

Federal Maritime Commission

§ 583.1

(OMB) for each agency information collection requirement.

Section	Current OMB Control No.
582.2 through 582.4 .....	3072-0028

[49 FR 36858, Sept. 20, 1984]

APPENDIX A TO PART 582—CERTIFICATION OF POLICIES AND EFFORTS TO COMBAT REBATING IN THE FOREIGN COMMERCE OF THE UNITED STATES

46 CFR Part 582

I, (Name of affiant), state under oath that I am the Chief Executive Officer (State exact title) of (Exact names of firm), hereinafter referred to as *The Firm*, and that:

1. It is, and shall continue to be, the policy of The Firm to prohibit its participation in the payment, solicitation, or receipt of any rebate, directly or indirectly, which is unlawful under the provisions of the Shipping Act of 1984.

2. Each owner, officer, employee and agent of The Firm was notified or reminded of this policy on (Date).

3. The Firm affirms that it will cooperate fully with the Federal Maritime Commission in any investigation of suspected rebating in United States foreign trades.

4. Attached hereto is a description of the details of measures instituted, within the Firm or otherwise, to prohibit its involvement in the payment or the receipt of illegal rebates in the foreign commerce of the United States.

The period covered by this Certification is from (Date) to (Date).

The Firm is a (check each block applicable):

- \_\_\_\_\_ Broker
- \_\_\_\_\_ Freight Forwarder (License No. \_\_\_\_\_)
- \_\_\_\_\_ Marine Terminal Operator
- \_\_\_\_\_ Non-Vessel-Operating Common Carrier
- \_\_\_\_\_ Shipper
- \_\_\_\_\_ Shippers' Association
- \_\_\_\_\_ Vessel Operating Common Carrier

(Signature of affiant)  
 Subscribed to and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Notary Public

PART 583—SURETY FOR NON-VESSEL-OPERATING COMMON CARRIERS

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AUTHORITY: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710-1712, 1716, and 1721.

SOURCE: 56 FR 51993, Oct. 17, 1991, unless otherwise noted.

§ 583.1 Definitions.

In this part:

(a) *Act* means the Shipping Act of 1984 (46 U.S.C. app. 1701 et seq.).

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

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

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker. As used in this paragraph, 'chemical parcel-tanker' means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination

and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

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

(d) *Non-vessel-operating common carrier or 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.

(e) *Ocean common carrier* means a vessel-operating common carrier.

(f) *Person* includes individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

#### § 583.2 Scope.

This part implements the Non-Vessel-Operating Common Carrier Amendments of 1990, Public Law No. 101-595, section 710, and the Non-Vessel-Operating Common Carrier Act of 1991, Public Law No. 102-251, section 201 and applies to all NVOCCs operating in the waterborne foreign commerce of the United States.

[58 FR 5623, Jan. 22, 1993]

#### § 583.3 Proof of financial responsibility, when required.

(a) Except as provided in paragraph (c) of this section, no person may provide transportation as a non-vessel-operating common carrier or obtain transportation for the account of such NVOCC unless a surety bond, insurance form, or guaranty form which demonstrates that such NVOCC is covered for any transportation-related liability under the Shipping Act of 1984 has been furnished to and accepted by the Commission. Where a group or association of NVOCCs accepts liability for all or part of an NVOCC's financial responsibilities for such NVOCC's transportation-related activities under the Shipping Act of 1984, the group or association of NVOCCs must file either a group supplemental coverage bond form, insurance form or guaranty form, clearly identifying each NVOCC covered, before a covered NVOCC may provide transportation as a non-vessel-operating common carrier or obtain

transportation for the account of such NVOCC. An individual NVOCC's bond, insurance or guaranty coverage shall be for \$50,000 except in the case where an individual NVOCC's responsibility is covered, in whole or in part, by a group or association's bond, insurance or guaranty. In such cases the group or association's coverage must be for \$50,000 per covered member NVOCC, or \$1,000,000 in aggregate.

(b) Where more than one entity operates under a common trade name, separate proof of financial responsibility is required covering each corporation or person separately providing transportation as a non-vessel-operating common carrier.

(c) 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 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.

[58 FR 5623, Jan. 22, 1993, as amended at 60 FR 44437, Aug. 28, 1995]

#### § 583.4 Financial responsibility requirements.

Prior to the date it commences common carriage operation, every non-vessel-operating common carrier 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, simultaneously with its tariff, a valid bond on Form FMC-48, in the amount of \$50,000. Bonds must be issued by a surety company found acceptable by the Secretary of the Treasury.

(b) Insurance, by filing with the Commission, simultaneously with its tariff, 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 Shipping Act of 1984 of the insured NVOCC and must be placed with:

## Federal Maritime Commission

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(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.

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 transaction-related liabilities of the Insured NVOCC as specified under the Shipping Act of 1984.

(c) Guaranty, by filing with the Commission, simultaneously with its tariff, 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 Shipping Act of 1984 of the covered NVOCC and 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 Insurer's Information Office of the National Association of Insurance Commissioners.

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 pro-

vided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's; and in the case of an 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 Commissions. The guarantor must certify that it has sufficient and acceptable assets located in the United States to cover all transportation-related liabilities of the covered NVOCC as specified under the Shipping Act of 1984.

(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 NVOCCs on behalf of its members, subject to the following conditions and procedures;

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

(2) Each group or association of NVOCCs shall provide the Commission with a list certified by its Chief Executive Officer containing the names of those NVOCCs to which it will provide coverage, in whole or in part; the manner and amount of existing coverage each covered NVOCC has; an indication that the existing coverage provided each NVOCC 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 of at least \$50,000.00; and the name, address and facsimile number of each surety, insurer or guarantor providing coverage pursuant to this section. Each group or association of NVOCCs shall notify the Commission within thirty (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 NVOCCs.

(4) Each group or association of NVOCCs 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 NVOCC arising from its transportation-related activities under the Shipping Act of 1984, or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710, or any penalty assessed against the NVOCC pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712. Each group or association of NVOCCs shall be responsible for requiring each member NVOCC to provide it with valid proof of financial responsibility annually.

(5) Where the group or association of NVOCCs 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 associations's Surety, Insurer or Guarantor for damages against each covered member NVOCC arising from each covered member NVOCC's transportation-related activities under the Shipping Act of 1984, or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710, or any penalty assessed against each covered member NVOCC pursuant to section 13 of the Shipping Act of 1984, 47 U.S.C. app. 1712; and

(ii) Be for an amount up \$50,000.00 for each covered member NVOCC up to a maximum of \$1,000,000.00 for each group or association of NVOCCs.

(6) The coverage provided by the group or association of NVOCCs on behalf of its members, in whole or in part, 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 Insurer's Information Office of the National Association of Insurance Commissioners and issued by such firms on Form FMC-67 and Form FMC-68, respectively.

All forms and documents for establishing financial responsibility of NVOCCs prescribed in this section shall be submitted to the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. 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 reparations. Such forms and documents must clearly identify the name; trade name, if any; the address; and effective January 1, 1994, the organization number as provided in 46 CFR 514.11(a) of each NVOCC. Copies of all forms may be obtained from the Commission's Bureau of Tariffs, Certification and Licensing at the address listed above, or from any Area Representative listed at 46 CFR 501.41(d).

[58 FR 5623, Jan. 22, 1993, as amended at 61 FR 51233, Oct. 1, 1996]

#### § 583.5 Resident agent.

(a) Every non-vessel-operating common carrier not domiciled in the United States and every group or association of NVOCCs which provide, in whole or in part, financial coverage for a member NVOCC's financial responsibilities pursuant to § 583.4 not domiciled in the United States shall designate and maintain a person in the United States as legal agent for the receipt of judicial and administrative process, including subpoenas.

(b) If the designated legal agent cannot be served because of death, disability, or unavailability, the Secretary, 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 NVOCC, group or association of

NVOCCs by registered mail, return receipt requested, at its address published in its tariff on file with the Commission, a copy of each document served upon the Secretary, and shall attest to that mailing at the time service is made upon the Secretary.

(c) Service of administrative process, other than subpoenas, may be effected upon the legal agent by mailing a copy of the document to be served by certified or registered mail, return receipt requested. Administrative subpoenas shall be served in accordance with § 502.134 of this chapter.

(d) Designations of resident 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 NVOCC's tariff in accordance with § 514.15(b)(24) of this chapter.

(e) Every non-vessel-operating common carrier using a group or association of NVOCCs to cover all or part of its financial responsibility requirement under § 583.4 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 in accordance with § 514.15(b)(24)(ii) of this chapter.

[56 FR 51993, Oct. 17, 1991, as amended at 58 FR 5624, Jan. 22, 1993; 60 FR 27230, May 23, 1995]

#### **§ 583.6 Termination of bond or designation of resident agent.**

(a) Upon receipt of notice of termination by a surety bond, group supplemental coverage bond, insurance coverage or guaranty, the Commission shall notify the NVOCC or group or association of NVOCCs by certified or registered mail at its address published in its tariff or on the list required of a group or association on file with the Commission, that the Commission shall, without hearing or other proceeding, suspend or cancel the tariff or tariffs of the NVOCC or NVOCCs as of the termination date of the bond, group supplemental coverage bond, insurance coverage or guaranty, unless the NVOCC, group or association of NVOCCs submits a valid replacement surety bond, group supplemental coverage bond, insurance coverage or guaranty before such termination date.

Replacement surety bonds, group supplemental coverage bonds, insurance coverage or guaranties must bear an effective date no later than the termination date of the expiring bond, group supplemental coverage bond, insurance coverage or guaranty. The liability of the retiring surety, insurer or guarantor shall be considered as having terminated as of the effective date of the replacement surety bond, group supplemental coverage bond, insurance policy or guaranty.

(b) Upon receipt of notice of termination of a designation of resident agent, or upon receipt of alternative service of process upon the Secretary in accordance with § 583.5(b), the Commission shall notify the NVOCC by certified or registered mail, at its address published in its tariff on file with the Commission, that the Commission shall, without hearing or other proceeding, suspend or cancel the tariff or tariffs of the NVOCC effective thirty days after receipt of such notice of termination or alternative service of process upon the Secretary unless the NVOCC publishes in its tariff a replacement designation of an agent in the United States for the receipt of judicial and administrative process before such effective date of suspension or cancellation.

[56 FR 51993, Oct. 17, 1991, as amended at 58 FR 5625, Jan. 22, 1993]

#### **§ 583.7 Proof of Compliance.**

(a) No common carrier may transport cargo for the account of a shipper known by the carrier to be an NVOCC unless the carrier has determined that that NVOCC has a tariff and a bond as required by sections 8 and 23 of the Act.

(b) A common carrier can obtain proof of an NVOCC's compliance with the tariff and bonding requirements by:

(1) Consulting a current list provided by the Commission of tariffed and bonded NVOCCs; or

(2) Reviewing a copy of the tariff rule published by the NVOCC and in effect under § 514.15(b)(24) of this chapter; or

(3) Any other appropriate procedure, provided that such procedure is set forth in the carrier's tariff of general applicability as required by § 514.15(b)(25) of this chapter.

(c) A common carrier that has employed the procedure prescribed in either paragraph (b) (1) or (2) of this section shall be deemed to have met its obligations under section 10(b)(14) of the Act, unless the common carrier knew that such NVOCC was not in compliance with the tariff and bonding requirements.

(d) The fee for providing the list of tariffed and bonded NVOCCs referred to in paragraph (b)(1) of this section is \$122. The list is available in several forms: Hard paper copy, diskette, or tape.

[56 FR 51993, Oct. 17, 1991, as amended at 59 FR 59172, Nov. 16, 1994; 60 FR 27231, May 23, 1995]

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

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072-0053.

**APPENDIX A TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) BOND FORM**

**FEDERAL MARITIME COMMISSION NON-VESSEL OPERATING COMMON CARRIER (NVOCC) BOND (SECTION 23, SHIPPING ACT OF 1984)**

\_\_\_\_\_, as Principal (hereinafter called Principal), and \_\_\_\_\_, as Surety (hereinafter called 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 NVOCC in the waterborne foreign commerce of the United States, has an NVOCC tariff on file with the Federal Maritime Commission, and pursuant to section 23 of the Shipping Act of 1984 has elected to file this bond with the Commission;

Now, Therefore, The condition of this obligation is that the penalty amount of this bond shall be available to pay any judgment 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 of 1984, 46 U.S.C. app. 1710, or any penalty assessed against the Principal pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712.

This bond shall inure to the benefit of any and all persons who have obtained a judgment for damages against the Principal arising from its transportation related activities or order of reparation issued pursuant to section 11 of the Shipping Act of 1984, and to the benefit of the Federal Maritime Commission for any penalty assessed against the Principal pursuant to section 13 of the Shipping Act of 1984. 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 of this bond, and in no event shall the Surety's total obligation hereunder exceed said penalty regardless of the number of claims or claimants.

This bond is effective the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, 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 written notice to the Federal Maritime Commission at its office in Washington, DC. 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 thirty (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 underwriting Surety will promptly notify the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) against this bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(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

Federal Maritime Commission

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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)

[56 FR 51993, Oct. 17, 1991, as amended at 60 FR 44437, Aug. 28, 1995]

APPENDIX B TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) INSURANCE FORM [FMC-67]

Form FMC-67

Federal Maritime Commission

Non-Vessel-Operating Common Carrier Insurance Form Furnished as Evidence of Financial Responsibility Under 46 U.S.C. app. 1721

This is to certify, that the

(Name of Insurance Company) (hereinafter "Insurer") of

(Home Office Address of Company) has issued to

(Non-Vessel-Operating Common Carrier or Group or Association of NVOCCs) (hereinafter called "Insured") of

(Address of Non-Vessel-Operating Common Carrier or Group or Association of NVOCCs)

a policy or policies of insurance for purposes of complying with the provisions of 46 U.S.C. app. 1721 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.

Whereas, the Insured is or may become a Non-Vessel-Operating Common Carrier

("NVOCC") subject to the Shipping Act of 1984, 46 U.S.C. app. 1701 et seq., and the rules and regulations of the Federal Maritime Commission ("Commission"), or is or may become a group or association of NVOCCs, and desires to establish financial responsibility in accordance with section 23 of the Shipping Act of 1984, has elected to file 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, this Insurance is written to assure compliance by the Insured with section 23 of the Shipping Act of 1984, 46 U.S.C. app. 1721, and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for non-vessel-operating common carriers, this Insurance shall be available to pay any and all claimants to whom the Insured may be legally liable for any damages against the Insured arising from the Insured's transportation-related activities under the Shipping Act of 1984, or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710; or any penalty assessed against the Insured pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712; provided, however, that Insurer's obligation for a group or association of NVOCCs shall extend only to such damages, reparations or penalties described herein as are not covered by another insurance policy, guaranty or surety bond held by the NVOCC(s) against which a claim or final judgment has been brought and that Insurer's total obligation hereunder shall not exceed Fifty Thousand Dollars (\$50,000.00) per NVOCC, or One Million Dollars (\$1,000,000.00) in aggregate, for a group or association of NVOCCs.

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 arising from its transportation-related activities under the Shipping Act of 1984, or order of reparation issued pursuant to section 11 of the Shipping Act of 1984, and to the benefit of the Federal Maritime Commission for any penalty assessed against the

Insured pursuant to section 13 of the Shipping Act of 1984.

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 1984 of Insured in the event that such legal liability has not been discharged by the Insured within 30 days 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, the Federal Maritime Commission, or where all parties and claimants 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, whereby, upon payment of the agreed sum, the Insured 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 Fifty Thousand Dollars (\$50,000.00) per NVOCC, or One Million Dollars (\$1,000,000.00) for a group or association of NVOCCs.

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 or Fifty Thousand Dollars (\$50,000.00) per NVOCC, or One Million Dollars (\$1,000,000.00) for a group or association of NVOCCs, whichever comes first, 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 \_\_\_\_\_, 19\_\_\_\_, 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 filing a notice in writing with the Federal Maritime Commission at its office in Washington, DC. 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 1984 of the Insured after the expiration of the thirty (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.

Insurer or Insured shall immediately give notice to the Federal Maritime Commission of all lawsuits filed, judgments rendered, and payments made under the insurance policy.

(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 Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) against the Insurance.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
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.

[58 FR 5625, Jan. 22, 1993]

APPENDIX C TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) GUARANTY FORM [FMC-68]

Form FMC-[68]

Federal Maritime Commission

Guaranty in Respect of Non-Vessel-Operating Common Carrier Liability for Damages, Reparations or Penalties Arising From Transportation-Related Activities Under the Shipping Act of 1984

1. Whereas \_\_\_\_\_ (Name of applicant) (Hereinafter referred to as the "Applicant") is or may become a Non-Vessel-Operating Common Carrier ("NVOCC") subject to the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.*, and the rules and regulations of the Federal Maritime Commission ("FMC"), or is or may become a group or association of NVOCCs, and desires to establish its financial responsibility in accordance with section 23 of the 1984 Act, 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 Untied States to cover all transportation-related liabilities of the covered NVOCC as specified under the Shipping Act of 1984, the undersigned Guarantor hereby guarantees to discharge the Applicant’s legal liability to indemnify bona fide claimants for damages, reparations or penalties arising from Applicant’s transportation-related activities under the Shipping Act of 1984 in the event that such legal liability has not been discharged by the Applicant within 30 days 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, the FMC, or where all parties and claimants 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, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant. In the case of a guaranty covering the liability of a group or association of NVOCCs, 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 NVOCC(s) against which a claim or final judgment has been brought.

2. The Guarantor’s liability under this Guaranty is respect to any claimant shall not exceed the amount due to such claimant; and the aggregate amount of the Guarantor’s liability under this Guaranty shall not exceed Fifty Thousand Dollars (\$50,000.00) per NVOCC, or One Million Dollars (\$1,000,000.00) in aggregate, for each group or association of NVOCCs.

3. 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 of 1984, occurring after the Guaranty has become effective, and before the expiration date of this Guaranty, which shall be the date 30 days after the date of receipt by FMC of notice in writing 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.

4. 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.

5. Guarantor shall pay, subject up to limit of Fifty Thousand Dollars (\$50,000.00), 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 of 1984 and the rules and regulations of the Federal Maritime Commission, made by Applicant while this agreement is in effect, regardless of the financial responsibility or lack thereof, or the solvency or bankruptcy, of Applicant.

6. Applicant or Guarantor shall immediately give written notice to the FMC of all lawsuits filed, judgments rendered, and payments made under the Guaranty.

7. 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.

8. 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.

9. This Guaranty is effective the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, 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.

10. 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)

[58 FR 5626, Jan. 22, 1993]

APPENDIX D TO PART 583—NON-VESSEL-OPERATING COMMON CARRIER (NVOCC) GROUP BOND FORM [FMC-69]

Form FMC—[69]

Federal Maritime Commission

Federal Maritime Commission Non-Vessel-Operating Common Carrier (NVOCC) Group Supplemental Coverage Bond Form (Section 23, Shipping Act of 1984) \_\_\_\_\_, as Principal (hereinafter called Principal), and \_\_\_\_\_, as Surety (hereinafter called 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 non-vessel-operating common carriers in the waterborne foreign commerce of the United States and pursuant to section 23 of the Shipping Act of 1984 has elected to file this bond with the Federal Maritime Commission ("Commission");

Now, Therefore, the conditions of this obligation are that the penalty amount of this bond shall be available to pay any judgment against the NVOCCs enumerated in appendix A of this bond for damages arising from any or all of the identified NVOCCs' transportation-related activities under the Shipping Act of 1984, 46 U.S.C. app. 1701 et seq., or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710, or any penalty assessed pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712 that are not covered by the identified NVOCCs' individual insurance policy(ies), guaranty(ies) or surety bond(s).

This bond shall inure to the benefit of any and all persons who have obtained a judgment for damages against any or all of the NVOCCs identified in appendix A not covered by said NVOCCs insurance policy(ies), guaranty(ies) or surety bond(s) arising from said NVOCCs transportation-related activities under the Shipping Act of 1984, or order for reparation issued pursuant to section 11 of the Shipping Act of 1984, and to the benefit of the Federal Maritime Commission for any penalty assessed against said NVOCCs pursuant to section 13 of the Shipping Act of 1984. 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 of this bond, and in no event shall the Surety's total obligation hereunder exceed Fifty Thousand Dollars (\$50,000.00) per NVOCC identified in appendix A, or One Million Dollars (\$1,000,000.00) regardless of the number of NVOCCs, claims or claimants.

This bond is effective the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, 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 written notice to the Federal Maritime Commission at its office in Washington, DC. 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 NVOCCs identified in appendix A as covered by the Principal after the expiration of the thirty (30) day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activity occurring prior to the date when said termination becomes effective.

The Principal will promptly notify the underwriting Surety and the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any additions, deletions or changes to the NVOCCs 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 NVOCC(s) shall become effective thirty (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 NVOCC(s) deleted from appendix A after the expiration of the thirty (30) day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activity of said NVOCC(s) occurring prior to the date when said termination becomes effective.

The underwriting Surety will promptly notify the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) against this bond.

Signed and sealed this \_\_\_\_\_ day of, 19\_\_\_\_ (Please type name of signer under each signature).

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

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

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

Federal Maritime Commission

§ 585.101

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 Business Address  
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 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 (Re-  
 quired if Principal is not a U.S. Corporation)  
 -----  
 Agent's Address  
 -----  
 Corporate Surety  
 -----  
 Business Address (Affix Corporate Seal)  
 -----  
 By  
 -----  
 Title

[58 FR 5627, Jan. 22, 1993, as amended at 60 FR 44438, Aug. 28, 1995]

**PART 585—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES**

**Subpart A—General Provisions**

- Sec.
- 585.101 Purpose.
- 585.102 Scope.
- 585.103 Definitions.
- 585.104 Confidentiality.
- 585.105 Consultation.

**Subpart B—Production of Information**

- 585.201 Information orders.
- 585.202 Type of information.
- 585.203 Failure to provide information.

**Subpart C—Conditions Unfavorable to Shipping**

- 585.301 Findings.

**Subpart D—Petitions For Relief**

- 585.401 Who may file.
- 585.402 Filing of petitions.
- 585.403 Contents of petitions.
- 585.404 Amendment or dismissal of petitions.

**Subpart E—Proceedings**

- 585.501 Participation of interested persons.
- 585.502 Discovery.
- 585.503 Subpoenas.
- 585.504 Witness fees.
- 585.505 Failure to supply information.
- 585.506 Enforcement of orders.
- 585.507 Postponement, discontinuance, or suspension of action.
- 585.508 Publication, content, and effective date of regulation.

**Subpart F—Corrective Actions**

- 585.601 Actions to correct unfavorable conditions.
- 585.602 Penalty.

AUTHORITY: 5 U.S.C. 553; sec. 19(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12); Reorganization Plan No. 7 of 1961, 75 Stat. 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

SOURCE: 58 FR 64910, Dec. 10, 1993, unless otherwise noted.

**Subpart A—General Provisions**

**§ 585.101 Purpose.**

It is the purpose of the regulations of this part to declare certain conditions resulting from governmental actions by foreign nations or from the competitive methods or practices of owners, operators, agents, or masters of vessels of a foreign country unfavorable to shipping in the foreign trade of the United States and to establish procedures by which persons who are or can reasonably expect to be adversely affected by such conditions may petition the Federal Maritime Commission for the issuance of regulations under the authority of section 19 of the Merchant Marine Act of 1920. It is the further purpose of the regulations of this part to afford notice of the general circumstances under which the authority granted to the Commission under section 19 may be invoked and the nature of the regulatory actions contemplated.