

**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 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 proposed revision to Form FMC-131 requests additional information pertaining to vessel schedules, principal parties, and other information necessary for the Commission to determine the adequate amount of financial responsibility. In addition, some information is no longer requested as it is provided in the financial instrument submission. The remaining forms contain minor changes that do not require any new or additional reporting.

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 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.

The Commission proposes to amend its rules regarding the establishment of passenger vessel financial responsibility under Section 3 (Performance) of Public Law 89-777, 46 U.S.C. 44101-44106. Currently the amount of coverage required for performance shall not exceed \$15 million. The amendments would modify the current cap on required performance coverage from

\$15 million to \$30 million over a two-year period; adjust the amount of coverage required for smaller passenger vessel operators by providing for consideration of alternative forms of protection; revise the application Form FMC-131, *Application for Certificate of Financial Responsibility Vessel Schedule*; add an expiration date to the Certificate (Performance); and make some technical adjustments to the regulations.

The initiation of a five-year expiration cycle for each performance certificate issued would harmonize the FMC's passenger vessel operator (PVO) certificates with international certificates, such as those issued under *The Safety of Life at Sea Convention* and the *International Convention on Load Lines*, as well as with domestic certificates such as the Coast Guard's *Certificate of Inspection*. An expiration date also would assist Customs and CBP officers in determining the validity of a certificate, and would ensure that the FMC periodically confirms PVO information previously submitted to the Commission. The proposed rule would provide that the Commission, for good cause, could issue a Certificate (Performance) with an expiration date of less than five years, which would provide for issuance of short-term certificates to PVOs that operate from U.S. ports for a short period.

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 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 and applications](http://www.fmc.gov/forms_and_applications). The proposed rule would allow for the optional electronic filing of a PVO's semiannual statement under 46 CFR 540.9(h). Forms FMC-132A, *Passenger Vessel Surety Bond (Performance)*, and 133A, *Guaranty in Respect of Liability for Nonperformance, Section 3 of the Act*, both would be revised to allow for optional electronic filing. The proposed rule would revise Form FMC-131 to more closely comport with the information needed in an application and eventually allow for the form to be completed electronically. 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 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 (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 15 days following such change.

8. In accordance with the requirements of the Administrative Procedure Act, 5 U.S.C. § 553, this notice of proposed rulemaking was published in the Federal Register on September 20, 2011, at 76 FR 58227, for public comments. Respondents have 60 days to respond with their views regarding the collection of information. The extent of such comments will be addressed in the preamble to the final rule.

Prior to the publication of the NPRM, the Commission issued a Notice of Inquiry (NOI) (December 9, 2009, 74 FR 65125), soliciting information and comments on whether the passenger vessel financial responsibility regulations should be amended. The NOI focused on (1) the cost of complying with nonperformance regulations; (2) adequacy of nonperformance coverage; and (3) practices of sureties, credit card companies and others. On March 3, 2010, the Commission held a public hearing to receive further information regarding PVOs' financial responsibility. A number of comments were submitted in response to the NOI; the FMC has considered these comments and now proposes to amend its rules.

The FMC also occasionally consults with U.S. CBP and Coast Guard since the PVO 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).

- 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
- 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 9 hours is necessary to complete Form FMC-131 to obtain casualty and performance certificates (405 hours).

The annual cost to respondents for wages, benefits and overhead is estimated at \$124,360. 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.]

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 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.

13. In addition to the total hour cost burden, respondents incur costs for required filing fees² as follows -- 46 CFR 540.4(b): Passenger Vessel Certificate (Performance) - \$2,767; Addition or Substitution of Vessel - \$1,382; 46 CFR 540.23(b): Passenger Vessel Certificate (Casualty) - \$1,206; and Addition or Substitution of Vessel - \$605.

The total costs for filing fees in FY 2010 are shown below:

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

Aside from the foregoing filing fees, respondents have no capital or start-up costs associated with this regulation.

14. Total annual cost to the Federal Government for this rule and application form is estimated to be approximately \$185,672, 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 \$171,760.

15. OMB recently approved a request for extension of this information collection. The total number of annual hours requested in that extension request was 1,294 hours, and was based upon the number of actual filings by respondents in FY 2010. The FMC believes that the proposed revisions to this rule will increase the annual hour burden upon the respondents by 45 hours to 1,339 hours annually.

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.

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.

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) + 405 hours (Form FMC-131) = 1,339 total hours

- 10% CEO (134 hours)
- 20% Lawyer (268 hours)
- 60% CPA (803 hours)
- 10% Secretary (134 hours)

The annual salary calculations have been formulated using the Department of Labor’s May 2010 National Industry-Specific Occupational Employment and Wages Estimates for Water Transportation. We have also added to the basic salary an overhead figure of \$22.11 per hour and benefits of 24.75% (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

$\$214,910 + (214,910 \times 24.75\%) = \$268,100/2,080 = \$128.89 + \$22.11 = \$151.00 = \text{CEO adjusted hourly salary}$

$\$129,440 + (129,440 \times 24.75\%) = \$161,476/2,080 = \$77.63 + \$22.11 = \$99.74 = \text{Lawyer adjusted hourly salary}$

$\$109,046 + (109,046 \times 24.75\%) = \$136,035/2,080 = \$65.40 + \$22.11 = \$87.51 = \text{CPA adjusted hourly salary}$

$\$51,790 + (51,790 \times 24.75\%) = \$64,608/2,080 = \$31.06 + \$22.11 = \$53.17 = \text{Secretary adjusted hourly salary}$

Employee	Hourly Salary	Number of Hours	Total
CEO	\$151.00	134	\$ 20,234
Lawyer	\$99.74	268	\$ 26,730
CPA	\$87.51	803	\$ 70,271
Secretary	\$53.17	134	\$ 7,125
TOTALS		1,339	\$124,360

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

The annual salary calculations have been formulated using the Federal Government’s August 2011 salary table (overhead of \$22.11 per hour and benefits of 24.75% per year have been added to the basic salary).

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

$\$165,300 + (165,300 \times 24.75\%) = \$206,212/2,080 = \$99.14 + \$22.11 = \$121.25$ adjusted hourly salary

Office Chief (GS 14/3) – 20% (416 hours)

$\$112,224 + (112,224 \times 24.75\%) = \$139,999/2,080 = \$67.31 + \$22.11 = \$89.42$ adjusted hourly salary

Industry Analyst (GS 13/4) – 40% (832 hours)

$\$97,936 + (97,936 \times 24.75\%) = \$22,175/2,080 = \$58.74 + \$22.11 = \$80.85$ adjusted hourly salary

Industry Analyst (GS 12/2) – 40% (832 hours)

$\$77,368 + (77,368 \times 24.75\%) = \$96,517/2,080 = \$46.40 + \$22.11 = \$68.51$ adjusted hourly salary

Program Support Assistant (GS 8/7) – 10% (208 hours)

$\$56,092 + (56,092 \times 24.75\%) = \$69,975/2,080 = \$33.64 + \$22.11 = \$55.75$ adjusted hourly salary

Employee	Hourly Salary	Number of Hours	Total
Bureau Director	\$121.25	104	\$ 12,610
Office Chief	\$ 89.42	416	\$ 37,199
Industry Analyst	\$ 80.85	832	\$ 67,267
Industry Analyst	\$ 68.51	832	\$ 57,000
Information Processing Assistant	\$ 55.75	208	\$ 11,596
TOTALS		2,392	\$185,672

Estimated Burden Cost to the Federal Government:	\$185,672
Offset by Respondent Filing Fees:	<u>\$ 13,912</u>
Total Cost to Government	\$171,760