

**NARRATIVE SUPPORTING STATEMENT
FOR 46 CFR PART 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. 44101-44106), 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 Part 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, (4) surety bonds, or (5) self-insurance (for casualty only) 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 (PVOs) 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 continues to look 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. The Commission hopes to allow for online filing once necessary research and development are completed. The Commission anticipates having pay.gov implemented within the next fiscal year, which would also facilitate the filing of forms online.

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 operators.

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 PVOs 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 (IC) 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 3, 2011, at 76 FR 24881. 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 45. 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).

The number of responses filed annually is based on a review of FY2010 submissions. All certificate holders are required to file semiannual statements to report any changes since their initial application. Certificate holders that established financial responsibility with an escrow account are required to provide weekly, monthly, and quarterly reports. In addition to required reports, certificate holders may file reports to change the financial coverage amount, change the type of financial responsibility instrument, or terminate their financial coverage. Certificate holders arrive at such business decisions independently based upon their unique business circumstances. Thus, the number of such reports can vary from year to year and cannot be accurately predicted. That being said, below are the FMC's burden estimates relative to this IC extension:

- 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 (934 hours).¹

¹ The Commission estimated the cumulative amount of time required of certificate holders to prepare and submit each IC based upon an estimate of the submissions received in FY2010. A majority of the ICs require the calculation, verification and submission of a PVO's unearned passenger revenue, which is money collected from passengers as deposits for cruises or payment of fares for voyages that have not yet been performed. This unearned passenger revenue is the basis for the amount of financial responsibility a financial responsibility a PVO is required to provide.

The amount of recordkeeping hours primarily declined from the previous submission due to a decline in PVOs electing to use an escrow agreement as their financial instrument. Because escrow agreements have the most stringent reporting requirements, i.e., weekly recomputation certificates, a decline in those instruments results in a more substantial decline in the burden for that IC than occurred with other ICs. Conversely, an increase in the filing of escrow agreements will result in a substantial increase in reports received. As the type of financial instrument used to satisfy the Commission's passenger vessel financial responsibility requirements is determined as a business decision by the PVO, the associated burden can vary as well.

- b. Application Form FMC-131: At present there is a maximum estimated respondent universe of 45 cruise line operators. They have changes in owners, charterers, operators, 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 45 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 (360 hours).

The annual cost to respondents for wages, benefits and overhead is estimated at \$113,916. 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. In addition to the total hour cost burden, respondents incurred costs for required filing fees² in FY 2010 as follows:

Passenger Vessel Certificate (Performance)	1 @ \$2,767	\$ 2,767
Add/Subtract Vessel (Performance)	5 @ \$1,382	\$ 6,910
Add/Subtract Vessel (Casualty)	7 @ \$ 605	\$ 4,235
TOTAL		\$13,912

Aside from the foregoing filing fees, respondents have no capital or start-up costs associated with this regulation. (These fees were not reflected in past filings; recent OMB guidance requires that they be accounted for.)

14. Total annual cost to the Federal Government for this rule and application form is estimated to be approximately \$176,530, 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.] This cost is offset by the collection of \$13,912 in required filing fees. The net estimated total annual cost to the government of this collection of information is \$162,618.

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 by 184 hours.

² When a passenger vessel operator first seeks to enter the Commission's passenger vessel financial responsibility program, the operator files an initial application. Each vessel must have its own Certificate (Performance) to advertise water transportation in the U.S. and a Certificate (Casualty) to embark passengers from a U.S. port. There is an application fee of \$2,767 for an initial Certificate (Performance) and \$1,206 for an initial Certificate (Casualty). To add subsequent vessels to the Commission's passenger vessel program, the application fees are \$1,382 for a Certificate (Performance) and \$605 for a Certificate (Casualty). There are no filing fees to amend an application.

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 IC.

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

934 hours (reporting and recordkeeping requirements) + 360 hours (Form FMC-131) = 1,294 total hours

10% CEO (129 hours)

20% Lawyer (259 hours)

60% CPA (776 hours)

10% Secretary (130 hours)

The annual salary calculations have been formulated using the Department of Labor's May 2009 National Industry-Specific Occupational Employment and Wages Estimates for Water Transportation. We have also added to the basic salary an overhead figure of \$20.10 per hour and benefits of 24.23% (provided by FMC's Office of Budget and Finance).

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

$\$204,920 + (204,920 \times 24.23\%) = \$254,572/2,080 = \$122.39 + \$20.10 = \$142.49 = \text{CEO adjusted hourly salary}$

$\$129,020 + (129,020 \times 24.23\%) = \$160,282/2,080 = \$77.06 + \$20.10 = \$97.16 = \text{Lawyer adjusted hourly salary}$

$\$104,450 + (104,450 \times 24.23\%) = \$129,758/2,080 = \$62.38 + \$20.10 = \$82.48 = \text{CPA adjusted hourly salary}$

$\$48,360 + (48,360 \times 24.23\%) = \$60,078/2,080 = \$28.88 + \$20.10 = \$48.98 = \text{Secretary adjusted hourly salary}$

Employee	Hourly Salary	Number of Hours	Total
CEO	\$142.49	129	\$ 18,381
Lawyer	\$97.16	259	\$ 25,164
CPA	\$82.48	776	\$ 64,004
Secretary	\$48.98	130	\$ 6,367
TOTALS		1,294	\$113,916

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

The annual salary calculations have been formulated using the Federal Government's March 2010 salary table (overhead of \$20.10 per hour and benefits of 24.23% per year have been added to the basic salary).

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

$\$165,300 + (165,300 \times 24.23\%) = \$205,352/2,080 = \$98.73 + \$20.10 = \$118.83$ adjusted hourly salary

Office Chief (GS 14/2) – 20% (416 hours)

$\$108,717 + (108,717 \times 24.23\%) = \$135,059/2,080 = \$64.93 + \$20.10 = \$85.03$ adjusted hourly salary

Industry Analyst (GS 13/3) – 40% (832 hours)

$\$94,969 + (94,969 \times 24.23\%) = \$117,980/2,080 = \$56.72 + \$20.10 = \$76.82$ adjusted hourly salary

Industry Analyst (GS 12/1) – 40% (832 hours)

$\$74,872 + (74,872 \times 24.23\%) = \$93,014/2,080 = \$44.72 + \$20.10 = \$64.82$ adjusted hourly salary

Information Processing Assistant (GS 8/6) – 10% (208 hours)

$\$54,534 + (54,534 \times 24.23\%) = \$67,748/2,080 = \$32.57 + \$20.10 = \$52.67$ adjusted hourly salary

Employee	Hourly Salary	Number of Hours	Total
Bureau Director	\$118.83	104	\$ 12,358
Office Chief	\$85.03	416	\$ 35,373
Industry Analyst	\$76.82	832	\$ 63,914
Industry Analyst	\$64.82	832	\$ 53,930
Information Processing Assistant	\$52.67	208	\$ 10,955
TOTALS		2,392	\$176,530

Estimated Burden Cost to the Federal Government:	\$176,530
Offset by Respondent Filing Fees:	<u>\$ 13,912</u>
Total Cost to Government	\$162,618