Addendum B

The Centers for Medicare & Medicaid Services
Average Sales Price Data

Name of Drug or Biological Manufacturer (as "manufacturer" is defined in section 1927(k)(5) of the Social Security Act):

Legal Address:

Manufacturer Contact(s):
Name: Email:

Title: Fax:

Address: Telephone No.:

Name: Email:

Title: Fax:

Address: Telephone No.:

I certify that the reported Average Sales Prices were calculated accurately and that all information and statements made in this submission are true, complete, and current to the best of my knowledge and belief and are made in good faith. I understand that information contained in this submission may be used for Medicare reimbursement purposes.

Name of CEO, CFO or Authorizing Official:
Title:

Signature Date

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0921. The time required to complete this information collection is estimated to average 1 hour per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: CMS, 7500 Security Boulevard, Attn: PRA Reports Clearance Officer, Baltimore, Maryland 21244-1850.

[FR Doc. 04–7715 Filed 4–1–04; 11:24 am]
BILLING CODE 4120–01–C

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 04–02]

Optional Rider for Proof of Additional NVOCC Financial Responsibility

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its regulations governing proof of financial responsibility for ocean transportation intermediaries to allow an optional rider to be filed with a licensed non-vessel-operating common carrier's proof of financial responsibility to provide additional proof of financial responsibility for such carriers serving the U.S. oceanborne trade with the People's Republic of China.

EFFECTIVE DATE: April 6, 2004.

FOR FURTHER INFORMATION CONTACT: Amy W. Larson, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573–0001, (202) 523–5740, E-mail: *GeneralCounsel@fmc.gov.*

Sandra A. Kusumoto, Director, Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW., Room 970, Washington, DC 20573–0001, (202) 523–5787, E-mail: *otibonds@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This rulemaking proceeding was initiated on January 23, 2004, with the issuance by the Federal Maritime Commission ("FMC" or "Commission") of a Notice of Proposed Rulemaking ("NPR"). 69 FR 4271 (January 29, 2004). Comments on the NPR were to be due on February 20, 2004, but requests for

extension from the American Surety Association ("ASA") and the Surety Association of America ("SAA") were granted on February 19, 2004, and the comment period was extended until February 27, 2004. The Commission also invited interested persons to make oral presentations in addition to filing written comments; however, no such presentations or meetings were made. The Commission received comments in response to the NPR from the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA"), ASA and SAA.

The NPR arose from a Commission order issued January 22, 2004 granting in part and denying in part a petition for rulemaking from NCBFAA. Petition No. P10–03, *Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Rulemaking.* NCBFAA, the primary trade association representing licensed ocean transportation intermediaries ("OTIs") in the U.S., who states that its members are linked to 90% of the U.S. oceanborne cargo, petitioned the Commission to change its rules to effectuate concessions made by the People's Republic of China ("PRC" or "China") in a recently concluded bilateral Maritime Agreement between the United States and China ("Agreement"). The Agreement's associated Memorandum of Consultations provides that the Chinese government will not require U.S. non-vessel-operating common carriers ("NVOCCs") to make a cash deposit in a Chinese bank, as long as the NVOCC: (1) Is a legal person registered by U.S. authorities; (2) obtains an FMC license as an NVOCC; and (3) provides evidence of financial responsibility in the total amount of RMB 800,000 or U.S. $96,000.[1] Therefore, it appears that an FMC-licensed U.S. NVOCC that voluntarily provides an additional surety bond in the amount of $21,000, which by its conditions is responsive to potential claims of the Chinese Ministry of Communications ("MOC") (as well as other Chinese agencies) for violations of the Regulations of the People's Republic of China on International Maritime Transportation ("RIMT"),[2] would be able to register in the PRC without paying the cash deposit otherwise required by Chinese law and regulation. However, because current FMC regulations do not provide any mechanism for NVOCCs to file proof of such additional financial responsibility with the FMC, the Commission proposed to amend its regulations in order to permit licensed NVOCCs to file such additional proof in the form of optional riders to the required NVOCC bond (hereinafter "optional bond riders").

The proposed rule granted NCBFAA's petition in most substantive respects. As requested by NCBFAA, the Commission proposed to amend its rules to add a new subsection to provide for the optional rider at § 515.25. 69 FR at 4272–73. As suggested by NCBFAA, the Commission proposed to provide for group surety bonds by the addition of § 515.25(c), changes to § 515.21(b), and the addition of Appendix F. *Id.* Finally, the Commission declined to propose changes requested by NCBFAA that would have the effect of creating a procedure by which the Commission would administer the payment of claims against these optional riders. *Id.* at 4772. The Commission found that it would be inappropriate for it to be involved in the collection of claims arising from decisions of the MOC, whether involving reparations, fines or penalties. *Id.* The Commission noted that the issuers of such bonds might wish to propose language to be included in the optional rider itself that would relate to procedures by which claims may be exercised against the optional rider, such as whether the English language must be used for all claims, whether the surety will not pay any claim earlier than 30 days after it has been notified of the claim, or what documentation the surety will require before paying a claim. The Commission invited comments on that issue particularly. *Id.*

II. Summary of the Comments

The Commission received three comments, from NCBFAA, ASA and SAA, generally in support of the proposed rule. All of the commenters propose that the Commission include further language in the rule that would limit the scope and application of the optional bond rider.

NCBFAA supports the NPR and urges the Commission to adopt the proposed rule in its entirety. NCBFAA at 2. The proposed rule, NCBFAA believes, is essential to reduce regulatory burdens on small and medium-sized NVOCCs that would otherwise result from the Chinese regulations. *Id.* Furthermore, NCBFAA points out, because the new rule is optional, it will not impose any burden on NVOCCs that either do not engage in the U.S./China trade or prefer to meet their obligations under Chinese law in a different manner. *Id.*

The commenters urge the Commission to narrow the scope and coverage of the optional bond rider. SAA and ASA request that the Commission include further specific requirements for the optional bond rider, as their members must consider the risks and uncertainty of the underwriting of such an instrument and NCBFAA appears to agree with this assertion. SAA at 1; ASA at 12; NCBFAA at 3. ASA and NCBFAA agree that the optional bond rider should only be limited to "fines and penalties" imposed by MOC for violations of the RIMT. ASA at 5; NCBFAA at 3.

ASA argues that the optional bond rider should only be available in the U.S. bilateral trades between the U.S. and the PRC. ASA at 5. This is consistent, ASA asserts, with limitations in the "base" bond[3] which cover only "shipments between the U.S. and a foreign port" but not for shipments or activities occurring between foreign to foreign points. *Id.* To support this assertion, ASA relies on the Memorandum of Consultations referenced in the NPR which states, "[t]he bond required by the FMC covers liabilities for transportation-related activities in the U.S./China trade (as well as other U.S./foreign trades)." ASA at 6 (quoting Memorandum of Consultations at 2). Further, ASA contends the rider should only be available to pay "fines and penalties" assessed against a U.S. NVOCC operating in the U.S.-China trades, and to allow otherwise would be inconsistent with the FMC-filed main bond. ASA at 6.

The commenters also request that the Commission include in the rule further guidance regarding the procedure for claims against the optional rider. SAA at 1–2; ASA at 7; NCBFAA at 3–4. SAA believes that if the Commission does not include such guidance, then the general risk will be increased and such riders may be less available. SAA further asserts that, as an obligee on the main bond, the Commission has an interest in ensuring the claims process is fair and

[1] The Agreement and Memorandum of Consultations can be found on the Maritime Administration's Web site at *http://www.marad.dot.gov/Headlines/announcements/China/China.htm.*

[2] Promulgated by Decree No. 335 of the State Council of the People's Republic of China, on December 11, 2001, and effective as of January 1, 2002. An English translation is available at: *http://english.mofcom.gov.cn/article/200211/20021100050858_1.xml.* MOC has issued Implementing Rules of the Regulations of the People's Republic of China on International Maritime Transportation, promulgated by Decree No. 1 of the MOC on January 20, 2003, and effective as of March 1, 2003. An English translation of these Implementing Rules is available at: *http://www.moc.gov.cn/zhinengbm/sys/1026.htm.*

[3] Bonds obtained to satisfy the requirements of section 19 of the Shipping Act of 1984, 46 U.S.C. app. 1718, are hereinafter referred to as "main bonds."

definite. SAA at 1–2. SAA proposes that the Commission set forth, either in the regulation or in the rider, requirements that all claims against the optional rider be submitted by the MOC (as opposed to any other Chinese government agency) with documentation substantiating the claim in English, and that any litigation regarding the claim be heard by a U.S. Federal Court. *Id.* SAA also notes the rule as proposed does not contain any indication whether the claim may be paid in U.S. dollars. *Id.* at 1.

ASA and NCBFAA suggest that the optional bond rider should incorporate the claims procedures in 46 CFR 515.23, which provides a time line for review and payment of claims, notice requirements, etc. ASA at 7; NCBFAA at 3–4. ASA asserts that the Commission's rules should state that claims against the optional bond rider must: sufficiently identify the NVOCC (name and bond number); state the amount sought, how calculated, date of violation, and specific law, rule or regulation violated; include a sufficient, detailed summary of the proceedings before the Chinese regulatory authority; be in English, with which NCBFAA agrees (NCBFAA at 3); and be presented to the surety at its address listed on the rider. ASA at 7–8.

ASA is confused by the proposed rule's language regarding the Commission's intentions not to be a depository or distributor as to the optional rider document itself. *Id.* at 8. ASA objects to the proposed requirements for written notice of termination in Subpart C regarding notice of termination. *Id.* Further, ASA asserts that the declaration that the Commission will not "serve as a depository or distributor to third parties of optional bond rider'' is inconsistent with the Commission's "mandate that proof of financial responsibility be filed with the Commission.'' *Id.* (citing 46 U.S.C. app. 1718). The proposed language, ASA argues, will prejudice sureties because it is inconsistent with the date of termination of the main bond. *Id.* at 8–9. As an alternative, ASA proposes that the Commission maintain a copy of the notice of termination and that such notice be included as part of the main bond file so that the Commission has a complete record of the dates upon which the optional bond rider became effective and was terminated. *Id.* at 9. In addition, ASA objects to the language in the proposed rule that makes the termination date of the optional rider effective 30 days after either receipt by the Commission of a notice, or transmission of the notice to the MOC, whichever occurs later. Using the "whichever occurs later'' standard, ASA argues, is prejudicial, arbitrary and unfair to the surety who is required to provide notice to the Commission but termination is effective only after MOC receives it. *Id.* ASA conjectures that notices of termination will follow a surety's decision to cancel the optional bond rider bond for underwriting reasons, the failure of the bond principal to respond to a claim, or an MOC fine or penalty. The surety may wish to terminate both the main bond and the optional bond rider at the same time, thus, ASA concludes, receipt of the notice to the Commission should trigger termination, and subsequent notice to MOC should not preempt the effectiveness of the notice to the Commission. *Id.* at 9–10. Termination of the optional bond rider, ASA asserts, should become effective 30 days after receipt of notice by the Commission or transmission of the notice to MOC, whichever occurs earlier. *Id.* at 10.

Furthermore, ASA believes that it would be more prudent to require whichever party (principal or surety) provides notice of termination to the Commission also to provide such notice to MOC. *Id.* at 11. Otherwise, ASA worries, the Commission would be obligating the surety to notify MOC when the surety itself may not be aware of the termination filed with the Commission by the principal. *Id.*

ASA proposes that the optional bond rider include a sum certain, namely, $21,000.00. *Id.* at 10. This change, ASA recommends, would accord with the supplementary information of the NPR and be consistent with NCBFAA's petition. *Id.* at 10–11. ASA suggests that the Commission revise proposed § 515.25(c) to indicate that when an optional bond rider is used that it must be filed with the Commission. *Id.* at 1. Finally, ASA is confused by reference in the proposed Appendix F (group bond optional rider) which refers to an "Appendix A.'' ASA recommends the Commission's rule ensure that references to any Appendix in either form FMC–69 or FMC–69A be clear as to which entities will be covered. *Id.* at 12.

III. Discussion

We believe that several of the questions raised by the comments may be resolved through close examination of the language of the Memorandum of Consultations[4] associated with the Agreement. Specifically, the Chinese Government has stated that it will not "require [a] U.S. NVOCC[] to make a cash deposit in a Chinese bank, as a prerequisite to apply to the Chinese Ministry of Communications (MOC) to engage in non-vessel operating service between U.S. and Chinese ports'' if such applicants provide authentic and valid documentation that they: (1) Are "legal person[s] registered by U.S. authorities;'' (2) have "obtain[ed] an FMC license evidencing NVOCC eligibility;'' and (3) "provide[] evidence of financial responsibility in the total amount of 800,000RMB or $96,000.''

All of these requirements stem from Chinese law and regulation; no part of these requirements arise from the Shipping Act or the Commission's regulations. Rather, the Commission is providing this opportunity for eligible NVOCCs to add such optional bond riders to their currently filed FMC bonds to enable them to benefit from the commitments made in connection with the Agreement. We are hopeful that this will prove to be a temporary measure until other, less burdensome forms of financial responsibility to the cash deposit become available in China and the Chinese law and regulations are amended to reflect that availability.

We agree with the commenters' suggestion that the scope and coverage of the optional bond rider form can be clarified and narrowed. With respect to the concerns about the geographic scope of the optional bond rider, we agree that the optional bond rider is subject to the limitations of the main bond, whose coverage includes only the U.S.-foreign trades. We agree, therefore, that the coverage of the optional bond rider should be limited to the U.S.-China trade. This limitation is reflected in Appendices E and F to the Final Rule.

The Memorandum of Consultations' use of the term "total amount,'' and its recognition that Chinese shippers are able to assert claims for non-performance against the main bond, may indicate that the Chinese negotiators anticipated that additional coverage would be necessary to cover only fines and penalties assessed under the RIMT to which the main bond is not subject. As all FMC-licensed NVOCCs are currently required to carry a minimum of $75,000.00 of financial responsibility, the difference to reach the total required by MOC ($96,000) is $21,000.00. The Final Rule adopts the commenters' proposal that the optional bond rider forms include the sum of $21,000.00. This appears consistent with the text of the Memorandum of Consultations that "financial responsibility in the total amount of

[4] The Memorandum of Consultations is available at the Web site of the Maritime Administration: *http://www.marad.dot.gov/Headlines/announcements/China/China.htm.*

800,000RMB or $96,000'' must be provided.

The language of the Memorandum of Consultations also suggests that the Chinese would not require any particular currency, but would accept payment in either U.S. Dollars or Renminbi Yuan ("RMB''). Therefore, the optional bond rider forms in Appendices E and F to the Final Rule include a provision stating that either currency may be used, at the option of the surety.

The NPR stated that the Commission found it inappropriate to be involved in the collection of claims arising under foreign law. 69 FR 4272. The Commission requested comments with respect to adding such procedures to the language of the optional bond rider forms. The commenters suggest that the Commission should require claims against the optional bond rider to be subject to the provisions of 46 CFR 515.23(b) and 545.3.[5] Section 19(b)(3) of the Shipping Act directs the Commission to protect the interests of claimants, principals and sureties "with respect to the process of pursuing claims against [OTI] bonds * * * through court judgments.'' 46 U.S.C. app. 1718(b)(3). That section is designed to ensure that the bond coverage is used for damages arising out of an NVOCC's transportation-related activities. In contrast, the optional bond rider here is not so limited, but rather, is to cover fines and penalties imposed by MOC. Therefore, the Commission declines to make the claim procedures at 46 CFR 515.23(b) applicable to the coverage provided by the optional bond rider.

We understand that the uncertainties of the risks involved may increase the cost of the security. However, the assessment of the risks associated with issuing these instruments will have to be determined by the surety who issues them. While the Commission is optimistic that the marketplace will make such instruments available to the NVOCCs who seek them, it cannot require sureties to provide them or dictate at what cost they will be provided. We conclude that it would be inappropriate for the Commission to prescribe by rule any claims procedures for another government seeking to enforce its laws and regulations.

In response to ASA's comments, the Commission, in order to give effect to the provisions of the Agreement, agrees to act as a repository of the document indicating proof of filing of an optional bond rider. However, as it does with regard to the main bond under § 515.23(c), the Final Rule indicates that, for the optional bond rider, the 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.'' Thus, the bonds are filed with the Commission, but the Commission is not responsible for disbursing funds in the event of a claim. The change in § 515.23(d) in the Final Rule clarifies this.

The Commission also finds that certain aspects of the commenters' recommendations regarding notice and date of termination of the optional bond rider valid. As discussed above, if the main bond is terminated, which may be done by either the principal or surety, it follows that the optional bond rider would also be terminated. The Commission's rules regarding termination of the main bond are found at 46 CFR 515.26. The present practice of the Commission's staff is to notify principals, sureties and tariff publishers when it receives termination notices for main bonds. This notice includes the date upon which termination of the main bond becomes effective. In a case in which a main bond also has an optional bond rider as described in this Final Rule, the Commission will add MOC as a recipient of such termination notices.

ASA and SAA express concern that if the principal informs the Commission, but does not inform the MOC of the termination of an optional bond rider, the termination of the optional bond rider might not take effect until 30 days after the surety itself learns of the principal's notice of termination to the Commission. As the Commission will serve as the principal point of contact for the effectiveness of the optional bond rider, and will indicate on its Web site the existence of optional bond riders, it must have information regarding termination. However, as the Chinese Government is the likely claimant against and beneficiary of the optional bond rider, we also find it reasonable to require that the party terminating the optional bond rider notify MOC of that termination as well.

To that end, the procedure for termination shall be notification to the Commission accompanied by proof of transmission to MOC.[6] Notification will not be deemed complete unless accompanied by proof of transmission of notice of termination to MOC. The 30-day period will not begin until the Commission receives both notification and proof of transmission to MOC. We believe that the language in Appendices E and F in the Final Rule, requiring whichever party terminates the optional bond rider to provide proof that it has sent such notification also to MOC, sufficiently addresses the concern expressed by ASA and SAA.

ASA questions the possible effect of exhaustion of the optional bond rider on the main bond. The optional bond rider supplements the main bond. Therefore, the fact that the amount available to MOC under the optional bond rider may be exhausted will have no effect on the availability of coverage of the main bond. Unlike the optional bond rider, the main bond is not available to pay claims based solely upon Chinese law.

The Commission will indicate the filing of optional bond riders on its OTI list, located at *http://www.fmc.gov/oti/oti_index2.htm*, which includes all OTIs licensed by the Commission.[7] The optional bond rider forms will also be available at the Commission's Web site at *http://www.fmc.gov/Forms.htm#FF.*

The Administrative Procedure Act ("APA'') provides that "the required publication of a substantive rule shall not be made less than 30 days before its effective date.'' 5 U.S.C. 553. However, the APA further provides an exception for rulemakings "as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d). Accordingly, the Commission finds that good cause exists for waiving the customary delay of 30 days after the publication of a final rule before it becomes effective.

This Final Rule is provided at the request of the entities regulated in the hopes that it will provide an alternative to the requirements of the laws and regulations of the Government of China pursuant to the recent bilateral Maritime Agreement. This Final Rule provides an avenue for licensed NVOCCs to file with the Commission proof of additional

[5] 46 CFR 545.3, an interpretive rule referring to § 515.23(b), provides:

A claimant seeking to settle a claim in accordance with § 515.23(b)(1) of this chapter should promptly provide to the financial responsibility provider all documents and information relating to and supporting its claim for the purpose of evaluating the validity and subject matter of the claim.

[6] Acceptable proof of transmission will include copies (may be electronic) of signed, dated return postal receipts, copies of successful fascimile transmissions or electronic mail receipts.

[7] This list also includes foreign unlicenced NVOCCs, which are required to maintain financial responsibility and a tariff. NVOCCs are required by Commission regulation 46 CFR 520.11(a) to include information in its publicly-available tariff regarding financial responsibility, including the type of bond, the name and address of the surety, the bond number, and (where applicable) the name and address of the group or association providing coverage. The location of an NVOCC's tariff publication can be found at the Commission's Web site, Form FMC–1. *http://www.fmc.gov/fmcfrml/scripts/ExtReports.asp?tariffClass=oti.*

financial responsibility in the form of the optional bond rider. We are optimistic that, over time, alternative forms of financial responsibility will become available in China, rendering this optional bond rider unnecessary. For the present, however, we find that there exists adequate public interest in allowing these instruments to be filed with the Commission as soon as possible and that there exists good cause to make this rule effective upon publication. This Final Rule will become effective upon publication in the **Federal Register**.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant impact on a substantial number of small entities. In its NPR, the Commission stated its intention to certify this rulemaking because the proposed changes establish an optional provision for U.S. licensed NVOCCs, which may be used at their discretion. While these businesses qualify as small entities under the guidelines of the Small Business Administration, the rule poses no economic detriment, but rather provides a more cost-effective alternative than would otherwise be available to assist U.S. licensed NVOCCs with their business endeavors in the PRC. As such, the rule helps to promote U.S. business interests in the PRC and facilitate U.S. foreign commerce. No comments were filed to dispute this certification. Therefore, the certification remains valid.

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

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, as amended. Public reporting burden for this collection of information is estimated to be 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Austin L. Schmitt, Deputy Executive Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, Washington, DC 20503.

List of Subjects in 46 CFR Part 515

Common carriers, Exports, Non-vessel-operating common carriers, Ocean transportation intermediaries, Financial responsibility requirements, Reporting and recordkeeping requirements, Surety bonds.

■ Accordingly, the Federal Maritime Commission amends 46 CFR part 515 subpart C as follows:

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

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

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

■ 2. Amend §515.21(b) by adding a new sentence at the end as follows:

§ 515.21 Financial responsibility requirements.

(b) * * * A group or association of ocean transportation intermediaries may also file an optional bond rider as provided for by § 515.25 (c).

* * * * *

■ 3. Amend §515.23 by adding paragraph (d) to read as follows:

§ 515.23 Claims against an ocean transportation intermediary.

* * * * *

(d) *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(c).

■ 4. Amend §515.25 by adding paragraph (c) to read as follows:

§ 515.25 Filing of proof of financial responsibility.

* * * * *

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

■ 5. Add Appendix E to read as follows:

Appendix E to Subpart C of 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 $21,000 (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. 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.

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 [_____], 200 [_____], 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 written notice to the Federal Maritime Commission at its offices in Washington, D.C., 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 [_____], 200 [_____], [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. app. 1718.

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 e-mail: *secretary@fmc.gov*.

■ 6. Add Appendix F to read as follows:

Appendix F to Subpart C of 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 $21,000 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 [_____], 200[_____], 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 written notice to the Federal Maritime Commission at its offices in Washington, DC., 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 [_____], 200 [_____],
[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. app. 1718.

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 e-mail: *secretary@fmc.gov*.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–7782 Filed 4–5–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 27, 74, 90 and 101

[WT Docket No. 01–319; FCC 04–23]

Practice and Procedure, Miscellaneous Wireless Communications Services, Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services, Private Land Mobile Radio Services, Fixed Microwave Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules to provide for immediate processing of applications that may implicate Quiet Zones, in the event that the applicant indicates that it has obtained consent of the Quiet Zone entity. The document also clarifies that applicants may provide notification to and begin coordination with Quiet Zone entities, where required, in advance of filing an application with the Commission. Further, the Commission permits part 101 applicants to initiate conditional operation, provided they have obtained prior consent of the Quiet Zone entity to the extent required, and are otherwise eligible to initiate conditional operations over the proposed facility. Further, the Commission clarifies that either the applicant or the applicant's frequency coordinator may notify and initiate any required coordination proceedings with the Quiet Zone entity.

DATES: Effective June 7, 2004, except for 47 CFR 1.924(a)(2) and 1.924(d)(2) which contain information collection modifications that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that section.

FOR FURTHER INFORMATION CONTACT: Roger Noel or Linda Chang, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal