinely in dispute if the evidence of record is such that a reasonable fact finder could return a verdict in favor of the nonmoving party. *Id.* However, a dispute over a fact which would not alter the Board's decision on the legal issue will not prevent entry of summary judgment. *See, e.g., Kellogg Co. v. Pack'Em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991).

II. STATEMENT OF MATERIAL UNDISPUTED FACTS

#	FACT	EVIDENTIARY SUPPORT	RECORD LOCATION
1	Applicant was incorporated as a Delaware limited liability company on July 16, 2013.	Applicant's Answer to Opposer's Request for Admission #56	Decl. Composite Ex. M
2	On August 7, 2013, Applicant filed Application No. 86031633 under Section 1(a) to obtain registration of the mark "United Yacht Transport" for the services of the transport of yachts by boat in International Class 039.	Application Serial No. 86031633	PTO File '33 Application and Decl. Ex. A
3	On August 22, 2013, Applicant signed its first contract with a customer to provide yacht transport services.	Applicant's Answer to Opposer's Request for Admissions ## 17 – 19 Applicant's Answer to Interrogatory # 2	Decl. Composite Ex. M Decl. Composite Ex. N
4	On October 3, 2013, Applicant entered into its first Charter Party agreement with a vessel owner to transport yachts by boat by entering into a contract with PACC Container Lines Ptd.	Applicant's Answer to Interrogatory # 19	Decl. Composite Ex. N
5	In or about October 2013, Applicant transported the first yachts by boat via the M/V CLIPPER ANITA, from Port Everglades to the following foreign ports: Ensenada, Manzanillo, and Golfito.	Applicant's Answer to Interrogatory # 27	Decl. Ex. O

8-b	Applicant's Response to Office Action contained the unqualified representation that the substitute specimens were "in use in commerce at least as early as the filing date of the application."	Applicant's Response to Office Action	PTO File '33 Application and Decl. Ex. C
9	The Application was approved for publication and published on July 8, 2014.	PTO Notice of Publication	PTO File '33 Application
10	The website specimens submitted by Applicant with its Response to Office Action were not posted online until "[l]ate March 2014."	Applicant's Answers to Interrogatories ## 13 and 16	Decl. Composite Ex. N
11	Applicant did not provide the yacht transport services depicted in the website pages which Applicant filed with its Response to Office Action as a verified substitute specimens.	Applicant's Answer to Opposer's Request for Admissions ## 13 - 16	Decl. Composite Ex. L
12	In 2015, the Federal Maritime Commission's South Florida area office opened an investigation into Applicant operating as an unlicensed ocean transport intermediary in violation of the Shipping Act of 1984 and the Commission's regulations.	Certified Copy of March 29, 2016 WARNING LETTER from Commission's Bureau of Enforcement to Applicant	Decl. Composite Ex. Q
13	In mid-December, 2015, Applicant filed an application with the Federal Maritime Commission to be licensed as an ocean transport intermediary under the Shipping Act of 1984.	Certified Copy of Applicant's Application for OTI License on Form FMC-18	Decl. Composite Ex. P
14	By letter dated December 17, 2015, the Commission's Bureau of Certification and Licensing acknowledged receipt of Applicant's "OTI" application.	Certified Copy of December 17, 2015 Letter	Decl. Composite Ex. Q

Opposition No. 91219179
Opposer's Motion for Summary Judgment

15	Applicant's ocean transport intermediary bonds (NVOCC and OFF bonds) became effective on February 3, 2016.	Certified Copies of Applicant's NVOCC and OFF bonds.	Decl. Composite Ex. Q
16	The Federal Maritime Commission licensed Applicant as an ocean transport intermediary on February 8, 2016.	Certified Copy of Applicant's OTI License No. 025897NF	Decl. Composite Ex. P
17	On March 29, 2016, the Federal Maritime Commission's Bureau of Enforcement issued a "WARNING LETTER" to Applicant which cited Applicant for providing yacht transport services in 2014 and 2015 in violation of the Shipping Act of 1984.	Certified Copy of March 29, 2016 WARNING LETTER from Commission's Bureau of Enforcement to Applicant	Decl. Composite Ex. Q
18	No enforcement proceedings or fines or penalties were imposed against Applicant because Applicant agreed to and did comply with the Shipping Act by obtaining a license and bond and publishing its tariff.	Certified Copy of March 29, 2016 WARNING LETTER from Commission's Bureau of Enforcement to Applicant	Decl. Composite Ex. Q
19	On August 18, 2013, Opposer's predecessor, Dockwise Shipping B.V., filed its Application Serial No. 86041056 under Section 1(a) to obtain registration of the mark "United Yacht Transport" for the identical specified services.	Application Serial No. 86041056	Decl. Comp. Ex. R
20	On December 4, 2013, the PTO issued a Suspension Notice of Application No. 86041056 due to the prior filing of Application Serial No. 86031633.	PTO Suspension Notice	Decl. Comp. Ex. R
21	On July 1, 2104, Dockwise Shipping B.V. assigned its pending trademark application to Opposer.	Assignment document	Decl. Comp. Ex. R

III. ARGUMENT

A. **OPPOSER HAS STANDING TO BRING THIS OPPOSITION PROCEEDING**

Opposer has a real interest in this proceeding and a reasonable belief that it would be damaged if Applicant's application is granted. Opposer is the owner of Application Serial No. 86041056 filed on August 18, 2013 to register the identical service mark for the identical specified services, which was suspended based on the filing of the subject Application. Opposer pleaded facts establishing its standing in its Second Amended Notice of Opposition¹ and has made the PTO file of its suspended application of record herein. (UMF 19 – 21; Decl. Comp. Ex. R). Therefore, Opposer has established its standing to bring the instant opposition. *See Weatherford/Lamb Inc. v. C&J Energy Services Inc.*, 96 USPQ2d 1834, 1837 (TTAB 2010); *Life Zone Inc. v. Middleman Group Inc.*, 87 USPQ2d 1953, 1959 (TTAB 2008); *see also* TBMP§ 309.03(b), citations at Note 10 (2d ed. rev. 2004).

B. **APPLICANT'S UNLAWFUL USE OF THE MARK IN CONNECTION WITH GLOBAL YACHT TRANSPORT SERVICES STARTING IN OCTOBER 2013 DOES NOT ESTABLISH USE IN COMMERCE OR PRIORITY OVER OPPOSER**

It is well settled that only lawful use of a mark in commerce may give rise to an entitlement to registration or to trademark priority. From the date of Applicant's first yacht transport in October 2013 until Applicant was licensed as an "ocean transport intermediary" on February 8, 2016, its use

¹ *See* Opposer's *Second Amended Notice of Opposition* at ¶¶ 1, 10, 44 – 47, 50 and 56. In addition, there unquestionably is a likelihood of confusion because Applicant and Opposer seek to register the same mark for the same services to the same class of purchasers. *See e.g., Eden Organics, Inc. v. Native Nutrients*, 2015 TTAB LEXIS 173 at *5 – 6 (TTAB June 5, 2015) (non-precedential)("contemporaneous use of the parties' marks is likely to cause confusion among purchasers in the marketplace").

of the Mark in the provision of yacht transport services was unlawful and in violation of the Shipping Act of 1984 ("Shipping Act"). Applicant's unlawful use of the mark "UNITED YACHT TRANSPORT": (a) does not constitute "use in commerce" under the Lanham Act so as to entitle Applicant to registration of the mark and (b) does not establish priority use of the mark by Applicant which is superior to Opposer's application to register the same mark for identical services filed on August 18, 2013. Therefore, registration of the subject Application must be refused.

1. "Use in Commerce" Under the Lanham Act Requires Lawful Use To Establish Trademark Rights or Priority

To qualify for federal registration, the use of a mark in commerce must be lawful. As set forth in the Trademark Manual of Examining Procedure (TMEP) § 907 (Apr. 2014 Rev.):

Use of a mark in commerce must be lawful use to be the basis for federal registration of the mark. *Gray v. Daffy Dan's Bargaintown*, 823 F.2d 522, 526, 3 USPQ2d 1306, 1308 (Fed. Cir. 1987); see [15 U.S.C. §§1051](#), 1127; [37 C.F.R. §2.69](#); *In re Midwest Tennis & Track Co.*, 29 USPQ2d 1386, 1386 n.2 (TTAB 1993); *In re Stellar Int'l, Inc.*, 159 USPQ 48, 50-51 (TTAB 1968). Thus, the goods or services to which the mark is applied, and the mark itself, must comply with all applicable federal laws. See *In re Pepcom Indus., Inc.*, 192 USPQ 400, 401 (TTAB 1976) ("In order for [an] application to have a valid basis that could properly result in a registration, the use of the mark [has] to be lawful, i.e., the sale or shipment of the product under the mark [has] to comply with all applicable laws and regulations. If this test is not met, the use of the mark fails to create any rights that can be recognized by a Federal registration.").

It has long been the policy of the PTO's Trademark Trial and Appeal Board to refuse or cancel registration of a mark where the use of the mark on which the application or registration was based was unlawful. See e.g., *Nationstar Mortgage LLC v. Ahmad*, 112 USPQ2d 1361, 1373-1374 (TTAB 2014); *The John W. Carson Foundation v. Toilets.com, Inc.*, 94 USPQ2d 1942, 1948 (TTAB March 25, 2010); *In re Midwest Tennis & Track Co.*, 29 U.S.P.Q.2d 1386, 1386 n.2 (TTAB.

1993); *Clorox Co. v. Armour-Dial, Inc.*, 214 U.S.P.Q. 850, 851 (TTAB 1982); *In re Pepcom Indus., Inc.*, 192 U.S.P.Q. 400, 401 (TTAB 1976); *In re Stellar International, Inc.*, 159 U.S.P.Q. 48, 51 (TTAB 1968); *see also CreAgri, Inc. v. USANA Health Sciences, Inc.*, 81 USPQ2d 1592, 1594 (9th Cir. 2007); *United Phosphorus Ltd. v. Midland Fumigant Inc.*, 53 USPQ2d 1929, 1932 (10th Cir. 2000).

2. The Shipping Act of 1984 Requires Any Person Providing Services As An Ocean Transport Intermediary To Be Licensed and Provide Proof of Financial Responsibility

The Shipping Act of 1984, at 46 U.S.C. §§ 40101, *et seq.*, prohibits any person in the United States from providing services as an "ocean transport intermediary" without a license issued by the Federal Maritime Commission and a bond to ensure financial responsibility.² Under the Act, an ocean transport intermediary is defined to mean either an "ocean freight forwarder" or a "non-vessel-operating common carrier," which are also defined terms. 46 U.S. Code § 40102(19).³ Both

² The sections of the Shipping Act relevant for this Motion for Summary Judgment are the definitions in 46 U.S. Code § 40102, the licensing and financial responsibility requirements for ocean transport intermediaries in 46 U.S. Code §§ 40901 and 40902, the penalty provisions in 46 USC § 41107(a) and the sections pertaining the enforcement of the statute in 46 U.S.C. Chapter 413 (§§ 40301 – 41309). A copy of 46 U.S.C. Chapters 401, 409, 411 and 413 are attached hereto as Composite Exhibit "1."

The Federal Maritime Commission adopted regulations to implement and enforce the Shipping Act. These regulations are set forth in Title 46, Part IV, Subchapter B, Part 515, Subparts A – E at Sections 515.1 through 515.91. A copy of the Commission's regulations are attached as Composite Exhibit "2."

³ The Act defines a "non-vessel operating common carrier," as a "common carrier" that:

- (A) does not operate the vessels by which the ocean transportation is provided; and
- (B) is a shipper in its relationship with an ocean common carrier.

46 U.S.C. § 40102(16).

ocean freight forwarders and non-vessel-owning common carriers are ocean transport intermediaries between (i) shippers, who seek to export cargo, and (ii) ocean carriers, who physically carry the cargo on their vessels." *Landstar Express Am., Inc. v. FMC*, 569 F. 3d 493, 494 (D. C. Cir. April 21, 2009), citing, *NLRB v. Int'l Longshoremen's Ass'n*, 447 U.S. 490, 496 n.8, 100 S. Ct. 2305, 65 L.Ed. 2d 289 (1980)(NVOCCs); *Nat'l Customs Brokers & Forwarders Ass'n of Am., Inc. (NCBFAA) v. United States*, 883 F.2d 93, 94-95, 280 U.S. App. D.C. 21 (D.C. Cir. 1989)(OFFs).⁴ In the context of Applicant's global yacht transport business, the "shippers" are the yacht owners who contract with Applicant for transport and the "ocean carriers" are the ocean-going vessels selected and used by Applicant to transport the yachts. Without complying with the license and bonding requirements of the Shipping Act, Applicant served as the "ocean transport intermediary" between its yacht-owning customers who contracted with Applicant to transport their yachts between U.S. and foreign ports and the vessels not owned by Applicant that physically carried the yachts from port to port.

The Act, at 46 U.S.C. § 40901 entitled "License requirement," provides in pertinent part:

(a) In General.—

The Act defines an "ocean freight forwarder" as a person that:

(A) 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

(B) processes the documentation or performs related activities incident to those shipments.

46 U.S.C. § 40102(18).

⁴ A discussion of the activities of ocean freight forwarders and non-vessel operating common carriers that are regulated under the Shipping Act of 1984 can be found in *Landstar Express Am., Inc. v. FMC*, 569 F. 3d 493, 494 – 496 (D. C. Cir. April 21, 2009).

A person in the United States may not act as an ocean transportation intermediary unless the person holds an ocean transportation intermediary's license issued by the Federal Maritime Commission. The Commission shall issue a license to a person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.

The Act, at 46 U.S.C. § 40902, entitled "Financial Responsibility," provides in pertinent part:

(a) **In General.**—A person may not act as an ocean transportation intermediary unless the person furnishes a bond, proof of insurance, or other surety—

(1) in a form and amount determined by the Federal Maritime Commission to insure financial responsibility; and

(2) issued by a surety company found acceptable by the Secretary of the Treasury.

The Federal Maritime Commission is the independent federal agency that regulates ocean shipping between the U.S. and foreign countries under the Shipping Act. The Shipping Act, at 46 U.S.C. Chapter 413, authorizes the Commission to investigate violations and enforce the Shipping Act's licensing and penalty provisions and the Commission's implementing regulations. Violations of the Shipping Act are punishable by the assessment of civil penalties *See* 46 U.S.C. § 41107(a). Each day of a continuing violation is a separate violation subject to penalty. *Id.*

3. The Record Evidence Establishes Applicant's Unlawful Use of the Mark in Providing Ocean Transport Intermediary Services in Violation of the Shipping Act

It is undisputed that Applicant was not licensed as an ocean transport intermediary under the Shipping Act until February 8, 2016. (UMF 5, 6 and 16; Decl. Ex. E – K and Comp. Ex. Q). It also is undisputed that Applicant used the Mark starting in October 2013 to provide yacht transport services between U.S. and foreign ports. Applicant's website, www.united-yacht.com establishes that Applicant used the Mark to provide global yacht transport services (i.e. unlicensed ocean transport

intermediary services) in 2013, 2014, 2015 and 2016. (Decl. Exhibits E – K). Record evidence establishes that Applicant did not file its OTI license application with the Commission until mid-December 2015 and that the effective date of Applicant's OTI License No. 025897NF was February 8, 2016. (UMF 13 and 16; Decl. Comp. Exhibits P and Q).⁵

The Commission's 2015 investigation of Applicant for violating the Shipping Act and its correspondence to Applicant on December 17, 2015 and March 29, 2016 establish that the Commission's Bureau of Licensing and Certification and the Commission's Bureau of Enforcement both had concluded that Applicant was operating in violation of the Shipping Act and notified Applicant of that fact. (UMF 12, 14 and 17; Decl. Comp. Exhibits P and Q).

The December 17, 2015 letter from the Commission's Bureau of Certification and Licensing acknowledged receipt of Applicant's OTI license application on Form FMC-18 and stated, *inter alia*, as follows:

The website www.united-yacht.com apparently holds out the company to provide OTI services, which you are not permitted to perform without a license. Please take steps to cease from holding out to perform OTI services on your website until you are licensed to do so.

Please note that the Shipping Act of 1984, as amended and the Commission's implementing regulations forbid performing, or holding out to perform, ocean transport intermediary services until a license is issued. ...

⁵ Applicant's sworn OTI license application on Form FMC-18 falsely averred that Applicant would not provide ocean transport intermediary services until it was licensed by the Commission. At the time Applicant filed Form FMC-18, it had been furnishing unlicensed and unlawful ocean transport intermediary services in its international yacht transportation business for over two years. (Decl. Ex. E - K).

(UMF 14; Decl. Comp. Ex. Q).⁶

The March 29, 2016 WARNING LETTER "Re: Violations of the Shipping Act of 1984" issued by the Commission's Bureau of Enforcement to Applicant cited Applicant for providing yacht transportation services in 2014 and 2015 in violation of the Shipping Act. The WARNING LETTER, addressed to Applicant's President Paul Haber, stated, *inter alia*, the following:

As you know, a review was conducted by the Commission's South Florida area Representatives Margolis and Mintz into the operations of United Yacht Transport LLC (UYT) with respect to shipments of yachts in the United States foreign commerce during 2014 – 2015.

[text redacted pursuant to FOIA Exemption 7, 5 U.S.C. § 552(b)(7)(E)]⁷

Based on records and information provided to the Bureau of Enforcement, it appears that the following violation of the Shipping Act of 1984, 46 U.S.C. § 40101, et seq., could be found with respect to shipments transported in 2014 and 2015:

United Yacht Transport acted as an ocean transportation intermediary in the United States without a license, bond or tariff in apparent violation of sections 8 and 19 of the Shipping Act, 46 U.S.C. § 40501, 40901, and 40902.

The Shipping Act of 1984 prescribes that violations of the statute are punishable by the assessment of a civil penalty not to exceed \$9,000 for each violation, unless the violation was willfully and knowingly committed, in

⁶ After receiving the Commission's December 17, 2015 letter, Applicant knowingly continued to violate the Shipping Act and Commission regulations by holding itself out to provide ocean transport intermediary services and providing such services while its OTI license application was pending. (UMF 6 and Declar. Exhibits J and K).

⁷ Under the cited FOIA exemption, 5 U.S.C. § 552(b)(7)(E), federal agencies are not required to provide the public with "law enforcement records or information" that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law."

which case the penalty may not exceed \$45,000 for each violation. See section 13(a), 46 U.S.C. § 41107.

The Bureau of Enforcement does not presently intend to seek enforcement action against UYT for the violations described herein. We have confirmed with the Commission's Bureau of Certification and Licensing the UYT promptly applied for and obtained a license, filed evidence of financial responsibility, and published its tariff. Consequently, you have fulfilled your commitments to obtain an OTI license, file evidence of financial responsibility, and publish a tariff.

[text redacted pursuant to FOIA Exemption 7, 5 U.S.C. § 552(b)(7)(E)]

This determination does not preclude any future review of your operations under the requirements of the Shipping Act.

(UMF 17 and 18; Decl. Comp. Ex. Q).

Applicant's unlawful use of the Mark in connection therewith does not establish trademark rights or Applicant's priority of use over Opposer. Therefore, registration of the mark under Application Serial No. 86031633 must be refused.

C. APPLICANT COMMITTED FRAUD ON THE PTO REGARDING ITS USE OF THE SERVICE MARK IN COMMERCE

1. The "Use in Commerce" Requirement for Section 1(a) Applications to Register Service Marks Requires Use of the Mark in Commerce To Render The Identified Services - Advertising or Other Promotional or Preparatory Activities Alone Are Insufficient

It is well settled that "use in commerce" for service marks under the Lanham Act requires the actual use of the mark to render the identified services in the ordinary course of trade. Advertising or other promotional activities displaying the mark, prior to the actual use of the mark in the provision of the services, are insufficient for registration.

The Trademark act defines "use in commerce" for services as follows:

The term “use in commerce” means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For purposes of this chapter, a mark shall be deemed to be in use in commerce—

...

(2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services.

15 U.S.C. § 1127. (emphasis supplied). *See Couture v. Playdom, Inc.*, 778 F.3d 1379 (Fed. Cir. 2015), *cert. denied*, 2015 U.S. LEXIS 5080 (U.S. Oct. 5, 2015). (“On its face, the statute is clear that a mark for services is used in commerce only when *both* [1]“it is used or displayed in the sale or advertising of services *and* [2] the services are rendered” 15 U.S.C. § 1127.”) (emphasis in original); McCarthy on Trademarks and Unfair Competition § 19:103 (4th ed. Supp. 2013) (“To qualify for registration, the Lanham Act requires that the mark be both used in the sale or advertising of services *and* that the services themselves have been rendered in interstate or foreign commerce.” (emphasis in original)).

A mark becomes eligible for registration only after it has been used or displayed in the sale or advertising of the services and the services have been rendered in commerce. *See Aycock Eng'g, Inc. v. Airflite, Inc.*, 560 F.3d 1350, 90 USPQ2d 1301 (Fed. Cir. 2009) (holding that actual use of the mark in commerce in connection with an existing service is required and that mere preparations to use a mark sometime in the future does not constitute use in commerce); *Sinclair Oil Corp. v. Kendrick*, 85 USPQ2d 1032, 1035 (TTAB 2007)(noting that use of the mark in connection with promotional, advertising or other activities undertaken prior to the actual rendering of the recited services does not constitute actual “use in commerce” of the identified services sufficient to support

the filing of a use-based application or a statement of use); *see also, In re Port Authority of New York*, 3 USPQ2d 1453, 1455 (TTAB 1987); *In re Cedar Point, Inc.*, 220 USPQ 533, 535 (TTAB 1983); TMEP Section 1301.03(A) and cases cited therein.

2. Applicant knowingly made false statements to the PTO in its Application to Register the Mark "United Yacht Transport" and in its Response to Office Action

The Application filed on August 7, 2013 contained the unqualified sworn statement that Applicant was using the mark in commerce in connection with the provision of the identified services of the transport of yachts by boat on or prior to the filing date of its application.

The Application sought registration of the service mark for a single class of services and contained the following statement under oath:

In International Class 039, the mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 07/16/2013, and first used in commerce at least as early as 08/05/2013, and is now in use in such commerce....

In addition, in its Response to Office Action, filed on May 19, 2014, Applicant re-affirmed its sworn statement of use of the mark in commerce prior to the filing date of the Application and also stated under oath that its substitute specimens (represented to be snapshots of Applicant's website) submitted with the Response were in use in commerce at least as early as the Application's filing date.

Specifically, the Response included the following sworn statements:

Filing Basis: Section 1(a), Use in Commerce:

... The mark was first used at least as early as 07/16/13 and first used in commerce at least as early as 08/05/2013, and is now in use in such commerce.

Applicant hereby submits one (or more) specimens(s) for Class 039. The specimen(s) submitted consists of The Specimen consists of [sic] the Internet Website of United Yacht Transport LLC showing United Yacht Transport and the Services to which the name relates.

"The substitute (or new, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" for an application based on Section 1(a), Use in Commerce]"

(Emphasis in original).

All of the above representations made under oath in the Application and Response were false. It is undisputed that Applicant was a newly-formed company in the summer of 2013. (UMF 1). Applicant has admitted that it had not rendered any yacht transport services as of the filing date of its Application. (UMF 3 and 5). Applicant has admitted that it did not enter into its first customer contract to transport a yacht by boat until August 22, 2013. (UMF 3). Applicant has disclosed in discovery that the first yacht transported by boat in commerce pursuant to a customer contract entered between Applicant and a customer was not until October 2013 with yacht transport in U.S. foreign commerce aboard the M/V *Clipper Anita*. (UMF 5).

In addition, Applicant has admitted that the substitute specimens (represented to be its website) that Applicant filed with its Response to Office Action were not posted online until late March 2014. (UMF 10; Decl. Comp. Ex. N). Applicant has also admitted that Applicant had no connection to the yacht transport services depicted in the specimens. (UMF 11; Decl. Comp. Ex. L). Therefore, as to these specimens Applicant made two false representations: that it used the specimens in commerce on or prior to its initial filing date and that the specimens show Applicant's use of the mark in commerce.

Notably, all of the facts that Applicant misrepresented to the PTO related to Applicant's own business activities. As such, Applicant unquestionably knew that its representations were false when made. And, as discussed below, Applicant's conduct constitutes fraud on the PTO because there is clear and convincing evidence record evidence that Applicant acted with the intent to deceive the PTO or with reckless indifference to the truth or falsity of its representations.

3. Applicant Committed Fraud on the PTO — Applicant Knowingly Made the False Statements With Intent to Deceive the PTO or Acted With Reckless Indifference Regarding the Truth or Falsity of Its Representations Concerning Its Use of the Mark In Commerce for the Identified Services

A party claiming fraud on the PTO must establish by clear and convincing evidence that the applicant or registrant knowingly made a false, material representation with the intent to deceive the PTO. *In re Bose Corp.*, 91 USPQ2d at 1941 (Fed. Cir. 2009); *See also Torres v. Cantine Torresella S.r.l.*, USPQ2d 1483, 1484 (Fed. Cir. 1986). Subjective intent to deceive is rarely established through direct evidence and is often inferred from indirect or circumstantial evidence. *See Bose*, 91 USPQ2d at 1941; *Nationstar Mortgage LLC . v. Ahmad*, 112 USPQ2d 1361, 1374 (TTAB 2014) ("the law does not require "smoking gun" evidence of deceptive intent but instead has long recognized that direct evidence of deceptive intent is rarely available and deceptive intent may be inferred from the surrounding facts and circumstances. We may infer deceptive intent where "the involved conduct, viewed in light of all the evidence ... indicate[s] sufficient culpability to require a finding of intent to deceive.").

In *Bose*, the Federal Circuit left open the question whether "reckless indifference to the truth of representations" made to the PTO was sufficient to establish fraud in a trademark case. 91 USPQ2d at 1942, n.2. However, recklessness as to the accuracy or basis for representations has long

been recognized as grounds for fraud⁸ and the Federal Circuit consistently has recognized a reckless disregard for the truth of representations as sufficient to establish "Walker Process" fraud on the PTO in the context of patent disputes.⁹ See *Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc.*, 375 F.3d 1341, 1358 (Fed. Cir. 2004)("We have consistently explained that *Walker Process* fraud is a variant of common law fraud ... and the elements of common law fraud include: ... (3) the intent to deceive, or at least, a state of mind so reckless as to the consequences that it is held to be the equivalent of intent (scienter)"), citing *In re Spalding Sports Worldwide, Inc.*, 203 F.3d 800, 807 (Fed. Cir. 2000); *Nobelpharma AB USA v. Implant Innovations Inc.*, 141 F.3d 1059, 1069-71 (Fed. Cir. 1998)(recognizing recklessness as basis for *Walker Process* fraud and distinguishing fraud standard from lesser "inequitable conduct" standard).

In Board decisions rendered since *Bose*, its analyses have recognized a reckless disregard for the truth or falsity of representations made to the PTO as grounds for proving fraud but the evidence in the involved cases was found to be insufficient to prove recklessness and the issue was left

⁸ See Restatement (Second) of Torts, § 526(b) (1977) which states:
§ 526 Conditions Under Which Misrepresentation Is Fraudulent (Scienter)

A misrepresentation is fraudulent if the maker

(a) knows or believes that the matter is not as he represents it to be,

(b) does not have the confidence in the accuracy of his representation that he states or implies, or

(c) knows that he does not have the basis for his representation that he states or implies.

⁹ See *Walker Process Equip., Inc. v. Food Mach. & Chem. Corp.*, 382 U.S. 172, 15 L. Ed. 2d 247, 86 S. Ct. 347 (1965)(a patent owner is immune from antitrust liability for enforcing its patent unless the patent was obtained by defrauding the PTO).

unresolved. *See Alcatraz Media, Inc., v. Chesapeake Marine Tours Inc. dba Watermark Cruises*, 107 USPQ2d 1750, 1769 (TTAB July 2, 2013)(Board's analysis of petitioner's fraud claim included whether respondent's Section 2(f) declarations were recklessly made but concluded based on evidence that respondent had not acted "with recklessness"); *DaimlerChrysler Corp. v. AMC*, 94 USPQ2d 1086, 1090 (TTAB 2010)(Board noted that petitioner had not met its burden of proving that respondent had the "intent to deceive the Office, or at least had a reckless disregard for the truth.").

The Board's recent decision in *Nationstar* is highly persuasive authority for sustaining Opposer's fraud claim. In *Nationstar*, the Board sustained an opposition on the ground of fraud and refused registration to the applicant for the mark "NATIONSTAR" after finding that the Section 1(a) applicant had not used the mark in commerce on any of the identified services at the time of filing and that applicant was not properly licensed at the time he filed the application to lawfully hold himself out as or provide the identified services of mortgage broker, insurance broker or real estate broker. 112 USPQ2d at 1373. This decision establishes that the Board's pre-*Bose* decisions in *Herbaceuticals*, *Hachette*, *First Int'l* and *Hurley*¹⁰ are still good law with respect to the obligation of an applicant to investigate and ensure the accuracy of statements made under oath to the PTO and that fraud may be inferred where there is no good faith basis to support an applicant's affirmations as to use in commerce. *See Nationstar*, 112 USPQ2d at 1374 and 1376. ("Statements under oath are made with a degree of solemnity requiring thorough investigation prior to signature and submission

¹⁰ *Herbaceuticals Inc. v. Xel Herbaceuticals Inc.*, 86 USPQ2d 1572, 1577 (TTAB 2008); *Hachette Filipacchi Presse v. Elle Belle, LLC*, 85 USPQ2d 1090, 1094 (TTAB 2007); *First Int'l Services Corp. v. Chuckles, Inc.*, 5 USPQ2d 1628 (TTAB 1987) ; *Hurley Int'l LLC v. Volta*, 82 USPQ2d 1339, 1345 (TTAB 2007). These decisions were decided under the "knew or should have known" fraud standard.

to the USPTO."). In finding that the applicant in *Nationstar* had defrauded the PTO, the Board emphasized that the requirements of a use-based application are "straightforward," that an applicant's declaration as to the use of goods and services is "clear and unambiguous" and that the declaration of use is signed subject to criminal penalties under 18 U.S.C. § 1001 and the requirements of 37 C.F.R. § 11.18. *Id.* at 1375 and 1376 n. 83. An applicant's errors in its application statements concerning the use of goods and services in commerce "cannot be characterized as merely carelessness of misunderstanding to be winked at as of no importance." *Id.* at 1375.

The record in this proceeding contains clear and convincing evidence from which the Board may infer Applicant's fraudulent intent to deceive the PTO regarding Applicant's use of the mark in commerce. As in *Nationstar*, Applicant's claimed use of the mark was unlawful and Applicant had not rendered any services on or prior to its application date. Nonetheless, Applicant filed its Application on August 7, 2013 swearing that it was using the mark in commerce for the identified yacht transport services and nine months later Applicant filed its Response to Office Action in which Applicant "doubled down" on its initial misrepresentations and repeated the falsehood that it was using the mark to render the services of yacht transport in commerce as of its Application filing date. In its Response, Applicant also added the misrepresentation that its substitute specimens were online as of its Application filing date and falsely implied that Applicant was providing the yacht transport services depicted in the specimens. Applicant's discovery responses in this proceeding establish, clearly and convincingly, that Applicant knowingly or recklessly made material false representations to the PTO concerning its own use of the mark in commerce and that there are no facts upon which Applicant can credibly claim mistake, innocence or inadvertence in making them. The undisputed facts and circumstances herein are more than sufficient to establish

to the degree of proof required to establish that the Applicant – by means of intentional and/or reckless conduct – had the requisite intent to deceive the PTO concerning its use in commerce, and committed fraud on the PTO in connection with the filing and prosecution of its Application.

As in *Nationstar*, the facts surrounding the subject Application are distinguishable from cases such as *Bose* and *Maids to Order* in which there was record evidence of activities – the shipment of goods in commerce or the provision of services – which the Board found supportive of the signer's professed belief that the mark had been used in commerce. *See Nationstar*, 112 USPQ2d at 1375.¹¹ The instant proceeding is also distinguishable from prior cases in which the Board did not find fraud where the applicant had used the mark on some but not all of the goods or services identified in a multi-class application. *See e.g. Enbridge, Inc. v. Ecelerate Energy Limited Partnership*, 92 USPQ2d 1537 (TTAB 2009). The subject Application involves only a single identified service: International Class 039, the Transport of Yachts by Boat. Therefore, in this proceeding, Applicant cannot credibly contend that it was confused by a varied list of services or that it made an innocent, "over-inclusive" listing of services.

¹¹ In *Bose*, the applicant sought continued registration of the mark WAVE based on its activity of repairing previously-sold WAVE radios and shipping the goods to customers in commerce. The corporate representative for Bose who signed the declaration of use testified under oath that he believed that these activities by application constituted "use in commerce" and the Board found this to be a reasonable basis for the signer's belief. In *Maids to Order*, there was evidence that respondent Maid-to-Order, Inc. ("MTO") employees had provided cleaning services for interstate companies and billed these out-of-state customers for the services rendered. Based on this evidence, MTO's President was found by the Board to have " a reasonable basis for her belief that MTO had used/was using the mark MAID TO ORDER in interstate commerce for cleaning services at the time of filing the application, the Section 8 declaration, and the application for renewal." *Maid to Order of Ohio, Inc. v. Maid-to-Order, Inc.*, 78 USPQ2d 1899, 1906 (TTAB 2006).

The fact that the Application and the Response to Office Action were signed by Applicant's former attorney of record¹² rather than by a principal of Applicant is irrelevant for the purposes of this analysis. Signing by counsel does not relieve Applicant of its "duty to ensure the accuracy of the application and the truth of its statements." *See Hachette Filipacchi Presse*, 85 USPQ2d at 1094.

In sum, there is no bona fide factual basis for Applicant to attempt to "excuse" its repeated misrepresentations to the PTO as inadvertence or misunderstanding. As the Board itself has observed: "there are limits to what can be claimed in good faith." *Nationstar*, 112 USPQ2d at 1374. Applicant defrauded the PTO in connection with its Application on the material issue of its use of the Mark in commerce and its registration should be refused on that basis.

4. Applicant Cannot Cure Its Fraud By Belatedly Seeking to Amend the Basis for Its Application

Applicant's motion to amend the filing basis for its application¹³ from Section 1(a) to Section 1(b), filed on April 22, 2015, will not insulate Applicant from Opposer's fraud claim. *See Nationstar*, 112 USPQ2d at 1364. ("once an application has been filed, fraud cannot be cured merely by amending the filing basis for those goods or services on which the mark was not used at the time of the signing of the use-based application ... applicant's amendment, made after publication and institution of a challenge based on fraud, cannot aid applicant in defense of that claim.")(citations omitted).

¹² The signer, Attorney Zimmer, was Applicant's attorney of record from August 7, 2013 through December 8, 2014, when a revocation of counsel and appointment of Applicant's current counsel was filed with the PTO.

¹³ 6 TTABVUE.

D. THE APPLICATION IS VOID *AB INITIO* BECAUSE APPLICANT DID NOT USE THE MARK TO PROVIDE ANY SERVICES PRIOR TO FILING ITS APPLICATION AND APPLICANT'S MOTION TO AMEND FILING BASIS IS NOT SUPPORTED BY A BONA FIDE INTENT TO LAWFULLY USE THE MARK

Applicant has conceded that it did not use the Mark to provide any services before filing its Section 1(a) Application on August 7, 2013. (UMF 3 and 5). Therefore, the Application is void *ab initio*. See *Clorox Co. v. Salazar*, 108 USPQ2d 1083 (TTAB September 26, 2013)(opposition sustained on summary judgment based holding that application was void *ab initio* based on non-use as a matter of law); *ShutEmDown Sports, Inc. v. Lacy*, 102 USPQ 2d 1036, 1045 (TTAB February 22, 2012)("The law is clear that an application can be held void if the plaintiff pleads and proves either fraud or nonuse of a mark for all identified goods or services prior to the application filing date.").

Under the circumstances of this case, Applicant's Motion for Leave to Amend Application from Section 1(a) to Section 1(b) should be denied. The amendment of an application that is the subject of an *inter partes* proceeding before the Board is governed by 37 C.F.R. § 2.133(a). A filing basis may only be amended if the applicant has a continuing valid basis for registration. See *e.g.*, *Leeds Technologies Ltd., v. Topaz Communications Ltd.*, 65 USPQ2d 1303, 1307 at n. 9 (TTAB 2002)(With regard to applicant's motion for leave to amend from a Section 44(e) filing basis to Section 1(b) basis, the issue to be determined is "whether applicant had a continuing valid basis under Section 1(b), that is, a bona fide intent-to-use the mark in commerce at the time of filing and to date.").

Both Section 1(a) and Section 1(b) require "lawful" use of a mark to qualify as "use in commerce." Although the "Verified Statement" of Applicant's President filed with its motion to amend basis contains the conclusory averment that Applicant had a continuing *bona fide* intent to

use the Mark in commerce, its actions speak differently. There is no record evidence that Applicant took any actions to comply with federal law (the Shipping Act) in its use of the Mark until Applicant belatedly filed its Form FMC-18 in mid-December 2015. Furthermore, the evidence establishes that Applicant filed its OTI application only after the Commission's Bureau of Enforcement began investigating Applicant for Applicant's unlicensed activities in violation of federal law. Applicant's several years of operations in violation of the license and bonding requirements of the Shipping Act, Applicant's false representations to the Commission in its Form FMC-18 OTI license application that it was not providing services as an OTI and Applicant's failure to stop business operations as an OTI after it received the Commission's December 17, 2015 letter all constitute contradictory, objective evidence that rebuts the presumption under 37 C.F.R. § 2.35(b)(3) that Applicant had a good faith "continuing valid basis" to lawfully use the mark in commerce as required to support registration under a Section 1(b) intent-to-use application. (Decl. Comp. Ex. P and Ex. E – K). *See M.Z. Berger & Co. v. Swatch AG*, 787 F.3d 1368 (Fed. Cir. 2015) (Motion to amend basis denied where there was no objective evidence of Applicant's intent to use the mark "iWatch" in the sale of watches).

Based on the foregoing, the Application should be declared void *ab initio*, Applicant's motion to amend basis should be denied and registration of its Application should be refused.

IV. CONCLUSION

There are no material facts in dispute which necessitate a trial on the opposition grounds of unlawful use, Applicant's fraud on the PTO in connection with Applicant's use of the mark in commerce and non-use rendering the Applicant *void ab initio*. Based upon the record evidence and the legal authority cited herein, Opposer respectfully requests the Board to grant Opposer's Motion for Summary Judgment and refuse registration of Application Serial No. 86031633.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposer's Motion for Summary Judgment and Supporting Memorandum of Law has been e-filed via ESTTA and served upon Bryan D. Hull, Esquire, counsel for Applicant United Yacht Transport, LLC, by email to bhull@bushross.com, this 23rd day of August, 2016.

/s/ Sandra I. Tart

Sandra I. Tart



maritime lien, the remedy provided by such a lien, or the defenses thereto, including any defense under the doctrine of laches.

(Pub. L. 100-710, title I, §102(c), Nov. 23, 1988, 102 Stat. 4748; Pub. L. 107-295, title II, §205(a)(1), Nov. 25, 2002, 116 Stat. 2095; Pub. L. 111-281, title IX, §913(a)(1), Oct. 15, 2010, 124 Stat. 3017.)

HISTORICAL AND REVISION NOTES

Revised section	Source section (U.S. Code)
31343	46:925

Section 31343 provides that any person claiming a lien on a vessel covered by a preferred mortgage may record a notice of lien. This notice must state the nature of the lien, date it was established; the amount; and the name and address of the person claiming a lien, and it must be acknowledged. The Secretary must record a notice of lien if it complies with these requirements. When any part of the indebtedness is discharged, the claimant shall provide the Secretary with a written, acknowledged certificate of discharge of the indebtedness, and the Secretary shall record the certificate. This section makes no substantive change to law.

Section 31343(c) provides that, on the full and final discharge of an indebtedness that is the basis for a claim, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge on the request of the Secretary or owner of the vessel. This subsection makes a substantive change to law by not requiring partial discharges to be filed, as well as making the filing of discharge certificates only at the request of the Secretary or owner of the vessel.

HOUSE FLOOR STATEMENT

Subsection (d) of this section requires a person claiming a lien on a vessel covered by a preferred mortgage under section 31322(d) to record and discharge the lien as provided by the law of the State in which the vessel is titled.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-281 struck out “of Transportation” after “Secretary” in introductory provisions.

2002—Pub. L. 107-295, §205(a)(1)(A), substituted “notices of claim of maritime lien” for “liens on preferred mortgage vessels” in section catchline.

Subsec. (a). Pub. L. 107-295, §205(a)(1)(B), substituted “documented, or for which an application for documentation has been filed, under chapter 121” for “covered by a preferred mortgage filed or recorded under this chapter” in introductory provisions.

Subsec. (b). Pub. L. 107-295, §205(a)(1)(C), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The Secretary shall record a notice complying with subsection (a) of this section.”

Subsec. (c). Pub. L. 107-295, §205(a)(1)(D), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “On full and final discharge of the indebtedness that is the basis for a claim recorded under subsection (b) of this section, on request of the Secretary or owner, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness. The Secretary shall record the certificate.”

Subsecs. (e), (f). Pub. L. 107-295, §205(a)(1)(E), added subsecs. (e) and (f).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-295 effective Jan. 1, 2003, see section 205(e) of Pub. L. 107-295, set out as a note under section 31325 of this title.

Subtitle IV—Regulation of Ocean Shipping

PART A—OCEAN SHIPPING

Chapter	Sec.
401. General	40101
403. Agreements	40301
405. Tariffs, Service Contracts, Refunds, and Waivers	40501
407. Controlled Carriers	40701
409. Ocean Transportation Intermediaries	40901
411. Prohibitions and Penalties	41101
413. Enforcement	41301

PART B—ACTIONS TO ADDRESS FOREIGN PRACTICES

421. Regulations Affecting Shipping in Foreign Trade	42101
423. Foreign Shipping Practices	42301

PART C—MISCELLANEOUS

441. Evidence of Financial Responsibility for Passenger Transportation	44101
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PART A—OCEAN SHIPPING

CHAPTER 401—GENERAL

Sec.	
40101.	Purposes.
40102.	Definitions.
40103.	Administrative exemptions.
40104.	Reports filed with the Commission.

§ 40101. Purposes

The purposes of this part are to—

- (1) establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;
- (2) provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices;
- (3) encourage the development of an economically sound and efficient liner fleet of vessels of the United States capable of meeting national security needs; and
- (4) promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1523.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40101	46 App.:1701.	Pub. L. 98-237, §2, Mar. 20, 1984, 98 Stat. 67; Pub. L. 105-258, title I, §101, Oct. 14, 1998, 112 Stat. 1902.

EFFECTS ON CERTAIN AGREEMENTS AND CONTRACTS

Pub. L. 98-237, §20(d), Mar. 20, 1984, 98 Stat. 90; Pub. L. 105-258, title I, §117(1), Oct. 14, 1998, 112 Stat. 1914, provided that: “All agreements, contracts, modifications, licenses, and exemptions previously issued, approved, or effective under the Shipping Act, 1916 [former 46 U.S.C. App. 801 et seq., see Disposition Table preceding section 101 of this title], or the Shipping Act of 1984 [former 46 U.S.C. App. 1701 et seq., see Disposition

tion Table preceding section 101 of this title], shall continue in force and effect as if issued or effective under this Act, as amended by the Ocean Shipping Reform Act of 1998 [Pub. L. 105-258, Oct. 14, 1998, 112 Stat. 1902], and all new agreements, contracts, and modifications to existing, pending, or new contracts or agreements shall be considered under this Act, as amended by the Ocean Shipping Reform Act of 1998."

§ 40102. Definitions

In this part:

- (1) **AGREEMENT.**—The term "agreement"—
- (A) means a written or oral understanding, arrangement, or association, and any modification or cancellation thereof; but
- (B) does not include a maritime labor agreement.
- (2) **ANTITRUST LAWS.**—The term "antitrust laws" means—
- (A) the Sherman Act (15 U.S.C. 1 et seq.);
- (B) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8, 9);
- (C) the Clayton Act (15 U.S.C. 12 et seq.);
- (D) the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a);
- (E) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);
- (F) the Antitrust Civil Process Act (15 U.S.C. 1311 et seq.); and
- (G) Acts supplementary to those Acts.
- (3) **ASSESSMENT AGREEMENT.**—The term "assessment agreement" means an agreement, whether part of a collective bargaining agreement or negotiated separately, to the extent the agreement provides for the funding of collectively bargained fringe-benefit obligations on other than a uniform worker-hour basis, regardless of the cargo handled or type of vessel or equipment used.
- (4) **BULK CARGO.**—The term "bulk cargo" means cargo that is loaded and carried in bulk without mark or count.
- (5) **CHEMICAL PARCEL-TANKER.**—The term "chemical parcel-tanker" means a vessel that has—
- (A) a cargo-carrying capability consisting of individual cargo tanks for bulk chemicals that—
- (i) are a permanent part of the vessel; and
- (ii) have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination; and
- (B) a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.
- (6) **COMMON CARRIER.**—The term "common carrier"—
- (A) means a person that—
- (i) holds 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;
- (ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and
- (iii) uses, 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; but
- (B) does not include a carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker, or by vessel when primarily engaged in the carriage of perishable agricultural commodities—
- (i) if the 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.
- (7) **CONFERENCE.**—The term "conference"—
- (A) means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to use a common tariff; but
- (B) does not include a joint service, consortium, pooling, sailing, or transshipment agreement.
- (8) **CONTROLLED CARRIER.**—The term "controlled carrier" means an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government, with ownership or control by a government being deemed to exist for a carrier if—
- (A) a majority of the interest in the carrier is owned or controlled in any manner by that government, an agency of that government, or a public or private person controlled by that government; or
- (B) 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.
- (9) **DEFERRED REBATE.**—The term "deferred rebate" means a return by a common carrier of any freight money to a shipper, where the return is—
- (A) consideration for the shipper giving all or any portion of its shipments to that or any other common carrier over a fixed period of time;
- (B) deferred beyond the completion of the service for which it was paid; and
- (C) made only if the shipper has agreed to make a further shipment with that or any other common carrier.
- (10) **FOREST PRODUCTS.**—The term "forest products" includes 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, and paper and paper board in rolls or in pallet or skid-sized sheets.
- (11) **INLAND DIVISION.**—The term "inland division" means the amount paid by a common carrier to an inland carrier for the inland portion of through transportation offered to the public by the common carrier.

(12) INLAND PORTION.—The term “inland portion” means the charge to the public by a common carrier for the non-ocean portion of through transportation.

(13) LOYALTY CONTRACT.—The term “loyalty contract” means a contract with an ocean common carrier or agreement providing for—

- (A) a shipper to obtain lower rates by committing all or a fixed portion of its cargo to that carrier or agreement; and
- (B) a deferred rebate arrangement.

(14) MARINE TERMINAL OPERATOR.—The term “marine terminal operator” means a person engaged in the United States in the business of providing 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.

(15) MARITIME LABOR AGREEMENT.—The term “maritime labor agreement”—

- (A) means—
 - (i) a collective bargaining agreement between an employer subject to this part, or a group of such employers, and a labor organization representing employees in the maritime or stevedoring industry;
 - (ii) an agreement preparatory to such a collective bargaining agreement among members of a multi-employer bargaining group; or
 - (iii) 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
- (B) does not include an assessment agreement.

(16) NON-VESSEL-OPERATING COMMON CARRIER.—The term “non-vessel-operating common carrier” means a common carrier that—

- (A) does not operate the vessels by which the ocean transportation is provided; and
- (B) is a shipper in its relationship with an ocean common carrier.

(17) OCEAN COMMON CARRIER.—The term “ocean common carrier” means a vessel-operating common carrier.

(18) OCEAN FREIGHT FORWARDER.—The term “ocean freight forwarder” means a person that—

- (A) 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
- (B) processes the documentation or performs related activities incident to those shipments.

(19) OCEAN TRANSPORTATION INTERMEDIARY.—The term “ocean transportation intermediary” means an ocean freight forwarder or a non-vessel-operating common carrier.

(20) SERVICE CONTRACT.—The term “service contract” means a written contract, other than a bill of lading or receipt, between one or more shippers, on the one hand, and an individual ocean common carrier or an agreement between or among ocean common carriers, on the other, in which—

(A) the shipper or shippers commit to providing a certain volume or portion of cargo over a fixed time period; and

(B) 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.

(21) SHIPMENT.—The term “shipment” means all of the cargo carried under the terms of a single bill of lading.

(22) SHIPPER.—The term “shipper” means—

- (A) a cargo owner;
- (B) the person for whose account the ocean transportation of cargo is provided;
- (C) the person to whom delivery is to be made;
- (D) a shippers’ association; or
- (E) a non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(23) SHIPPERS’ ASSOCIATION.—The term “shippers’ association” means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group to obtain carload, truckload, or other volume rates or service contracts.

(24) THROUGH RATE.—The term “through rate” means the single amount charged by a common carrier in connection with through transportation.

(25) THROUGH TRANSPORTATION.—The term “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 a common carrier, between a United States port or point and a foreign port or point.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1523.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40102(1)	46 App.:1702(1).	Pub. L. 98-237, §3, Mar. 20, 1984, 98 Stat. 67; Pub. L. 99-307, §11, May 19, 1986, 100 Stat. 447; Pub. L. 105-258, title I, §102, Oct. 14, 1998, 112 Stat. 1902; Pub. L. 105-383, title IV, §424(d), Nov. 13, 1998, 112 Stat. 3441.
40102(2)	46 App.:1702(2).	
40102(3)	46 App.:1702(3).	
40102(4)	46 App.:1702(4).	
40102(5)	46 App.:1702(6) (last sentence).	
40102(6)	46 App.:1702(6) (1st sentence).	
40102(7)	46 App.:1702(7).	
40102(8)	46 App.:1702(8).	
40102(9)	46 App.:1702(9).	
40102(10)	46 App.:1702(10).	
40102(11)	46 App.:1702(11).	
40102(12)	46 App.:1702(12).	
40102(13)	46 App.:1702(13).	
40102(14)	46 App.:1702(14).	
40102(15)	46 App.:1702(15).	
40102(16)	46 App.:1702(17)(B).	
40102(17)	46 App.:1702(16).	
40102(18)	46 App.:1702(17)(A).	
40102(19)	46 App.:1702(17) (1st sentence).	
40102(20)	46 App.:1702(19).	
40102(21)	46 App.:1702(20).	
40102(22)	46 App.:1702(21).	
40102(23)	46 App.:1702(22).	
40102(24)	46 App.:1702(23).	
40102(25)	46 App.:1702(24).	

In the definition of "service contract", the words "The contract may also specify provisions in the event of nonperformance on the part of any party" are omitted as unnecessary and inappropriate for a definition.

In the definition of "shipper", the words "non-vessel-operating common carrier" are substituted for "ocean transportation intermediary, as defined in paragraph (17)(B) of this section" because paragraph (17)(B) contains a definition of "non-vessel-operating common carrier" which is restated as a separate definition.

The definition of "Commission" is omitted because the full name of the Federal Maritime Commission is used the first time the Commission is referred to in each section. The definition of "person" is omitted as unnecessary because of 1 U.S.C. 1. The definition of "United States" is omitted because the term is defined in chapter 1 of the revised title for purposes of the title.

REFERENCES IN TEXT

The Sherman Act, referred to in par. (2)(A), is act July 2, 1890, ch. 647, 26 Stat. 209, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

The Clayton Act, referred to in par. (2)(C), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, Commerce and Trade, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

Act of June 19, 1936, referred to in par. (2)(D), is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Act, the Robinson-Patman Anti-discrimination Act, and the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in par. (2)(E), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

The Antitrust Civil Process Act, referred to in par. (2)(F), is Pub. L. 87-664, Sept. 19, 1962, 76 Stat. 548, which is classified generally to chapter 34 (§1311 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of Title 15 and Tables.

§ 40103. Administrative exemptions

(a) IN GENERAL.—The Federal Maritime Commission, on application or its own motion, may by order or regulation exempt for the future any class of agreements between persons subject to this part or any specified activity of those persons from any requirement of this part if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to an exemption and may, by order, revoke an exemption.

(b) OPPORTUNITY FOR HEARING.—An order or regulation of exemption or revocation of an exemption may be issued only if the Commission has provided an opportunity for a hearing to interested persons and departments and agencies of the United States Government.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1527.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40103	46 App.:1715.	Pub. L. 98-237, §16, Mar. 20, 1984, 98 Stat. 84; Pub. L. 105-258, title I, §114, Oct. 14, 1998, 112 Stat. 1912.

§ 40104. Reports filed with the Commission

(a) IN GENERAL.—The Federal Maritime Commission may require a common carrier or an officer, receiver, trustee, lessee, agent, or employee of the carrier to file with the Commission a periodical or special report, an account, record, rate, or charge, or a memorandum of facts and transactions related to the business of the carrier. The report, account, record, rate, charge, or memorandum shall be made under oath if the Commission requires, and shall be filed in the form and within the time prescribed by the Commission.

(b) CONFERENCE MINUTES.—Conference minutes required to be filed with the Commission under this section may not be released to third parties or published by the Commission.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1527.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40104	46 App.:1714.	Pub. L. 98-237, §15, Mar. 20, 1984, 98 Stat. 84; Pub. L. 98-595, §3(b)(3), Oct. 30, 1984, 98 Stat. 3133; Pub. L. 105-258, title I, §113, Oct. 14, 1998, 112 Stat. 1912.

CHAPTER 403—AGREEMENTS

- Sec.
- 40301. Application.
- 40302. Filing requirements.
- 40303. Content requirements.
- 40304. Commission action.
- 40305. Assessment agreements.
- 40306. Nondisclosure of information.
- 40307. Exemption from antitrust laws.

§ 40301. Application

(a) OCEAN COMMON CARRIER AGREEMENTS.—This part applies to an agreement between 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 regulate the number and character of voyages between ports;
- (4) regulate the volume or character of cargo or passenger traffic to be carried;
- (5) engage in an exclusive, preferential, or cooperative working arrangement between themselves or with a marine terminal operator;
- (6) control, regulate, or prevent competition in international ocean transportation; or
- (7) discuss and agree on any matter related to a service contract.

(b) MARINE TERMINAL OPERATOR AGREEMENTS.—This part applies to an agreement be-



on at least 30 days' notice to the controlled carrier.

(3) MAXIMUM SUSPENSION.—A period of suspension under this subsection may not exceed 180 days.

(e) REPLACEMENT DURING SUSPENSION.—Whenever the Commission has suspended a rate, charge, classification, rule, or regulation under this section, the controlled carrier may publish a new rate, charge, classification, rule, or regulation to take effect immediately during the suspension in lieu of the suspended rate, charge, classification, rule, or regulation. However, the Commission may reject the new rate, charge, classification, rule, or regulation if the Commission believes it is unjust and unreasonable.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1536.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 40704: 46 App.:1708(c) (last sentence), (d). Pub. L. 98-237, §9(e) (last sentence), (d), Mar. 20, 1984, 98 Stat. 76; Pub. L. 105-258, title I, §108(9)-(15), Oct. 14, 1998, 112 Stat. 1908.

In subsection (d)(1), the words "in a proceeding under subsection (c)" are substituted for "in such a proceeding" for clarity.

§ 40705. Presidential review of Commission orders

(a) TRANSMISSION TO PRESIDENT.—The Federal Maritime Commission shall transmit to the President, concurrently with publication thereof, each order of suspension or final order of prohibition issued under section 40704 of this title.

(b) PRESIDENTIAL REQUEST AND COMMISSION ACTION.—Within 10 days after receipt or the effective date of a Commission order referred to in subsection (a), the President, in writing, may request the Commission to stay the effect of the order if the President finds that the stay is required for reasons of national defense or foreign policy. The reasons shall be specified in the request. The Commission shall immediately grant the request by issuing an order in which the President's request shall be described. During a stay, the President shall, whenever practicable, attempt to resolve the matter by negotiating with representatives of the applicable foreign governments.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1537.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 40705: 46 App.:1708(e). Pub. L. 98-237, §9(e), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105-258, title I, §108(16), Oct. 14, 1998, 112 Stat. 1909.

In subsection (b), the words "Notwithstanding any other law" are omitted as unnecessary.

§ 40706. Exceptions

This chapter does not apply to—

(1) a controlled carrier of a foreign country whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

(2) a trade served only by controlled carriers.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1537.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 40706: 46 App.:1708(f). Pub. L. 98-237, §9(f), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105-258, title I, §108(17)-(19), Oct. 14, 1998, 112 Stat. 1909.

In paragraph (1), the words "foreign country" are substituted for "state" for clarity and consistency.

CHAPTER 409—OCEAN TRANSPORTATION INTERMEDIARIES

- Sec. 40901. License requirement. 40902. Financial responsibility. 40903. Suspension or revocation of license. 40904. Compensation by common carriers.

§ 40901. License requirement

(a) IN GENERAL.—A person in the United States may not act as an ocean transportation intermediary unless the person holds an ocean transportation intermediary's license issued by the Federal Maritime Commission. The Commission shall issue a license to a person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.

(b) EXCEPTION.—A person whose primary business is the sale of merchandise may forward shipments of the merchandise for its own account without an ocean transportation intermediary's license.

(Pub. L. 109–304, §7, Oct. 6, 2006, 120 Stat. 1538.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 40901(a): 46 App.:1718(a). Pub. L. 98-237, §19(a), (d), Mar. 20, 1984, 98 Stat. 87, 88; Pub. L. 105-258, title I, §116, Oct. 14, 1998, 112 Stat. 1912. Row 40901(b): 46 App.:1718(d).

§ 40902. Financial responsibility

(a) IN GENERAL.—A person may not act as an ocean transportation intermediary unless the person furnishes a bond, proof of insurance, or other surety—

- (1) in a form and amount determined by the Federal Maritime Commission to insure financial responsibility; and (2) issued by a surety company found acceptable by the Secretary of the Treasury.

(b) SCOPE OF FINANCIAL RESPONSIBILITY.—A bond, insurance, or other surety obtained under this section—

- (1) shall be available to pay any penalty assessed under section 41109 of this title or any order for reparation issued under section 41305 of this title; (2) may be available to pay any claim against an ocean transportation intermediary arising from its transportation-related activities—

(A) with the consent of the insured ocean transportation intermediary and subject to review by the surety company; or

(B) when the claim is deemed valid by the surety company after the ocean transportation intermediary has failed to respond to adequate notice to address the validity of the claim; and

(3) shall be available to pay any judgment for damages against an ocean transportation intermediary arising from its transportation-related activities, if the claimant has first attempted to resolve the claim under paragraph (2) and the claim has not been resolved within a reasonable period of time.

(c) REGULATIONS ON COURT JUDGMENTS.—The Commission shall prescribe regulations for the purpose of protecting the interests of claimants, ocean transportation intermediaries, and surety companies with respect to the process of pursuing claims against ocean transportation intermediary bonds, insurance, or sureties through court judgments. The regulations shall provide that a judgment for monetary damages may not be enforced except to the extent that the damages claimed arise from the transportation-related activities of the insured ocean transportation intermediary, as defined by the Commission.

(d) RESIDENT AGENT.—An ocean transportation intermediary not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1538.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40902	46 App.:1718(b).	Pub. L. 98-237, §19(b), Mar. 20, 1984; added Pub. L. 105-258, title I, §116(4), Oct. 14, 1998, 112 Stat. 1913.

In subsection (b), in paragraphs (2) and (3), the words “described in section 1702(17) of this Appendix” are omitted as unnecessary.

§ 40903. Suspension or revocation of license

(a) FAILURE TO MAINTAIN QUALIFICATIONS OR TO COMPLY.—The Federal Maritime Commission, after notice and opportunity for a hearing, shall suspend or revoke an ocean transportation intermediary's license if the Commission finds that the ocean transportation intermediary—

(1) is not qualified to provide intermediary services; or

(2) willfully failed to comply with a provision of this part or with an order or regulation of the Commission.

(b) FAILURE TO MAINTAIN BOND, PROOF OF INSURANCE, OR OTHER SURETY.—The Commission may revoke an ocean transportation intermediary's license for failure to maintain a bond, proof of insurance, or other surety as required by section 40902(a) of this title.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1539.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40903	46 App.:1718(c).	Pub. L. 98-237, §19(c), Mar. 20, 1984, 98 Stat. 88; Pub. L. 105-258, title I, §116, Oct. 14, 1998, 112 Stat. 1912.

In subsection (a)(2), the words “lawful” and “rule” are omitted as unnecessary.

§ 40904. Compensation by common carriers

(a) CERTIFICATION OF LICENSE AND SERVICES.—A common carrier may compensate an ocean freight forwarder for a shipment dispatched for others only when the ocean freight forwarder has certified in writing that it holds an ocean transportation intermediary's license (if required under section 40901 of this title) and has—

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

(2) prepared and processed the ocean bill of lading, dock receipt, or other similar document for the shipment.

(b) DUAL COMPENSATION.—A common carrier may not pay compensation for services described in subsection (a) more than once on the same shipment.

(c) BENEFICIAL INTEREST SHIPMENTS.—An ocean freight forwarder may not receive compensation from a common carrier for a shipment in which the ocean freight forwarder has a direct or indirect beneficial interest. A common carrier may not knowingly pay compensation on that shipment.

(d) LIMITS ON AUTHORITY OF CONFERENCE OR GROUP.—A conference or group of two or more ocean common carriers in the foreign commerce of the United States that is authorized to agree on the level of compensation paid to an ocean freight forwarder may not—

(1) deny a member of the conference or group the right, upon notice of not more than 5 days, to take independent action on any level of compensation paid to an ocean freight forwarder; or

(2) 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 a tariff and assessed against the cargo on which the services of the ocean freight forwarder are provided.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1539.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40904	46 App.:1718(e).	Pub. L. 98-237, §19(e), Mar. 20, 1984, 98 Stat. 88; Pub. L. 105-258, title I, §116, Oct. 14, 1998, 112 Stat. 1912.

In this section, the words “ocean freight forwarder” are substituted for “ocean transportation intermediary, as defined in section 1702(17)(A) of this Appendix” and “ocean transportation intermediary” because the definition of “ocean transportation intermediary” in section 1702(17)(A) contains a definition of “ocean freight forwarder” which is restated as a separate definition.

In subsection (d)(1), the word “calendar” is omitted as unnecessary.

CHAPTER 411—PROHIBITIONS AND PENALTIES

Sec.	
41101.	Joint ventures and consortiums.
41102.	General prohibitions.
41103.	Disclosure of information.
41104.	Common carriers.
41105.	Concerted action.
41106.	Marine terminal operators.
41107.	Monetary penalties.
41108.	Additional penalties.
41109.	Assessment of penalties.

§ 41101. Joint ventures and consortiums

In this chapter, a joint venture or consortium of two or more common carriers operating as a single entity is deemed to be a single common carrier.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1540.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41101	46 App.:1709(e).	Pub. L. 98-237, §10(e), Mar. 20, 1984, 98 Stat. 80.

§ 41102. General prohibitions

(a) OBTAINING TRANSPORTATION AT LESS THAN APPLICABLE RATES.—A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply.

(b) OPERATING CONTRARY TO AGREEMENT.—A person may not operate under an agreement required to be filed under section 40302 or 40305 of this title if—

(1) the agreement has not become effective under section 40304 of this title or has been rejected, disapproved, or canceled; or

(2) the operation is not in accordance with the terms of the agreement or any modifications to the agreement made by the Federal Maritime Commission.

(c) PRACTICES IN HANDLING PROPERTY.—A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1540.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41102(a)	46 App.:1709(a)(1).	Pub. L. 98-237, §10(a), Mar. 20, 1984, 98 Stat. 77.
41102(b)	46 App.:1709(a)(2), (3).	
41102(c)	46 App.:1709(d)(1).	Pub. L. 98-237, §10(d)(1), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105-258, title I, §109(c)(2), Oct. 14, 1998, 112 Stat. 1909.

§ 41103. Disclosure of information

(a) PROHIBITION.—A common carrier, marine terminal operator, or ocean freight forwarder, either alone or in conjunction with any other person, directly or indirectly, may not knowingly disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier, without the consent of the shipper or consignee, if the information—

(1) may be used to the detriment or prejudice of the shipper, the consignee, or any common carrier; or

(2) may improperly disclose its business transaction to a competitor.

(b) EXCEPTIONS.—Subsection (a) does not prevent providing the information—

(1) in response to legal process;

(2) to the Federal Maritime Commission or an agency of the United States Government; or

(3) to an independent neutral body operating within the scope of its authority to fulfill the policing obligations of the parties to an agreement effective under this part.

(c) DISCLOSURE FOR DETERMINING BREACH OR COMPILING STATISTICS.—An ocean common carrier that is a party to a conference agreement approved under this part, a receiver, trustee, lessee, agent, or employee of the carrier, or any other person authorized by the carrier to receive information—

(1) may give information to the conference or any person or agency designated by the conference, for the purpose of—

(A) determining whether a shipper or consignee has breached an agreement with the conference or its member lines;

(B) determining whether a member of the conference has breached the conference agreement; or

(C) compiling statistics of cargo movement; and

(2) may not prevent the conference or its designee from soliciting or receiving information for any of those purposes.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1540.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41103(a)	46 App.:1709(b)(13), (d)(3) (related to (b)(13)), (5).	Pub. L. 98-237, §10(b)(13), (words after cl. (13)), (d)(3) (related to (b)(13)), (5), Mar. 20, 1984, 98 Stat. 79, 80; Pub. L. 101-595, title VII, §710(c)(1), (2), Nov. 16, 1990, 104 Stat. 2897; Pub. L. 105-258, title I, §109(a)(10), (11), (16), (17), (c)(3), Oct. 14, 1998, 112 Stat. 1910, 1911.
41103(b)	46 App.:1709(b) (next-to-last sentence).	
41103(c)	46 App.:1709(b) (last sentence).	

In subsection (a), the words “marine terminal operator, or ocean freight forwarder” are added because of 46 App. U.S.C. 1709(d)(3) and (5). The words “ocean freight forwarder” are substituted for “ocean transportation intermediaries, as defined by section 1702(17)(A) of this



In subsection (d)(1), the word “calendar” is omitted as unnecessary.

CHAPTER 411—PROHIBITIONS AND PENALTIES

- Sec. 41101. Joint ventures and consortiums. 41102. General prohibitions. 41103. Disclosure of information. 41104. Common carriers. 41105. Concerted action. 41106. Marine terminal operators. 41107. Monetary penalties. 41108. Additional penalties. 41109. Assessment of penalties.

§ 41101. Joint ventures and consortiums

In this chapter, a joint venture or consortium of two or more common carriers operating as a single entity is deemed to be a single common carrier.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1540.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 41101, 46 App.:1709(e), Pub. L. 98-237, §10(e), Mar. 20, 1984, 98 Stat. 80.

§ 41102. General prohibitions

(a) OBTAINING TRANSPORTATION AT LESS THAN APPLICABLE RATES.—A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply.

(b) OPERATING CONTRARY TO AGREEMENT.—A person may not operate under an agreement required to be filed under section 40302 or 40305 of this title if—

(1) the agreement has not become effective under section 40304 of this title or has been rejected, disapproved, or canceled; or

(2) the operation is not in accordance with the terms of the agreement or any modifications to the agreement made by the Federal Maritime Commission.

(c) PRACTICES IN HANDLING PROPERTY.—A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1540.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Rows 1-3: 41102(a), 41102(b), 41102(c) with their respective sources.

§ 41103. Disclosure of information

(a) PROHIBITION.—A common carrier, marine terminal operator, or ocean freight forwarder, either alone or in conjunction with any other person, directly or indirectly, may not knowingly disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier, without the consent of the shipper or consignee, if the information—

(1) may be used to the detriment or prejudice of the shipper, the consignee, or any common carrier; or

(2) may improperly disclose its business transaction to a competitor.

(b) EXCEPTIONS.—Subsection (a) does not prevent providing the information—

(1) in response to legal process;

(2) to the Federal Maritime Commission or an agency of the United States Government; or

(3) to an independent neutral body operating within the scope of its authority to fulfill the policing obligations of the parties to an agreement effective under this part.

(c) DISCLOSURE FOR DETERMINING BREACH OR COMPILING STATISTICS.—An ocean common carrier that is a party to a conference agreement approved under this part, a receiver, trustee, lessee, agent, or employee of the carrier, or any other person authorized by the carrier to receive information—

(1) may give information to the conference or any person or agency designated by the conference, for the purpose of—

(A) determining whether a shipper or consignee has breached an agreement with the conference or its member lines;

(B) determining whether a member of the conference has breached the conference agreement; or

(C) compiling statistics of cargo movement; and

(2) may not prevent the conference or its designee from soliciting or receiving information for any of those purposes.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1540.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Rows 1-3: 41103(a), 41103(b), 41103(c) with their respective sources.

In subsection (a), the words “marine terminal operator, or ocean freight forwarder” are added because of 46 App. U.S.C. 1709(d)(3) and (5). The words “ocean freight forwarder” are substituted for “ocean transportation intermediaries, as defined by section 1702(17)(A) of this

Appendix" in 46 App. U.S.C. 1709(d)(5) because the definition of "ocean transportation intermediary" in section 1702(17)(A) contains a definition of "ocean freight forwarder" which is restated as a separate definition.

In subsection (b), the words "does not prevent" are substituted for "Nothing . . . shall be construed to prevent" to eliminate unnecessary words.

In subsection (c)(1), the words "may give information" are substituted for "Nor shall it be prohibited . . . to give information" to eliminate unnecessary words. The words "firm, corporation" are omitted as unnecessary because firms and corporations are persons.

In subsection (c)(2), the words "may not prevent" are substituted for "Nor shall it be prohibited . . . to prevent" to reflect the probable intent of Congress. The words "but the use of such information for any other purpose prohibited by this chapter or any other Act is prohibited" are omitted as unnecessary.

§ 41104. Common carriers

A common carrier, either alone or in conjunction with any other person, directly or indirectly, may not—

(1) allow a person to obtain transportation for property at less than the rates or charges established by the carrier in its tariff or service contract by means of false billing, false classification, false weighing, false measurement, or any other unjust or unfair device or means;

(2) provide service in the liner trade that is—

(A) not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a service contract entered into under chapter 405 of this title, unless excepted or exempted under section 40103 or 40501(a)(2) of this title; or

(B) under a tariff or service contract that has been suspended or prohibited by the Federal Maritime Commission under chapter 407 or 423 of this title;

(3) retaliate against a shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason;

(4) for service pursuant to a tariff, engage in any unfair or unjustly discriminatory practice in the matter of—

(A) rates or charges;

(B) cargo classifications;

(C) cargo space accommodations or other facilities, with due regard being given to the proper loading of the vessel and the available tonnage;

(D) loading and landing of freight; or

(E) adjustment and settlement of claims;

(5) for service pursuant to a service contract, engage in any unfair or unjustly discriminatory practice in the matter of rates or charges with respect to any port;

(6) use a vessel in a particular trade for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade;

(7) offer or pay any deferred rebates;

(8) for service pursuant to a tariff, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage;

(9) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port;

(10) unreasonably refuse to deal or negotiate;

(11) knowingly and willfully accept cargo from or transport cargo for the account of an ocean transportation intermediary that does not have a tariff as required by section 40501 of this title and a bond, insurance, or other surety as required by section 40902 of this title; or

(12) knowingly and willfully enter into a service contract with an ocean transportation intermediary that does not have a tariff as required by section 40501 of this title and a bond, insurance, or other surety as required by section 40902 of this title, or with an affiliate of such an ocean transportation intermediary.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1541.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41104	46 App. 1709(b)(1)-(12).	Pub. L. 98-237, § 10(b)(1)-(12), Mar. 20, 1984, 98 Stat. 77; Pub. L. 101-595, title VII, § 710(c), Nov. 16, 1990, 104 Stat. 2997; Pub. L. 102-251, title II, § 201(b), Mar. 9, 1992, 106 Stat. 60; Pub. L. 105-258, title I, § 109(a), Oct. 14, 1998, 112 Stat. 1909; Pub. L. 105-363, title IV, § 424(b), Nov. 13, 1998, 112 Stat. 3441.

§ 41105. Concerted action

A conference or group of two or more common carriers may not—

(1) boycott or take any other concerted action resulting in an unreasonable refusal to deal;

(2) engage in conduct that unreasonably restricts the use of intermodal services or technological innovations;

(3) engage in any predatory practice designed to eliminate the participation, or deny the entry, in a particular trade of a common carrier not a member of the conference, a group of common carriers, an ocean tramp, or a bulk carrier;

(4) negotiate with a non-ocean carrier or group of non-ocean carriers (such as truck, rail, or air operators) on any matter relating to rates or services provided to ocean common carriers within the United States by those non-ocean carriers, unless the negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this part, except that this paragraph does not prohibit the setting and publishing of a joint through rate by a conference, joint venture, or association of ocean common carriers;

(5) deny in the export foreign commerce of the United States compensation to an ocean freight forwarder or limit that compensation to less than a reasonable amount;

(6) allocate shippers among specific carriers that are parties to the agreement or prohibit a carrier that is a party to the agreement from soliciting cargo from a particular shipper, except as—

(A) authorized by section 40303(d) of this title;

(B) required by the law of the United States or the importing or exporting country; or

(C) agreed to by a shipper in a service contract;

(7) for service pursuant to a service contract, engage in any unjustly discriminatory practice in the matter of rates or charges with respect to any locality, port, or person due to the person's status as a shippers' association or ocean transportation intermediary; or

(8) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any locality, port, or person due to the person's status as a shippers' association or ocean transportation intermediary.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1542.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41105	46 App.:1709(c).	Pub. L. 98-237, §10(c), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105-258, title I, §109(b), Oct. 14, 1998, 112 Stat. 1910; Pub. L. 105-383, title IV, §424(b), Nov. 13, 1998, 112 Stat. 3441.

In paragraph (5), the words "ocean freight forwarder" are substituted for "ocean transportation intermediary, as defined by section 1702(17)(A) of this Appendix" because the definition of "ocean transportation intermediary" in section 1702(17)(A) contains a definition of "ocean freight forwarder" which is restated as a separate definition.

§ 41106. Marine terminal operators

A marine terminal operator may not—

(1) agree with another marine terminal operator or with a common carrier to boycott, or unreasonably discriminate in the provision of terminal services to, a common carrier or ocean tramp;

(2) give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person; or

(3) unreasonably refuse to deal or negotiate.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1543.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41106(1)	46 App.:1709(d)(2).	Pub. L. 98-237, §10(d)(2), (3) (related to (b)(10)), (4), Mar. 20, 1984, 98 Stat. 77; Pub. L. 105-258, title I, §109(c), Oct. 14, 1998, 112 Stat. 1910.
41106(2)	46 App.:1709(d)(4).	
41106(3)	46 App.:1709(d)(3) (related to (b)(10)).	

§ 41107. Monetary penalties

(a) IN GENERAL.—A person that violates this part or a regulation or order of the Federal Maritime Commission issued under this part is liable to the United States Government for a civil

penalty. Unless otherwise provided in this part, the amount of the penalty may not exceed \$5,000 for each violation or, if the violation was willfully and knowingly committed, \$25,000 for each violation. Each day of a continuing violation is a separate violation.

(b) LIEN ON CARRIER'S VESSELS.—The amount of a civil penalty imposed on a common carrier under this section constitutes a lien on the vessels operated by the carrier. Any such vessel is subject to an action in rem to enforce the lien in the district court of the United States for the district in which it is found.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1543.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41107	46 App.:1712(a).	Pub. L. 98-237, §13(a), Mar. 20, 1984, 98 Stat. 82; Pub. L. 105-258, title I, §112(a), Oct. 14, 1998, 112 Stat. 1911.

In subsection (b), the words "is subject to an action in rem to enforce the lien" are substituted for "may be libeled therefore" to modernize the language.

§ 41108. Additional penalties

(a) SUSPENSION OF TARIFFS.—For a violation of section 41104(1), (2), or (7) of this title, the Federal Maritime Commission may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months.

(b) OPERATING UNDER SUSPENDED TARIFF.—A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended, or after its right to use that tariff has been suspended, is liable to the United States Government for a civil penalty of not more than \$50,000 for each shipment.

(c) FAILURE TO PROVIDE INFORMATION.—

(1) PENALTIES.—If the Commission finds, after notice and opportunity for a hearing, that a common carrier has failed to supply information ordered to be produced or compelled by subpoena under section 41303 of this title, the Commission may—

(A) suspend any or all tariffs of the carrier or the carrier's right to use any or all tariffs of conferences of which it is a member; and

(B) request the Secretary of Homeland Security to refuse or revoke any clearance required for a vessel operated by the carrier, and when so requested, the Secretary shall refuse or revoke the clearance.

(2) DEFENSE BASED ON FOREIGN LAW.—If, in defense of its failure to comply with a subpoena or discovery order, a common carrier alleges that information or documents located in a foreign country cannot be produced because of the laws of that country, the Commission shall immediately notify the Secretary of State of the failure to comply and of the allegation relating to foreign laws. On receiving the notification, the Secretary of State shall promptly consult with the government of the nation within which the information or documents are alleged to be located for the purpose of assisting the Commission in obtaining the information or documents.

(d) **IMPAIRING ACCESS TO FOREIGN TRADE.**—If the Commission finds, after notice and opportunity for a hearing, that the action of a common carrier, acting alone or in concert with another person, or a foreign government has unduly impaired access of a vessel documented under the laws of the United States to ocean trade between foreign ports, the Commission shall take action that it finds appropriate, including imposing any of the penalties authorized by this section. The Commission also may take any of the actions authorized by sections 42304 and 42305 of this title.

(e) **SUBMISSION OF ORDER TO PRESIDENT.**—Before an order under this section becomes effective, it shall be submitted immediately to the President. The President, within 10 days after receiving it, may disapprove it if the President finds that disapproval is required for reasons of national defense or foreign policy.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1543.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41108(a)	46 App.:1712(b)(1).	Pub. L. 98-237, § 13(b), Mar. 20, 1984, 98 Stat. 82; Pub. L. 105-258, title I, § 112(b), Oct. 14, 1998, 112 Stat. 1911.
41108(b)	46 App.:1712(b)(3).	
41108(c)	46 App.:1712(b)(2), (4), (5).	
41108(d)	46 App.:1712(b)(6), 46 App.:1710a(h) (related to 1712(b)(6)).	Pub. L. 100-418, title X, § 10002(h) (related to § 13(b)(6)), Aug. 23, 1988, 102 Stat. 1572; Pub. L. 105-258, title I, § 111(7), Oct. 14, 1998, 112 Stat. 1911.
41108(e)	46 App.:1712(b)(7).	

In subsection (c)(1)(B), the words "Secretary of Homeland Security" are substituted for "Secretary of the Treasury" because the functions of the Secretary of the Treasury relating to the Customs Service were transferred to the Secretary of Homeland Security by section 403(1) of the Homeland Security Act of 2002 (Pub. L. 107-296, 116 Stat. 2178).

§ 41109. Assessment of penalties

(a) **GENERAL AUTHORITY.**—Until a matter is referred to the Attorney General, the Federal Maritime Commission may, after notice and opportunity for a hearing, assess a civil penalty provided for in this part. The Commission may compromise, modify, or remit, with or without conditions, a civil penalty.

(b) **FACTORS IN DETERMINING AMOUNT.**—In determining the amount of a civil penalty, the Commission shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require.

(c) **EXCEPTION.**—A civil penalty may not be imposed for conspiracy to violate section 41102(a) or 41104(1) or (2) of this title or to defraud the Commission by concealing such a violation.

(d) **PROHIBITED BASIS OF PENALTY.**—The Commission or a court may not order a person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in a tariff or service contract by that common carrier for the transportation service provided.

(e) **TIME LIMIT.**—A proceeding to assess a civil penalty under this section must be commenced within 5 years after the date of the violation.

(f) **REVIEW OF CIVIL PENALTY.**—A person against whom a civil penalty is assessed under this section may obtain review under chapter 158 of title 28.

(g) **CIVIL ACTIONS TO COLLECT.**—If a person does not pay an assessment of a civil penalty after it has become final or after the appropriate court has entered final judgment in favor of the Commission, the Attorney General at the request of the Commission may seek to collect the amount assessed in an appropriate district court of the United States. The court shall enforce the order of the Commission unless it finds that the order was not regularly made and duly issued.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1544.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41109(a)	46 App.:1712(c) (1st, last sentences).	Pub. L. 98-237, § 13(c)-(f), Mar. 20, 1984, 98 Stat. 82; Pub. L. 105-258, title I, § 112(c), Oct. 14, 1998, 112 Stat. 1912.
41109(b)	46 App.:1712(c) (2d sentence).	
41109(c)	46 App.:1712(f)(1) (1st sentence).	
41109(d)	46 App.:1712(f)(1) (last sentence).	
41109(e)	46 App.:1712(f)(2).	
41109(f)	46 App.:1712(d).	
41109(g)	46 App.:1712(e).	

CHAPTER 413—ENFORCEMENT

Sec.

- 41301. Complaints.
- 41302. Investigations.
- 41303. Discovery and subpoenas.
- 41304. Hearings and orders.
- 41305. Award of reparations.
- 41306. Injunctive relief sought by complainants.
- 41307. Injunctive relief sought by the Commission.
- 41308. Enforcement of subpoenas and orders.
- 41309. Enforcement of reparation orders.

§ 41301. Complaints

(a) **IN GENERAL.**—A person may file with the Federal Maritime Commission a sworn complaint alleging a violation of this part, except section 41307(b)(1). If the complaint is filed within 3 years after the claim accrues, the complainant may seek reparations for an injury to the complainant caused by the violation.

(b) **NOTICE AND RESPONSE.**—The Commission shall provide a copy of the complaint to the person named in the complaint. Within a reasonable time specified by the Commission, the person shall satisfy the complaint or answer it in writing.

(c) **IF COMPLAINT NOT SATISFIED.**—If the complaint is not satisfied, the Commission shall investigate the complaint in an appropriate manner and make an appropriate order.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1545.)

(d) **IMPAIRING ACCESS TO FOREIGN TRADE.**—If the Commission finds, after notice and opportunity for a hearing, that the action of a common carrier, acting alone or in concert with another person, or a foreign government has unduly impaired access of a vessel documented under the laws of the United States to ocean trade between foreign ports, the Commission shall take action that it finds appropriate, including imposing any of the penalties authorized by this section. The Commission also may take any of the actions authorized by sections 42304 and 42305 of this title.

(e) **SUBMISSION OF ORDER TO PRESIDENT.**—Before an order under this section becomes effective, it shall be submitted immediately to the President. The President, within 10 days after receiving it, may disapprove it if the President finds that disapproval is required for reasons of national defense or foreign policy.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1543.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41108(a)	46 App.:1712(b)(1).	Pub. L. 98-237, §13(b), Mar. 20, 1984, 98 Stat. 82; Pub. L. 105-258, title I, §112(b), Oct. 14, 1998, 112 Stat. 1911.
41108(b)	46 App.:1712(b)(3).	
41108(c)	46 App.:1712(b)(2), (4), (5).	
41108(d)	46 App.:1712(b)(6), 46 App.:1710a(h) (related to 1712(b)(6)).	Pub. L. 100-418, title X, §10002(h) (related to §13(b)(6)), Aug. 23, 1988, 102 Stat. 1572; Pub. L. 105-258, title I, §111(7), Oct. 14, 1998, 112 Stat. 1911.
41108(e)	46 App.:1712(b)(7).	

In subsection (c)(1)(B), the words “Secretary of Homeland Security” are substituted for “Secretary of the Treasury” because the functions of the Secretary of the Treasury relating to the Customs Service were transferred to the Secretary of Homeland Security by section 403(l) of the Homeland Security Act of 2002 (Pub. L. 107-296, 116 Stat. 2178).

§ 41109. Assessment of penalties

(a) **GENERAL AUTHORITY.**—Until a matter is referred to the Attorney General, the Federal Maritime Commission may, after notice and opportunity for a hearing, assess a civil penalty provided for in this part. The Commission may compromise, modify, or remit, with or without conditions, a civil penalty.

(b) **FACTORS IN DETERMINING AMOUNT.**—In determining the amount of a civil penalty, the Commission shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require.

(c) **EXCEPTION.**—A civil penalty may not be imposed for conspiracy to violate section 41102(a) or 41104(1) or (2) of this title or to defraud the Commission by concealing such a violation.

(d) **PROHIBITED BASIS OF PENALTY.**—The Commission or a court may not order a person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in a tariff or service contract by that common carrier for the transportation service provided.

(e) **TIME LIMIT.**—A proceeding to assess a civil penalty under this section must be commenced within 5 years after the date of the violation.

(f) **REVIEW OF CIVIL PENALTY.**—A person against whom a civil penalty is assessed under this section may obtain review under chapter 158 of title 28.

(g) **CIVIL ACTIONS TO COLLECT.**—If a person does not pay an assessment of a civil penalty after it has become final or after the appropriate court has entered final judgment in favor of the Commission, the Attorney General at the request of the Commission may seek to collect the amount assessed in an appropriate district court of the United States. The court shall enforce the order of the Commission unless it finds that the order was not regularly made and duly issued.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1544.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41109(a)	46 App.:1712(c) (1st, last sentences).	Pub. L. 98-237, §13(c)-(f), Mar. 20, 1984, 98 Stat. 82; Pub. L. 105-258, title I, §112(c), Oct. 14, 1998, 112 Stat. 1912.
41109(b)	46 App.:1712(c) (2d sentence).	
41109(c)	46 App.:1712(f)(1) (1st sentence).	
41109(d)	46 App.:1712(f)(1) (last sentence).	
41109(e)	46 App.:1712(f)(2).	
41109(f)	46 App.:1712(d).	
41109(g)	46 App.:1712(e).	

CHAPTER 413—ENFORCEMENT

- Sec.
- 41301. Complaints.
- 41302. Investigations.
- 41303. Discovery and subpoenas.
- 41304. Hearings and orders.
- 41305. Award of reparations.
- 41306. Injunctive relief sought by complainants.
- 41307. Injunctive relief sought by the Commission.
- 41308. Enforcement of subpoenas and orders.
- 41309. Enforcement of reparation orders.

§ 41301. Complaints

(a) **IN GENERAL.**—A person may file with the Federal Maritime Commission a sworn complaint alleging a violation of this part, except section 41307(b)(1). If the complaint is filed within 3 years after the claim accrues, the complainant may seek reparations for an injury to the complainant caused by the violation.

(b) **NOTICE AND RESPONSE.**—The Commission shall provide a copy of the complaint to the person named in the complaint. Within a reasonable time specified by the Commission, the person shall satisfy the complaint or answer it in writing.

(c) **IF COMPLAINT NOT SATISFIED.**—If the complaint is not satisfied, the Commission shall investigate the complaint in an appropriate manner and make an appropriate order.

(Pub. L. 109-304, § 7, Oct. 6, 2006, 120 Stat. 1545.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41301(a)	46 App.:1710(a), (g) (related to time limit).	Pub. L. 98-237, §11(a), (b), (g) (related to time limit), Mar. 20, 1984, 98 Stat. 80; Pub. L. 98-595, §3(b)(2), Oct. 30, 1984, 98 Stat. 3132; Pub. L. 105-258, title 1, §110, Oct. 14, 1998, 112 Stat. 1911.
41301(b)	46 App.:1710(b) (1st sentence).	
41301(c)	46 App.:1710(b) (last sentence).	

In subsection (a), the words “If the complaint is filed within 3 years after the claim accrues” are substituted for “For any complaint filed within 3 years after the cause of action accrued” in 46 App. U.S.C. 1710(g) to alert the reader to that time limitation.

§ 41302. Investigations

(a) IN GENERAL.—The Federal Maritime Commission, on complaint or its own motion, may investigate any conduct or agreement that the Commission believes may be in violation of this part. The Commission may by order disapprove, cancel, or modify any agreement that operates in violation of this part.

(b) EFFECTIVENESS OF AGREEMENT DURING INVESTIGATION.—Unless an injunction is issued under section 41306 or 41307 of this title, an agreement under investigation by the Commission remains in effect until the Commission issues its order.

(c) DATE FOR DECISION.—Within 10 days after the initiation of a proceeding under this section or section 41301 of this title, the Commission shall set a date by which it will issue its final decision. The Commission by order may extend the date for good cause.

(d) SANCTIONS FOR DELAY.—If, within the period for final decision under subsection (c), the Commission determines that it is unable to issue a final decision because of undue delay caused by a party to the proceeding, the Commission may impose sanctions, including issuing a decision adverse to the delaying party.

(e) REPORT.—The Commission shall make a written report of every investigation under this part in which a hearing was held, stating its conclusions, decisions, findings of fact, and order. The Commission shall provide a copy of the report to all parties and publish the report for public information. A published report is competent evidence in a court of the United States.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1545.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41302(a)	46 App.:1710(c) (1st, 3d sentences).	Pub. L. 98-237, §11(c)-(f), Mar. 20, 1984, 98 Stat. 80.
41302(b)	46 App.:1710(c) (2d sentence).	
41302(c)	46 App.:1710(d).	
41302(d)	46 App.:1710(e).	
41302(e)	46 App.:1710(f).	

§ 41303. Discovery and subpoenas

(a) IN GENERAL.—In an investigation or adjudicatory proceeding under this part—

(1) the Federal Maritime Commission may subpoena witnesses and evidence; and

(2) a party may use depositions, written interrogatories, and discovery procedures under regulations prescribed by the Commission that, to the extent practicable, shall conform to the Federal Rules of Civil Procedure (28 App. U.S.C.).

(b) WITNESS FEES.—Unless otherwise prohibited by law, a witness is entitled to the same fees and mileage as in the courts of the United States.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1545.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41303	46 App.:1711.	Pub. L. 98-237, §12, Mar. 20, 1984, 98 Stat. 81.

In subsection (a)(1), the words “may subpoena witnesses and evidence” are substituted for “may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence” to eliminate unnecessary words.

In subsection (a)(2), the words “shall conform to the Federal Rules of Civil Procedure (28 App. U.S.C.)” are substituted for “shall be in conformity with the rules applicable in civil proceedings in the district courts of the United States” for clarity.

§ 41304. Hearings and orders

(a) OPPORTUNITY FOR HEARING.—The Federal Maritime Commission shall provide an opportunity for a hearing before issuing an order relating to a violation of this part or a regulation prescribed under this part.

(b) MODIFICATION OF ORDER.—The Commission may reverse, suspend, or modify any of its orders.

(c) REHEARING.—On application of a party to a proceeding, the Commission may grant a rehearing of the same or any matter determined in the proceeding. Except by order of the Commission, a rehearing does not operate as a stay of an order.

(d) PERIOD OF EFFECTIVENESS.—An order of the Commission remains in effect for the period specified in the order or until suspended, modified, or set aside by the Commission or a court of competent jurisdiction.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1546.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41304(a)	46 App.:1713(a) (1st sentence).	Pub. L. 98-237, §14(a), (b), Mar. 20, 1984, 98 Stat. 83.
41304(b)	46 App.:1713(b) (1st sentence 1st-12th words).	
41304(c)	46 App.:1713(b) (1st sentence 13th-last words, last sentence).	
41304(d)	46 App.:1713(a) (last sentence).	

In subsection (a), the words “upon sworn complaint or on its own motion” are omitted as unnecessary.

§ 41305. Award of reparations

(a) DEFINITION.—In this section, the term “actual injury” includes the loss of interest at commercial rates compounded from the date of injury.

(b) **BASIC AMOUNT.**—If the complaint was filed within the period specified in section 41301(a) of this title, the Federal Maritime Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation of this part.

(c) **ADDITIONAL AMOUNTS.**—On a showing that the injury was caused by an activity prohibited by section 41102(b), 41104(3) or (6), or 41105(1) or (3) of this title, the Commission may order the payment of additional amounts, but the total recovery of a complainant may not exceed twice the amount of the actual injury.

(d) **DIFFERENCE BETWEEN RATES.**—If the injury was caused by an activity prohibited by section 41104(4)(A) or (B) of this title, the amount of the injury shall be the difference between the rate paid by the injured shipper and the most favorable rate paid by another shipper.

(e) **ATTORNEY FEES.**—In any action brought under section 41301, the prevailing party may be awarded reasonable attorney fees.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1546; Pub. L. 113-281, title IV, §402, Dec. 18, 2014, 128 Stat. 3056.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41305	46 App.:1710(g) (less time limit).	Pub. L. 98-237, §11(g) (less time limit), Mar. 20, 1984, 98 Stat. 80; Pub. L. 99-595, §3(b)(2), Oct. 30, 1984, 98 Stat. 3132; Pub. L. 105-258, title I, §110, Oct. 14, 1998, 112 Stat. 1911.

In subsection (b), the words “within the period specified in section 41301(a) of this title” are substituted for “within 3 years after the cause of action accrued” because the time limit is restated in section 41301(a) instead of in this section. The words “upon petition of the complainant” are omitted as unnecessary. The words “after notice and hearing” are omitted as unnecessary because of section 41304(a) of the revised title.

AMENDMENTS

2014—Subsec. (b). Pub. L. 113-281, §402(1), struck out “, plus reasonable attorney fees” before period at end.
Subsec. (e). Pub. L. 113-281, §402(2), added subsec. (e).

§ 41306. Injunctive relief sought by complainants

(a) **IN GENERAL.**—After filing a complaint with the Federal Maritime Commission under section 41301 of this title, the complainant may bring a civil action in a district court of the United States to enjoin conduct in violation of this part.

(b) **VENUE.**—The action must be brought in the judicial district in which—

(1) the Commission has brought a civil action against the defendant under section 41307(a) of this title; or

(2) the defendant resides or transacts business, if the Commission has not brought such an action.

(c) **REMEDIES BY COURT.**—After notice to the defendant, and a showing that the standards for granting injunctive relief by courts of equity are met, the court may grant a temporary restraining order or preliminary injunction for a period not to exceed 10 days after the Commission has issued an order disposing of the complaint.

(d) **ATTORNEY FEES.**—A defendant prevailing in a civil action under this section shall be allowed reasonable attorney fees to be assessed and collected as part of the costs of the action.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1546.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41306	46 App.:1710(h)(2).	Pub. L. 98-237, §11(h)(2), Mar. 20, 1984, 98 Stat. 81.

§ 41307. Injunctive relief sought by the Commission

(a) **GENERAL VIOLATIONS.**—In connection with an investigation under section 41301 or 41302 of this title, the Federal Maritime Commission may bring a civil action to enjoin conduct in violation of this part. The action must be brought in the district court of the United States for any judicial district in which the defendant resides or transacts business. After notice to the defendant, and a showing that the standards for granting injunctive relief by courts of equity are met, the court may grant a temporary restraining order or preliminary injunction for a period not to exceed 10 days after the Commission has issued an order disposing of the issues under investigation.

(b) **REDUCTION IN COMPETITION.**—

(1) **ACTION BY COMMISSION.**—If, at any time after the filing or effective date of an agreement under chapter 403 of this title, the Commission determines that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost, the Commission, after notice to the person filing the agreement, may bring a civil action in the United States District Court for the District of Columbia to enjoin the operation of the agreement. The Commission’s sole remedy with respect to an agreement likely to have such an effect is an action under this subsection.

(2) **REMEDIES BY COURT.**—In an action under this subsection, the court may issue—

(A) a temporary restraining order or a preliminary injunction; and

(B) a permanent injunction after a showing that the agreement is likely to have the effect described in paragraph (1).

(3) **BURDEN OF PROOF AND THIRD PARTIES.**—In an action under this subsection, the burden of proof is on the Commission. The court may not allow a third party to intervene.

(c) **FAILURE TO PROVIDE INFORMATION.**—If a person filing an agreement, or an officer, director, partner, agent, or employee of the person, fails substantially to comply with a request for the submission of additional information or documents within the period provided in section 40304(c) of this title, the Commission may bring a civil action in the United States District Court for the District of Columbia. At the request of the Commission, the Court—

(1) may order compliance;

(2) shall extend the period specified in section 40304(c)(2) of this title until there has been substantial compliance; and

(3) may grant other equitable relief that the court decides is appropriate.

(d) REPRESENTATION.—The Commission may represent itself in a proceeding under this section in—

(1) a district court of the United States, on notice to the Attorney General; and

(2) a court of appeals of the United States, with the approval of the Attorney General.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1547.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41307(a)	46 App.:1710(h)(1).	Pub. L. 98-237, §11(c) (last sentence), (h)(1), Mar. 20, 1984, 98 Stat. 80, 81.
41307(b)(1) ..	46 App.:1705(g), (h) (1st sentence).	Pub. L. 98-237, §6(g)-(i), (k), Mar. 20, 1984, 98 Stat. 72, 73.
41307(b)(2) ..	46 App.:1710(c) (last sentence).	
41307(b)(3) ..	46 App.:1705(h) (2d sentence).	
41307(c)	46 App.:1705(h) (3d, last sentences).	
41307(d)	46 App.:1705(i).	
41307(e)	46 App.:1705(k).	

§ 41308. Enforcement of subpoenas and orders

(a) CIVIL ACTION.—If a person does not comply with a subpoena or order of the Federal Maritime Commission, the Attorney General, at the request of the Commission, or an injured party, may seek enforcement in a district court of the United States having jurisdiction over the parties. If, after hearing, the court determines that the subpoena or order was regularly made and duly issued, the court shall enforce the subpoena or order.

(b) TIME LIMIT ON BRINGING ACTIONS.—An action under this section to enforce an order of the Commission must be brought within 3 years after the date the order was violated.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1548.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41308(a)	46 App.:1713(c).	Pub. L. 98-237, §14(c), (e), Mar. 20, 1984, 98 Stat. 83, 84.
41308(b)	46 App.:1713(e).	

In subsection (a), the words “subpoena or” are added in the second sentence for consistency in the subsection. The words “by an appropriate injunction or other process, mandatory or otherwise” are omitted as unnecessary. The words “regularly made and duly issued” are substituted for “properly made and duly issued” for consistency in the subtitle.

§ 41309. Enforcement of reparation orders

(a) CIVIL ACTION.—If a person does not comply with an order of the Federal Maritime Commission for the payment of reparation, the person to whom the award was made may seek enforcement of the order in a district court of the United States having jurisdiction over the parties.

(b) PARTIES AND SERVICE OF PROCESS.—All parties in whose favor the Commission has made an award of reparation by a single order may be joined as plaintiffs, and all other parties in the

order may be joined as defendants, in a single action in a judicial district in which any one plaintiff could maintain an action against any one defendant. Service of process against a defendant not found in that district may be made in a district in which any office of that defendant is located or in which any port of call on a regular route operated by that defendant is located. Judgment may be entered for any plaintiff against the defendant liable to that plaintiff.

(c) NATURE OF REVIEW.—In an action under this section, the findings and order of the Commission are prima facie evidence of the facts stated in the findings and order.

(d) COSTS AND ATTORNEY FEES.—The plaintiff is not liable for costs of the action or for costs of any subsequent stage of the proceedings unless they accrue on the plaintiff’s appeal. A prevailing plaintiff shall be allowed reasonable attorney fees to be assessed and collected as part of the costs of the action.

(e) TIME LIMIT ON BRINGING ACTIONS.—An action under this section to enforce an order of the Commission must be brought within 3 years after the date the order was violated.

(Pub. L. 109-304, §7, Oct. 6, 2006, 120 Stat. 1548.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41309(a)	46 App.:1713(d)(1).	Pub. L. 98-237, §14(d), (e), Mar. 20, 1984, 98 Stat. 83, 84.
41309(b)	46 App.:1713(d)(3).	
41309(c)	46 App.:1713(d)(2) (1st sentence 1st-23d words).	
41309(d)	46 App.:1713(d)(2) (1st sentence 24th-last words, last sentence).	
41309(e)	46 App.:1713(e).	

PART B—ACTIONS TO ADDRESS FOREIGN PRACTICES

CHAPTER 421—REGULATIONS AFFECTING SHIPPING IN FOREIGN TRADE

- Sec.
- 42101. Regulations of the Commission.
- 42102. Regulations of other agencies.
- 42103. No preference to Government-owned vessels.
- 42104. Information, witnesses, and evidence.
- 42105. Disclosure to public.
- 42106. Other actions to remedy unfavorable conditions.
- 42107. Refusal of clearance and entry.
- 42108. Penalty for operating under suspended tariff or service contract.
- 42109. Consultation with other agencies.

§ 42101. Regulations of the Commission

(a) UNFAVORABLE CONDITIONS.—To further the objectives and policy set forth in section 50101 of this title, the Federal Maritime Commission shall prescribe regulations affecting shipping in foreign trade, not in conflict with law, to adjust or meet general or special conditions unfavorable to shipping in foreign trade, whether in a particular trade or on a particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, agency services, ocean transportation

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[Title 46](#) → [Chapter IV](#) → [Subchapter B](#) → [Part 515](#)

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Title 46: Shipping

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

Contents**Subpart A—General**

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

Subpart B—Eligibility and Procedure for Licensing and Registration

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

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

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

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

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

Subpart E—Freight Forwarding Fees and Compensation

- §515.41 Forwarder and principal; fees.
- §515.42 Forwarder and carrier compensation; fees.
- §515.91 OMB control number assigned pursuant to the Paperwork Reduction Act.
- Appendix A to Part 515—Ocean Transportation Intermediary (OTI) Bond Form [Form 48]
- Appendix B to Part 515—Ocean Transportation Intermediary (OTI) Insurance Form [Form 67]

Composite Exhibit "2"

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

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

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

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

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

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

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

[↑ Back to Top](#)

Subpart A—General

[↑ Back to Top](#)

§515.1 Scope.

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

(b) Information obtained under this part is used to determine the qualifications of ocean transportation intermediaries and their compliance with shipping statutes and regulations. Failure to follow the provisions of this part may result in denial, revocation or suspension of an ocean transportation intermediary license 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]

[↑ Back to Top](#)

§515.2 Definitions.

The terms used in this part are defined as follows:

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

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

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

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

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

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

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

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

(ii) Only with respect to those commodities.

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

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

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

- (1) Ordering cargo to port;
- (2) Preparing and/or processing export documents, including the required 'electronic export information';
- (3) Booking, arranging for or confirming cargo space;
- (4) Preparing or processing delivery orders or dock receipts;
- (5) Preparing and/or processing common carrier bills of lading or other shipping documents;
- (6) Preparing or processing consular documents or arranging for their certification;
- (7) Arranging for warehouse storage;
- (8) Arranging for cargo insurance;
- (9) Assisting with clearing shipments in accordance with United States Government export regulations;
- (10) Preparing and/or sending advance notifications of shipments or other documents to banks, shippers, or consignees, as required;
- (11) Handling freight or other monies advanced by shippers, or remitting or advancing freight or other monies or credit in connection with the dispatching of shipments;
- (12) Coordinating the movement of shipments from origin to vessel; and
- (13) Giving expert advice to exporters concerning letters of credit, other documents, licenses or inspections, or on problems germane to the cargoes' dispatch.

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

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

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

- (1) Purchasing transportation services from a common carrier and offering such services for resale to other persons;
- (2) Payment of port-to-port or multimodal transportation charges;
- (3) Entering into affreightment agreements with underlying shippers;
- (4) Issuing bills of lading or other shipping documents;
- (5) Assisting with clearing shipments in accordance with U.S. government regulations;
- (6) Arranging for inland transportation and paying for inland freight charges on through transportation movements;
- (7) Paying lawful compensation to ocean freight forwarders;
- (8) Coordinating the movement of shipments between origin or destination and vessel;
- (9) Leasing containers;
- (10) Entering into arrangements with origin or destination agents;
- (11) Collecting freight monies from shippers and paying common carriers as a shipper on NVOCC's own behalf.

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

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

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

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

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

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

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

(o) *Principal* refers to the shipper, consignee, seller, or purchaser of property, and to anyone acting on behalf of such shipper, consignee, seller, or purchaser of property, who employs the services of a licensed freight forwarder to facilitate the ocean transportation of such property.

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

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

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

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

(t) *Shipper* means:

(1) A cargo owner;

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

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

(4) A shippers' association; or

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

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

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

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

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

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

[80 FR 68730, Nov. 5, 2015]

[↑ Back to Top](#)

§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]

[↑ Back to Top](#)

§515.4 License; when not required.

A license is not required in the following circumstances:

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

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

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

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

[80 FR 68731, Nov. 5, 2015]

 [Back to Top](#)

§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 \$825.

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

[80 FR 68732, Nov. 5, 2015]

 [Back to Top](#)

Subpart B—Eligibility and Procedure for Licensing and Registration

 [Back to Top](#)

§515.11 Basic requirements for licensing; eligibility.

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

- (1) It possesses the necessary experience, that is, its qualifying individual has a minimum of three (3) years'

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

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

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

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

(2) *Partnership.* At least one of the active managing partners.

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

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

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

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

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

[80 FR 68732, Nov. 5, 2015]

[↑ Back to Top](#)

§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 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]

 [Back to Top](#)

§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.

 [Back to Top](#)

§515.14 Issuance, renewal, and use of license.

[Link to an amendment published at 80 FR 68733, Nov. 5, 2015.](#)

(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.

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

 [Back to Top](#)

§515.15 Denial of license.

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

- (a) Does not possess the necessary experience or character to render intermediary services;
- (b) Has failed to respond to any lawful inquiry of the Commission; or
- (c) Has made any materially false or misleading statement to the Commission in connection with its application; then, a notice of intent to deny the application shall be sent to the applicant stating the reason(s) why the Commission intends to deny the application. The notice of intent to deny the application will provide, in detail, a statement of the facts supporting denial. An applicant may request a hearing on the proposed denial by submitting to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twenty (20) days of the date of the notice, a statement of reasons why the application should not be denied. Such hearing shall be provided pursuant to the procedures contained in §515.17. Otherwise, the denial of the application will become effective and the applicant shall be so notified.

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

 [Back to Top](#)

§515.16 Revocation or suspension of license.

(a) *Grounds.* Except for the automatic revocation for termination of proof of financial responsibility under §515.26, a license may be revoked or suspended after notice and an opportunity for a hearing under the procedures of §515.17. The

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

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

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

[80 FR 68734, Nov. 5, 2015]

[↑ Back to Top](#)

§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]

[↑ Back to Top](#)

§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]

[↑ Back to Top](#)

§515.19 Registration of foreign-based unlicensed NVOCC.

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

tariff.

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

(c) Registrations are complete upon receipt of a registration form which meets the requirements of this section 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 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]

[↑ Back to Top](#)

§515.20 Changes in organization.

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

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

(2) Change in ownership of a sole proprietorship;

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

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

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

(b) *Operation after death of sole proprietor*. In the event that the owner of a licensed sole proprietorship dies, the licensee's executor, administrator, heir(s), or assign(s) may continue operation of such proprietorship solely with respect to shipments for which the deceased sole proprietor had undertaken to act as an ocean transportation intermediary pursuant to the existing license, if the death is reported within 30 days to the Commission and to all principals and shippers for

whom services on such shipments are to be rendered. The acceptance or solicitation of any other shipments is expressly prohibited until a new license has been issued. Applications for a new license by the executor, administrator, heir(s), or assign(s) shall be made on Form FMC-18, and shall be accompanied by the fee required under §515.5(c).

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

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

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

[80 FR 68734, Nov. 5, 2015]

[Back to Top](#)

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

[Back to Top](#)

§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.

(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]

[Back to Top](#)

§515.22 Proof of financial responsibility.

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

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

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

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

(2) Underwriters at Lloyd's; or

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

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

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

(2) Underwriters at Lloyd's; or

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

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

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

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

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

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

(5) Where the group or association of ocean transportation intermediaries determines to secure on behalf of its members other forms of financial responsibility, as specified by this section, for damages, reparations or penalties not

covered by a member's individual financial responsibility coverage, such additional coverage must:

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

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

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

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

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

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

(e) All forms and documents for establishing financial responsibility of ocean transportation intermediaries prescribed in this section shall be submitted to the Director, Bureau of Certification and Licensing, 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]

[↑ Back to Top](#)

§515.23 Claims against an ocean transportation intermediary.

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

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

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

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

(2) If the parties fail to reach an agreement in accordance with paragraph (b)(1) of this section within ninety (90) days of the date of the initial notification of the claim, the bond, insurance, or other surety shall be available to pay any final judgment for reparations ordered by the Commission or damages obtained from an appropriate court. The financial responsibility provider shall pay such judgment for damages only to the extent they arise from the transportation-related activities of the ocean transportation intermediary, ordinarily within thirty (30) days, without requiring further evidence related to the validity of the claim; it may, however, inquire into the extent to which the judgment for damages arises from the ocean transportation intermediary's transportation-related activities.

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

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

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

(d) The Federal Maritime Commission shall not serve as depository or distributor to third parties of bond, guaranty, or

insurance funds in the event of any claim, judgment, or order for reparation.

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

[80 FR 68735, Nov. 5, 2015]

[↑ Back to Top](#)

§515.24 Agent for service of process.

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

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

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

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

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

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

[↑ Back to Top](#)

§515.25 Filing of proof of financial responsibility.

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

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

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

[80 FR 68736, Nov. 5, 2015]

[↑ Back to Top](#)

§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]

[↑ Back to Top](#)

§515.27 Proof of compliance—NVOCC.

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

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

(1) Consulting the Commission's 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]

[↑ Back to Top](#)

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

[↑ Back to Top](#)

§515.31 General duties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[80 FR 68736, Nov. 5, 2015]

[↑ Back to Top](#)

§515.32 Freight forwarder duties.

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

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

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

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

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

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

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

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

[↑ Back to Top](#)

§515.33 Records required to be kept.

Each licensed or registered NVOCC and each licensed ocean freight forwarder shall maintain in an orderly and systematic manner, and keep current and correct, all records and books of account in connection with its OTI business.

The licensed or registered NVOCC and each licensed freight forwarder may maintain these records in either paper or electronic form, which shall be readily available in usable form to the Commission; the electronically maintained records shall be no less accessible than if they were maintained in paper form. These recordkeeping requirements are independent of the retention requirements of other federal agencies. In addition, each licensed freight forwarder must maintain the following records for a period of five years:

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

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

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

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

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

[↑ Back to Top](#)

§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 may be purchased for the fee set forth in §515.5(c) by contacting the Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. Contact information is listed on the Commission's website at 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]

[↑ Back to Top](#)

Subpart E—Freight Forwarding Fees and Compensation

[↑ Back to Top](#)

§515.41 Forwarder and principal; fees.

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

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

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

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

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

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

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

[↑ Back to Top](#)

§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]

[↑ Back to Top](#)

§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]

 [Back to Top](#)

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

Form FMC-48

Federal Maritime Commission

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

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

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

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

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

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

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

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

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

Signed and sealed this ___ day of ___, ___.

(Please type name of signer under each signature.)

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Trade Name, If Any

Corporate Principal

State of Incorporation

Trade Name, If Any

Business Address

By

Title

(Affix Corporate Seal)

Corporate Surety

Business Address

By

Title

(Affix Corporate Seal)

[80 FR 68738, Nov. 5, 2015]

 [Back to Top](#)

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

Form FMC-67

Federal Maritime Commission

Ocean Transportation Intermediary (OTI) Insurance

Form Furnished as Evidence of Financial Responsibility

Under 46 U.S.C. 40901-40904

This is to certify, that the (Name of Insurance Company), (hereinafter "Insurer") of (Home Office Address of Company) has issued to (OTI or Group or Association of OTIs [indicate whether NVOCC(s) or Freight Forwarder(s)]) (hereinafter "Insured") of (Address of OTI or Group or Association of OTIs) a policy or policies of insurance for purposes of complying with the provisions of Section 19 of the Shipping Act of 1984 (46 U.S.C. 40901-40904) and the rules and regulations, as amended, of the Federal Maritime Commission, which provide compensation for damages, reparations or penalties arising from the transportation-related activities of Insured, and made pursuant to the Shipping Act of 1984 (46 U.S.C. 40101-41309) (Shipping Act).

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

Whereas, the Insurance is written to assure compliance by the Insured with section 19 of the Shipping Act (46 U.S.C. 40901-40904), and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for OTIs, this Insurance shall be available to pay any judgment obtained or any settlement made pursuant to

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

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

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

The liability of the Insurer shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of the Insurance in the amount per member OTI set forth in 46 CFR 515.21, or the amount per group or association of OTIs set forth in 46 CFR 515.21, regardless of the financial responsibility or lack thereof, or the solvency or bankruptcy, of Insured. The insurance evidenced by this undertaking shall be applicable only in relation to incidents occurring on or after the effective date and before the date termination of this undertaking becomes effective. The effective date of this undertaking shall be ___ day of __, __, and shall continue in effect until discharged or terminated as herein provided. The Insured or the Insurer may at any time terminate the Insurance by mail or email (*bcl@fmc.gov*) written notice to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Insurer shall not be liable for any transportation-related activities under the Shipping Act of the Insured after the expiration of the 30-day period but such termination shall not affect the liability of the Insured and Insurer for such activities occurring prior to the date when said termination becomes effective.

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

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

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

Signed and sealed this ___ day of __, __.

Signature of Official signing on behalf of Insurer

Type Name and Title of signer

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

[80 FR 68738, Nov. 5, 2015]

 [Back to Top](#)

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

Form FMC-68

Federal Maritime Commission

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

1. Whereas ___ (Name of Applicant [indicate whether NVOCC or Freight Forwarder]) (hereinafter "Applicant") is or may become an Ocean Transportation Intermediary ("OTI") subject to the Shipping Act of 1984 (46 U.S.C. 40101-41309) and the rules and regulations of the Federal Maritime Commission (FMC), or is or may become a group or association of OTIs, and desires to establish its financial responsibility in accordance with section 19 of the Shipping Act (46 U.S.C. 41107-41109), then, provided that the FMC shall have accepted, as sufficient for that purpose, the Applicant's application, supported by evidence of a financial rating for the Guarantor of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization on such rating organization's letterhead or designated form, or, in the case of Guaranty provided by Underwriters at Lloyd's, documentation verifying

membership in Lloyd's, or, in the case of surplus lines insurers, documentation verifying inclusion on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners, the undersigned Guarantor certifies that it has sufficient and acceptable assets located in the United States to cover all damages arising from the transportation-related activities of the covered OTI as specified under the Shipping Act.

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

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

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

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

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

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

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

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

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

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

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

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

(Place and Date of Execution)

(Type Name of Guarantor)

(Type Address of Guarantor)

By _____

(Signature and Title)

[80 FR 68738, Nov. 5, 2015]

[↑ Back to Top](#)

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

Form FMC-69

Federal Maritime Commission

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

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

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

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

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

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

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

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

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

The Principal or financial responsibility provider will promptly notify the underwriting Surety in writing and the Director,

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

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

Signed and sealed this ___ day of __,

(Please type name of signer under each signature).

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Trade Name, if Any

Corporate Principal

Place of Incorporation

Trade Name, if Any

Business Address (Affix Corporate Seal)

By

Title

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

Agent's Address

Corporate Surety

Business Address (Affix Corporate Seal)

By

Title

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

 [Back to Top](#)

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]

[Back to Top](#)

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

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

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

RIDER

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

1. The following condition is added to this Bond:

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

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

c. This Rider is effective the ___ day of __, 20___, and shall continue in effect until discharged, terminated as herein

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

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

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

[Principal],

By: _____

[Surety],

By: _____

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

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

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

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

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

[80 FR 68738, Nov. 5, 2015]

 [Back to Top](#)

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