

## Federal Maritime Commission

## § 540.27

for the purpose of establishing financial responsibility.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 1824, Jan. 19, 1990]

### § 540.25 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been established, a Certificate (Casualty) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to meet any liability which may be incurred for death or injury to passengers or other persons on voyages. The period covered by the certificate shall be indeterminate unless a termination date has been specified therein.

### § 540.26 Denial, revocation, suspension, or modification.

(a) Prior to the denial, revocation, suspension, or modification of a Certificate (Casualty), the Commission shall advise the applicant of its intention to deny, revoke, suspend, or modify, and shall state the reasons therefor. If the applicant, within 20 days after the receipt of such advice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission, except that a Certificate (Casualty) shall become null and void upon cancellation or termination of evidence of insurance, surety bond, guaranty, or escrow account.

(b) A Certificate (Casualty) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Casualty);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

(c) If the applicant, within 20 days after notice of the proposed denial, revocation, suspension, or modification under paragraph (b) of this section, re-

quests a hearing to show that such denial, revocation, suspension, or modification should not take place, such hearing shall be granted by the Commission.

### § 540.27 Miscellaneous.

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason, fails to provide adequate or satisfactory protection to the public, the Commission will notify the applicant stating the deficiencies thereof.

(b) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person to whom the Certificate (Casualty) is to be issued, and in case of a partnership, all partners shall be named.

(c) The Commission's bond (Form FMC-132B), guaranty (Form FMC-133B), and application (Form FMC-131 as set forth in subpart A of this part) forms are hereby incorporated as a part of the rules of this subpart. Any such forms filed with the Commission under this subpart must be in duplicate.

(d) Any securities or assets accepted by the Commission (from applicants, insurers, guarantors, escrow agents, or others) under the rules of this subpart must be physically located in the United States.

(e) Each applicant, insurer, escrow agent, and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary in accordance with the above provision must also serve the certificant, insurer, escrow agent, or guarantor, as the case may be, by registered mail, at its last known address on file with the Commission.

(f) In the case of any charter arrangements involving a vessel subject to the regulations of this subpart, the vessel owner (in the event of a subcharter, the

charterer shall file) must within 10 days file with the Secretary of the Commission evidence of any such arrangement.

(g) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to § 540.26(a) or § 540.26(b).

(h) Every person who has been issued a Certificate (Casualty) must submit to the Commission a semiannual statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. Such statements must cover every such 6-month period commencing with the first 6-month period of the fiscal year immediately subsequent to the date of the issuance of the Certificate (Casualty). In addition, the statements will be due within 30 days after the close of every 6-month period.

FORM FMC-132B TO SUBPART B OF PART 540

FORM FMC-132B

(5-67)

FEDERAL MARITIME COMMISSION

Surety Co. Bond No. \_\_\_\_\_  
FMC Certificate No. \_\_\_\_\_

PASSENGER VESSEL SURETY BOND (46 CFR PART 540)

Know all men by these presents, that We \_\_\_\_\_ (Name of applicant), of \_\_\_\_\_ (City), \_\_\_\_\_ (State and country), as Principal (hereinafter called Principal), and \_\_\_\_\_ (Name of surety), a company created and existing under the laws of \_\_\_\_\_ (State and country) and authorized to do business in the United States, as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of \_\_\_\_\_, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal intends to become a holder of a Certificate (Casualty) pursuant to the provisions of subpart B of part 540 of title 46, Code of Federal Regulations, and has elected to file with the Federal Maritime

Commission such a bond to insure financial responsibility to meet any liability it may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, and

Whereas, this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Casualty) pursuant to subpart B of part 540 of title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers or other persons to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers or other persons any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to meet any liability the Principal may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, while this bond is in effect pursuant to and in accordance with the provisions of subpart B of part 540 of title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger or other persons shall in no event exceed the amount of the Principal's legal liability under any final judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of Pub. L. 89-777, then the Surety's total liability under this surety bond shall be limited to an amount computed in accordance with such formula.

The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, 12:01 a.m., standard time, at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice sent by certified mail to the other and to the Federal Maritime Commission at its Office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for such liability incurred for death or injury to passengers or other

**Federal Maritime Commission**

**Pt. 540, Subpt. B, Form FMC-133B**

persons on voyages to or from U.S. ports prior to the date such termination becomes effective.

In witness whereof, the said Principal and Surety have executed this instrument on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

**PRINCIPAL**

Name \_\_\_\_\_  
By \_\_\_\_\_

(Signature and title)

Witness \_\_\_\_\_

**SURETY**

Name \_\_\_\_\_  
By [SEAL] \_\_\_\_\_

(Signature and title)

Witness \_\_\_\_\_

Only corporations or associations of individual insurers may qualify to act as Surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

FORM FMC-133B TO SUBPART B OF PART 540

FORM FMC-133B

(5-67)

**FEDERAL MARITIME COMMISSION**

Guaranty No. \_\_\_\_\_  
FMC Certificate No. \_\_\_\_\_

**GUARANTY IN RESPECT OF LIABILITY FOR DEATH OR INJURY, SECTION 2 OF THE ACT**

1. Whereas \_\_\_\_\_ (Name of Applicant) (Hereinafter referred to as the "Applicant") is the Owner or Charterer of the passenger Vessel(s) specified in the annexed Schedule ("the Vessels"), which are or may become engaged in voyages to or from U.S. ports, and the Applicant desires to establish its financial responsibility in accordance with section 2 of Public Law 89-777, 89th Congress, approved November 6, 1966 ("the Act") then, provided that the Federal Maritime Commission ("FMC") shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Casualty) ("Certificate"), the undersigned Guarantor hereby guarantees to discharge the applicant's legal liability in respect of claims for damages for death or injury to passengers or other persons on voyages of the Vessels to or from U.S. ports, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger or other person, or, in the event of death, his or her personal representative, has obtained a final

judgment (after appeal, if any) against the Applicant from a U.S. Federal or State Court of competent jurisdiction, or 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 passenger or other person, or to such personal representative, with respect to such claim.

2. The Guarantor's liability under this Guaranty shall in no event exceed the amount of the Applicant's legal liability under any such judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of the Act, then the Guarantor's total liability under this Guaranty shall be limited to an amount computed in accordance with such formula.

3. The Guarantor's liability under this Guaranty shall attach only in respect of events giving rise to causes of action against the Applicant in respect of any of the Vessels for damages for death or injury within the meaning of section 2 of the Act, occurring after the Certificate has been granted to the Applicant and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing (including telex or cable) that the Guarantor has elected to terminate this Guaranty, except that if, on the date which would otherwise have been the expiration date of this Guaranty under the foregoing provisions of this Clause 3, any of the Vessels is on a voyage in respect of which such Vessel would not have received clearance in accordance with section 2(e) of the Act without the Certificate, then the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have fully disembarked.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel owned or operated by the Applicant, and not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing (including telex or cable), then provided that, within 30 days of receipt of such notice FMC shall have granted a Certificate, such vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates \_\_\_\_\_, with offices at \_\_\_\_\_, as

**§ 540.91**

the Guarantor's legal agent for Service of process for the purposes of the Rules of the Federal Maritime Commission, subpart B of part 540 of title 46, Code of Federal Regulations, issued under section 2 of the Pub. L. 89-777 (80 Stat. 1357, 1358), entitled "Security for the Protection of the Public."

\_\_\_\_\_  
(Place and Date of Execution)

\_\_\_\_\_  
(Name and Guarantor)

\_\_\_\_\_  
(Address of Guarantor)

By \_\_\_\_\_  
(Name and Title)

*Schedule of Vessels Referred to in Clause 1*  
*Vessels Added to This Schedule in Accordance*  
*With Clause 4*

**Subpart C—General**

**§ 540.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB Control No.
540.4 (Form FMC-131) .....	3072-0012
540.5 .....	3072-0011
540.6 .....	3072-0011
540.8 .....	3072-0011
540.9 .....	3072-0011
540.23 (Form FMC-131) .....	3072-0012
540.24 .....	3072-0011
540.26 .....	3072-0011
540.27 .....	3072-0011

**46 CFR Ch. IV (10-1-06 Edition)**

**PART 545—INTERPRETATIONS AND STATEMENTS OF POLICY**

Sec.  
545.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.  
545.2 Interpretation of Shipping Act of 1984—Unpaid ocean freight charges.  
545.3 Interpretation of §515.23(b) of this chapter—Payment pursuant to a claim against an ocean transportation intermediary.  
  
AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 1706, 1707, 1709, 1716, and 1718; Pub. L. 105-383, 112 Stat. 3411; 46 CFR 515.23.

**§ 545.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.**

(a) Section 8(c) of the Shipping Act of 1984 ("1984 Act") authorizes ocean common carriers and agreements between or among ocean common carriers to enter into a service contract with a shippers' association, subject to the requirements of the 1984 Act. Section 10(b)(10) of the 1984 Act prohibits carriers from unreasonably refusing to deal or negotiate. Section 7(a)(2) of the 1984 Act exempts from the antitrust laws any activity within the scope of that Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

(b) The Federal Maritime Commission interprets these provisions to establish that a common carrier or conference may not require a shippers' association to obtain or apply for a Business Review Letter from the Department of Justice prior to or as part of a service contract negotiation process.

[53 FR 43698, Oct. 28, 1988. Redesignated and amended at 64 FR 7813, Feb. 17, 1999; 64 FR 9922, Mar. 1, 1999]

**§ 545.2 Interpretation of Shipping Act of 1984—Unpaid ocean freight charges.**

Section 10(a)(1) of the Shipping Act of 1984 states that it is unlawful for any person to obtain or attempt to obtain transportation for property at less than the properly applicable rates, by any "unjust or unfair device or