

Federal Maritime Commission

Pt. 515, Subpart C, App. B

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 1984 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(b), 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(b), 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, of any claim(s) 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)

[64 FR 11171, Mar. 8, 1999, as amended at 67 FR 39860, June 11, 2002; 74 FR 50720, Oct. 1, 2009]

APPENDIX B TO SUBPART C OF 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 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, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998 ("1984 Act").

Whereas, the Insured is or may become an OTI subject to the 1984 Act (46 U.S.C. 40101-41309) 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 1984 Act, 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 1984 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(b) for damages against the Insured arising from the Insured's transportation-related activities under the 1984 Act, or order for reparations issued pursuant to section 11 of the 1984 Act (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed against the Insured pursuant to section 13 of the 1984 Act (46 U.S.C. 41107-41109); provided, however, that Insurer'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 insurance policy, guaranty or surety bond held by the OTI(s) against which a claim or final judgment has been brought and 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 in aggregate.

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(b) arising from its transportation-related activities under the 1984 Act, or order of reparation issued pursuant to section 11 of the 1984 Act, and to the benefit of the Federal Maritime Commission for any penalty assessed against the Insured pursuant to section 13 of the 1984 Act.

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 1984 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(b), 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(b), 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 filing a notice in writing with the Federal Maritime Commission at its office in Washington, D.C. 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 1984 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.

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

Signed and sealed this _____ day of _____, _____.

Federal Maritime Commission

Pt. 515, Subpart C, App. C

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.

[64 FR 11171, Mar. 8, 1999, as amended at 67 FR 39860, June 11, 2002; 74 FR 50720, Oct. 1, 2009]

APPENDIX C TO SUBPART C OF 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, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998

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, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998 ("1984 Act") (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 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 United States to cover all damages arising from the transportation-related activities of the covered OTI as specified under the 1984 Act.

2. *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 pur-

suant to a claim under 46 CFR § 515.23(b) for damages against the Applicant arising from the Applicant's transportation-related activities or order for reparations issued pursuant to section 11 of the 1984 Act (46 U.S.C. 41301-41302, 41305-41307(a)), or any penalty assessed against the Principal pursuant to section 13 of the 1984 Act (46 U.S.C. 41107-41109).

3. 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 1984 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(b), 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(b), 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.

4. 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.

5. 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 1984 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 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.

6. 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