

Federal Maritime Commission

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the acts or omissions of its agent in the United States.

(4) The amount of the financial responsibility required to be furnished by any entity pursuant to paragraphs (a)(1) or (a)(2) of this section shall be increased by \$10,000 for each of the applicant's unincorporated branch offices.

(b) *Group financial responsibility.* Where a group or association of ocean transportation intermediaries accepts liability for an ocean transportation intermediary's financial responsibility for such ocean transportation intermediary's transportation-related activities under the Act, the group or association of ocean transportation intermediaries must file either a group supplemental coverage bond form, insurance form or guaranty form, clearly identifying each ocean transportation intermediary covered, before a covered ocean transportation intermediary may provide ocean transportation intermediary services. In such cases a group or association must establish financial responsibility in an amount equal to the lesser of the amount required by paragraph (a) of this section for each member or \$3,000,000 in aggregate. A group or association of ocean transportation intermediaries may also file an optional bond rider as provided for by § 515.25(c).

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

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

Defense, or the General Services Administration.

[64 FR 11171, Mar. 8, 1999, as amended at 69 FR 17945, Apr. 6, 2004]

§ 515.22 Proof of financial responsibility.

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

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

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

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

(2) Underwriters at Lloyd's; or

(3) Surplus lines insurers named on a current "white list" issued by the Non-Admitted Insurers' Information Office

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of the National Association of Insurance Commissioners; or

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

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

(2) Underwriters at Lloyd's; or

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

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

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

such as articles of incorporation, by-laws, etc.;

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

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

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

(5) Where the group or association of ocean transportation intermediaries

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determines to secure on behalf of its members other forms of financial responsibility, as specified by this section, for damages, reparations or penalties not covered by a member's individual financial responsibility coverage, such additional coverage must:

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

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

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

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

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

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

(e) All forms and documents for establishing financial responsibility of ocean transportation intermediaries

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

[64 FR 11171, Mar. 8, 1999, as amended at 67 FR 39860, June 11, 2002]

§ 515.23 Claims against an ocean transportation intermediary.

The Commission or another party may seek payment from the bond, insurance, or other surety that is obtained by an ocean transportation intermediary pursuant to this section. (See also §545.3 of this chapter.)

(a) *Payment pursuant to Commission order.* If the Commission issues an order for reparation pursuant to sections 11 or 14 of the Act, or assesses a penalty pursuant to section 13 of the Act, a bond, insurance, or other surety shall be available to pay such order or penalty.

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

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

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