

**NARRATIVE SUPPORTING STATEMENT
FOR 46 CFR 540 AND
RELATED FORMS FMC-131, 132A, 132B, 133A AND 133B**

A. Justification

1. The Commission administers sections 2 and 3 of Public Law 89-777 (46 U.S.C. §§ 44105 and 44106), which require vessel owners, charterers and operators of passenger vessels having 50 or more passenger berths or stateroom accommodations, and embarking passengers at United States ports and territories, to establish their financial responsibility to meet liability incurred for death or injury and to indemnify passengers in the event of nonperformance of a voyage or cruise.

46 CFR 540, entitled *Passenger Vessel Financial Responsibility*, implements Public Law 89-777. The regulation (and its related application Form FMC-131, *Application for Certificate of Financial Responsibility*), requires owners, operators or charterers of passenger vessels subject to Public Law 89-777 to apply for an initial certificate or to file an amendment to existing certificates. The Commission's rules require that applications be filed, in duplicate, at least 60 days prior to any advertising, promotion or collection of deposits and fares for Certificate (Performance), and at least 60 days prior to sailing for a Certificate (Casualty).

Applicants may apply separately for each certificate or for both certificates on one application. The method of establishing financial responsibility may be different for each certificate. The applicant has the option of using (1) insurance, (2) escrow accounts, (3) guaranties, or (4) surety bonds to establish financial responsibility to qualify for a Certificate (Casualty) evidencing compliance with section 2 of Public Law 89-777, or to qualify for Certificate (Performance) evidencing compliance with section 3 of Public Law 89-777. The forms used to evidence financial responsibility are set forth in the Commission's rules. The forms do not contain any new or additional reporting requirements and are based upon approved regulatory provisions.

Upon receipt, examination, and approval of the application form and evidence of financial responsibility, a *Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation* and/or a *Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages* is issued to the applicant/certificant. The period covered by the certificate is open-ended unless a termination date has been specified thereon. The certificate must be presented to U.S. Customs and Border Protection ("CBP") or Coast Guard officials at the time the vessel clears a United States port.

2. The information is used by the Commission's staff to determine the amount of evidence of financial responsibility required to qualify for passenger vessel certificates, to keep the information current, and assure a domestic agent for service of process. The information is

required to ensure that passenger vessel operators have adequate financial responsibility to indemnify passengers in the event of nonperformance or casualty. The Commission would be unable to fulfill its statutory responsibility without the collection of this information. Additionally, Public Law 89-777 provides civil penalties for persons who operate passenger vessels from United States ports without establishing their financial responsibility.

3. The Commission is looking at new technology to improve the efficiency of the program and reduce the burden on its respondents. The forms associated with this program are available to the public from the Internet at www.fmc.gov/forms or at the Government forms site at www.forms.gov. The Commission hopes to allow for online filing once necessary research and development are completed.

4. The information requested is unique to passenger vessel certification and is not available from any other source. There is no duplication as the information is collected once, unless there are changes in ownership, charterers, or operations.

5. This collection of information does not have a significant impact on small businesses or other small entities.

6. The information is required to ensure that passenger vessel operators have adequate financial responsibility to indemnify passengers in the event of nonperformance or casualty. If the information were not collected, passengers might not be indemnified as required by Public Law 89-777.

7. This information collection does not (1) require respondents to report information to the agency more often than quarterly; (2) require respondents to submit more than an original and two copies of any document; (3) require respondents to retain records for more than three years; (4) include confidentiality pledges that are not supported by established statutory authority; or (5) require respondents to submit proprietary information without protecting such information to the full extent of the law. Respondents are not required to prepare a written response to a collection of information in fewer than 30 days, except that in the event of a material change in the facts as reflected in a respondent's application, an amendment to the application shall be filed no later than 5 days following such change.

8. The 60-day Federal Register Notice regarding this extension was published May 13, 2008, at 73 FR 27537. Respondents had 60 days to respond with their views regarding the collection of information; no comments were received. The Commission occasionally consults with U.S. CBP and Coast Guard since the certificates are subject to inspection by these officials. A vessel may be refused clearance to embark passengers without these certificates (see 46 U.S.C. §§ 44105 and 44106 and 46 U.S.C. § 60105).

9. Not applicable – The Commission does not provide any payments or gifts to respondents.

10. The information filed by applicants, certificants and underwriters is subject to the limitations of the Freedom of Information Act and permitted by the Privacy Act. Financial data is treated as confidential pursuant to 46 CFR 540.9(g) and 46 CFR 540.27(g), except in instances where information becomes relevant in connection with hearings which may be requested by an applicant.

11. The regulation and forms do not ask information of a sensitive nature.

12. The estimated reporting respondent universe is 50. Of the potential respondents, the number of reports filed is not duplicated. The majority of certificants possess both Performance and Casualty Certificates and file one report, which satisfies similar requirements in Subparts A and B. For example, if a certificant possesses both Performance and Casualty Certificates, it is required to file one semiannual statement of changes in compliance with both 46 CFR 540.9(h) and 46 CFR 540.27(h).

- a. 46 CFR 540: Estimates for the reporting and recordkeeping requirements contained in the rules are based on the type and complexity of the reports required (1,078 person-hours).
- b. Application Form FMC-131: At present there is a maximum estimated respondent universe of 50 cruise line operators. They have changes in ownership, chartering, operations, and changes in the amount and type of financial responsibility. They also enter and exit the U.S. trades to accomplish their commercial purposes. The Commission estimates that it receives an average of 50 applications annually where operators seek new certificates for both casualty and performance on a single application. Based upon the Commission's knowledge of the industry, an average of 8 hours is required to complete a single Form FMC-131 to obtain casualty and performance certificates (400 person-hours).

The annual cost to respondents is estimated at \$115,659. The cost has been calculated in consideration of the time to gather information and furnish it to the Commission, as well as comply with the requirements of 46 CFR 540. It also includes clerical time as well as overhead and operational expenses. [See Attachment 1.]

13. There are no additional cost burdens to respondents or recordkeepers other than those reported in item 12.

14. Total annual cost to the Federal Government for this rule and application form is estimated to be approximately \$152,281, including overhead and benefits. This cost includes a consideration of maintenance and follow-up actions necessary to ensure respondents' compliance with the requirements of 46 CFR 540. [See Attachment 2.]

15. The burden estimate has not changed; however, based upon the number of actual filings by respondents, the total number of annual hours requested is decreased slightly, by 96 hours.

16. The Commission does not intend to publish any information collected under this regulation.

17. The Commission is not seeking approval to exclude the display of the expiration date for OMB approval of this information collection.

18. The Commission proposes no exception to the certification statement identified on OMB form 83-I.

B. Collections of Information Employing Statistical Methods

This collection of information does not employ statistical methods.

12. Estimated Burden and Costs, Including Overhead, to Respondents

1,078 person-hours (reporting and recordkeeping requirements) + 400 person-hours (Form FMC-131) = 1,478 total person-hours

- 10% CEO (148 hours)
- 20% Lawyer (295 hours)
- 60% CPA (887 hours)
- 10% Secretary (148 hours)

The annual salary calculations have been formulated using the Department of Labor’s May 2007 National Industry-Specific Occupational Employment and Wages Estimates for Water Transportation. We have also added to the basic salary an overhead figure of \$17.72 per hour and benefits of 23.69% (provided by FMC’s Office of Financial Management).

Formula: Annual salary + (annual salary X benefits rate) = adjusted annual salary/2,080 + overhead = adjusted hourly salary

$\$167,900 + (167,900 \times 23.69\%) = \$207,676 / 2,080 = \$99.84 + \$17.72 = \$117.56 = \text{CEO adjusted hourly salary}$

$\$94,608 + (94,608 \times 23.69\%) = \$117,021 / 2,080 = \$56.26 + \$17.72 = \$73.98 = \text{Lawyer adjusted hourly salary}$

$\$102,780 + (102,780 \times 23.69\%) = \$127,129 / 2,080 = \$61.12 + \$17.72 = \$78.84 = \text{CPA adjusted hourly salary}$

$\$44,110 + (44,110 \times 23.69\%) = \$54,560 / 2,080 = \$26.23 + \$17.72 = \$43.95 = \text{Secretary adjusted hourly salary}$

Employee	Hourly Salary	Number of Hours	Total
CEO	\$117.56	148	\$ 17,399
Lawyer	\$73.98	295	\$ 21,824
CPA	\$78.84	887	\$ 69,931
Secretary	\$43.95	148	\$ 6,505
TOTALS		1,478	\$115,659

14. Estimated Burden and Costs, Including Overhead, to Federal Government

The annual salary calculations have been formulated using the Federal Government's January 2008 salary table (overhead of \$17.72 per hour and benefits of 23.69% per year have been added to the basic salary).

Bureau Director (SES) – 5% (104 hours)

$\$158,500 + (158,500 \times 23.69\%) = \$196,049/2,080 = \$94.25 + \$17.72 = \$111.97$ adjusted hourly salary

Office Chief (GS 14/1) – 30% (624 hours)

$\$98,033 + (98,033 \times 23.69\%) = \$121,257/2,080 = \$58.30 + \$17.72 = \$76.02$ adjusted hourly salary

Industry Analyst (GS 13/1) – 60% (1,248 hours)

$\$82,961 + (82,961 \times 23.69\%) = \$102,615/2,080 = \$49.33 + \$17.72 = \$67.05$ adjusted hourly salary

Information Processing Assistant (GS 7/7) – 10% (208 hours)

$\$47,193 + (47,193 \times 23.69\%) = \$58,373/2,080 = \$28.06 + \$17.72 = \$45.78$ adjusted hourly salary

Employee	Hourly Salary	Number of Hours	Total
Bureau Director	\$111.97	104	\$ 11,645
Office Chief	\$76.02	624	\$ 47,436
Industry Analyst	\$67.05	1,248	\$ 83,678
Information Processing Assistant	\$45.78	208	\$ 9,522
TOTALS		2,184	\$152,281

Estimated cost to the Federal Government: \$152,281