

**NARRATIVE SUPPORTING STATEMENT
FOR 46 CFR PART 515
AND PROPOSED CHANGES TO RELATED FORMS FMC- 48, 48A, 67, 68, 69 and 69A**

A. Justification

1. Section 19 of the Shipping Act of 1984, as modified by Public Law 105-258 (The Ocean Shipping Reform Act of 1998) (Shipping Act) and Section 424 of Public Law 105-383 (The Coast Guard Authorization Act of 1998), requires that all ocean transportation intermediaries (OTIs) in the United States to be licensed by the Commission, publish a tariff of their rates and charges and provide a bond, proof of insurance or other surety. These requirements are now codified in positive law at 46 U.S.C. §§ 40901-40904 (2006). Non-vessel-operating common carriers (NVOCCs) OTIs that are not resident “in the United States” must publish a tariff and provide a bond, proof of insurance or other surety. These requirements are implemented in Commission regulations contained in 46 CFR Part 515.

FMC Docket No. 13-05 *Amendments to Regulations Governing Ocean Transportation Intermediary Licensing & Financial Responsibility Requirements, & General Duties* was commenced May 21, 2013 as an Advance Notice of Proposed Rulemaking. The ANPR was published in the *Federal Register*. 78 Fed. Reg. 32946 - 32978 (May 31, 2013). Over 80 written comments were received in response to the ANPR.

After further outreach to the industry, numerous concepts and proposals in the ANPR were deleted from further consideration by the Commission. *Amendments to Regulations Governing Ocean Transportation Intermediary Licensing & Financial Responsibility Requirements, & General Duties*. The Commission voted at its meeting of September 25, 2014 to proceed with the NOPR. The NOPR was published in the *Federal Register*. 79 Fed. Reg. 61544 - 61561 (October 10, 2014). The Commission received twenty-five comments in response to the NOPR. See the Summary of Comments, separately attached to this narrative.

The Commission voted on October 21, 2015 to adopt a Final Rule. The Final Rule reflects the changes made by the Commission at the ANPR stage that were set forth in the NOPR. The Final Rule has not yet been published in the *Federal Register*.

The Final Rule retains the minor changes to Forms FMC-48, FMC-48A, *OTI Optional Rider for Additional NVOCC Financial Responsibility Bond Form*, FMC-67, *OTI Insurance Form*, FMC-68, *OTI Guaranty Form*, FMC-69, *OTI Group Bond Form*; and FMC-69A, *Optional Rider for Additional NVOCC Financial Responsibility for Group Bonds*. These Forms were included for public comment at all stages of this rulemaking proceeding. No new forms are included in the Final Rule.

Forms FMC-48, FMC-48A, FMC-67, FMC-68, FMC-69, and FMC-69A

Forms FMC-48, FMC-67, FMC-68, and FMC-69 are revised to refer to §515.21, which section requires the financial responsibility to be furnished by each OTI. These Forms are also revised to require financial responsibility providers to promptly submit notices to the Commission of each claim made against an OTI and of the amount paid by the financial responsibility provider. As such these changes do not require additional information collection from the OTIs but from the financial responsibility providers.

These Forms currently provide that claims against the financial responsibility covered by them shall be available to pay any settlement “pursuant to a claim under 46 CFR § 515.23(b).” Each of these forms are revised to provide for settlement “pursuant to a claim under 46 CFR § 515.23” so as to encompass all of the relevant provisions of §515.23. .

The forms are revised to provide that the notification required be directed specifically to the Director of the Bureau of Certification and Licensing rather than to the Commission generally or to the Commission’s Secretary. Forms FMC-48A, *OTI Optional Rider for Additional NVOCC Financial Responsibility* and FMC-69A, *Optional Rider for Additional NVOCC Financial Responsibility for Group Bonds*, are also revised to require notices be provided to the Director, Bureau of Certification and Licensing.

License Renewal

The Final Rule provides for implementation of the requirement in section 515.14(d) that all licensed OTIs must renew their license every 3 years. Responding to numerous comments to at the ANPR and the NOPR stages, the Commission will provide a renewal process that is entirely on-line and user friendly. The license renewal requirement ensures that information essential to the Commission’s oversight of OTIs is verified periodically. Licensed OTIs will verify on-line information material to a licensee’s ongoing status and contact information. OTIs would only update information that is no longer accurate. There will be no fee assessed for the renewal process.

If there are no changes to an OTI’s information, the renewal process acts as a certification that the information remains accurate and may be relied upon by the public and the Commission.

The Commission voted to delay the effectiveness of paragraphs 515.14(c) and (d) (contain the license renewal requirements) for one year from the effective date of the Final Rule. The delay will provide time necessary for the Commission to develop the computer elements that enable OTIs to complete their license renewals on-line, and to commence a phased implementation whereby OTI renewals are scheduled, received and processed on a monthly basis.

Expedited Hearing and Appeal Procedures

To further ensure due process in circumstances where the Commission gives notice of intent to revoke or suspend an OTI’s license, terminate the registration of an un-licensed foreign-

based NVOCC, or deny a license application, section 515.17(c) has been added to provide that an OTI may file exceptions challenging an adverse decision by a hearing officer pursuant to the requirements of section 502.227 of the Commission's Rules of Practice and Procedure. Section 502.227 governs exceptions filed to, for example, Initial Decisions of Administrative Law Judges in formal Commission proceedings.

Financial Responsibility Increases for Unincorporated Branch Offices Eliminated.

The Final Rule deletes the section 515.21(a)(4) requirement that an OTI's financial responsibility be increased by \$10,000 for each unincorporated branch office established by the OTI.

2. Information obtained under part 515 and the revised financial responsibility Forms will be used to improve the Commission's oversight of OTIs with respect to the resolution of claims made against OTIs' financial responsibility and with respect to assuring that the information the Commission has in its records is regularly obtained and updated through the OTI license renewal process.

3. The information requested by the Commission is necessary to the agency's licensing process, and does not duplicate any information that would normally be collected elsewhere.

4. The Commission's Chairman has certified that the collection of information pursuant to the Notice of Proposed Rulemaking does not have a significant economic impact on a substantial number of small entities. The Commission's threshold analysis required by the Regulatory Flexibility Act, as amended, revealed that the only disbenefit of the proposed rule was the renewal requirement and that burden is estimated to be less than one-tenth of one percent of average annual revenue for the smallest OTIs.

5. This information collection does not (1) require OTI respondents to report information to the agency more often than every 3 years; (2) require respondents to prepare a written response to a collection of information in fewer than 2 years after receipt of it; (3) require respondents to submit more than an original and two copies of any document; (4) include confidentiality pledges; or (5) require respondents to submit proprietary information without protecting such information to the full extent of the law. The FMC is actively pursuing IT solutions that will facilitate secure, automated filing of OTI licensing and renewal data. Existing 46 CFR 515.33 requires that certain records be kept for five years. This requirement is consistent with the statute of limitations period for civil penalty cases, and is consistent with the requirements contained in section 13 of the Shipping Act of 1984 (46 U.S.C. 41109). Any confidential information required under this collection (such as Social Security Numbers, is protected by the Privacy Act and by security and privacy policies developed by the bureau responsible for this collection. Social Security Numbers in the optional automated filing are encrypted.

6. If the information were not collected, the Commission would not have information upon which to support a finding that an applicant, or existing licensee, is qualified for licensing or continues to meet the regulatory requirements of an OTI. Failure to collect this information would also prevent the Commission from adequately protecting the public by ensuring that OTIs

have obtained acceptable evidence of financial responsibility as required by section 19 of the Shipping Act. Therefore, the Commission would be unable to fulfill its statutory mandate.

7. Not applicable – The Commission does not provide any payments or gifts to respondents.
8. The information submitted by OTIs is subject to the limitations of the Freedom of Information Act and the Privacy Act. The bureau involved in this collection of information also has strict policies in place regarding the handling of confidential or sensitive information.
9. The Commission considers this information necessary because licensees will be representing others in fiduciary capacities or assuming responsibility for the safe transportation of cargo. There are no questions of a sensitive nature in Forms FMC-48, 48A, 67, 68, 69 or 69A.
10. There is currently an estimated universe of approximately 6,000 U.S. licensed OTIs under 46 CFR 515. The Commission estimates that this collection of information imposes, in varying degrees, a reporting burden to the entire respondent universe. The burden is calculated on the estimated amount of time necessary to comply with various requirements of 46 CFR 515, as set forth in the Attachment to this document. The Attachment shows the breakdown of the estimated burden of **5,469** hours for respondents to comply with 46 CFR 515.

The annual cost to respondents is estimated at **\$479,715**. This 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 515. It also includes clerical time, as well as overhead and operational expenses. No time is allocated for disclosure, as there are no disclosure requirements involved in this collection.

We estimate that the response time to file these forms, including the time to gather the documents necessary to fill in the form, varies from 1 hour to a maximum of 5 hours; on average it is estimated that it takes 2 hours to complete the form.

11. There are no additional cost burdens to respondents or recordkeepers other than those reported in item 12.
12. The cost to the Federal Government for the Commission to carry out this collection of information is estimated to be **\$1,113,525**. This includes overhead and benefits, and is based on a burden of **13,390** person-hours.
13. The burden estimate for this collection of information has decreased since it was last submitted. A decrease in the number of filings regarding financial instruments and license applications resulted in a reduction in the burden.
14. Not applicable – no information will be published.
15. Not applicable – the expiration date will be displayed.
18. Not applicable – no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

This collection of information does not employ statistical methods.

ATTACHMENT

INDUSTRY BURDEN FOR PART 515 FORMS

Requirement	Respondents (See Note 1)	Annual Instances	Average Person-hours Per Response (See Note 2)	Total Person- hours	Frequency (See Note 6)
OIT Licensing: 46 CFR 515.12					
FMC-18 paper form (new/amended)		55	2 (see Note 3)	110 hours	
FMC-18 electronic form (new/amended)		570	2 (see Note 3)	1140 hours	
OIT License Renewal		2,000	45 minutes	1500 hours	
Financial Responsibility: 46 CFR 515.22					
FMC-48 - OTI Bond (new/amended)		6,990 (see Note 4)	20 minutes (see Note 5)	2330 hours	
FMC-67 - Insurance		0	0	0	
FMC-68 - Guaranty		0	0	0	
FMC-69 Group Bond (new/amended)		64	20 minutes (see Note 5)	21 hours	
Financial Responsibility: 46 CFR 515.25					
FMC-48A Optional Rider		13	20 minutes (see note 5)	4 hours	
FMC 69A Optional Group Rider		2	20 minutes	40 minutes	
FMC-65 License FMC-65 Renewal		150 1300	15 minutes 15 minutes	38 hours 325 hours	
GRAND TOTAL		11,144		5,469 hours	

Note 1 - The total respondent universe is estimated at 6,000 (Estimated Total of OTIs at end of FY 2014).

Note 2 - For each entry in this column, the average industry person-hours must be subdivided into 3 categories, as follows:

- Recordkeeping (collecting documents);
- Reporting (completing form); and
- Disclosure (to 3rd parties, if any).

Example: FMC-18 paper form - 2 hours total consisting of: recordkeeping - 30 minutes; reporting - 1 hour 30 minutes; disclosure - 0 minutes.

Note 3 - Response time varies from 1 hour to a maximum of 5 hours. On average, it is estimated that it would take 2 hours to complete an application. The estimated average time of 2 hours is allocated as: recordkeeping - 30 minutes; reporting - 1 hour 30 minutes; and disclosure - 0 minutes.

Note 4 - This figure reflects the number of annual changes made to the Proof of Financial Responsibility, including terminations, by freight forwarders and NVOCCs in FY 2014.

Note 5 - The estimated time of 20 minutes is allocated as: recordkeeping - 10 minutes; reporting - 10 minutes; and disclosure - 0 minutes.

Note 6 - Biennially, decade, monthly, once, semi-annually, annually, daily, hourly, on occasion, quarterly, or weekly

Estimated Burden and Costs, Including Overhead, to Respondents

1,250 person-hours (Form FMC-18) + 2330 person-hours (Form FMC-48) +4 person-hours (Form FMC-48A) + 21 person-hours (Form FMC-69) + 363 person-hours (Form FMC 65 New/Renewal) + 1500 person-hours (License Renewal) = 5,469 total person-hours

75% Transportation Manager (4,102 hours)
25% Clerical (1367 hours)

The annual salary calculations have been formulated using the Federal Government's 2014 salary table (overhead of 109.70% has been added to the basic salary). The salary for the transportation manager was calculated using the salary of a GS 13/5 Senior Transportation Specialist, and the salary for the clerical employee was calculated using the salary of a GS 6/5 Program Assistant.

Formula: Annual salary/2087 + overhead rate = adjusted annual salary

$\$101,914/2087 = \$48.83 + 109.70\% = \$102.39 =$ Transportation Manager adjusted hourly salary

$\$43,476/2087 = \$20.83 + 109.70\% = \$43.68 =$ Clerical adjusted hourly salary

Employee	Hourly Salary	Number of Hours	Total
Transportation Manager	\$102.39	4102	\$420,004
Clerical	\$43.68	1367	\$ 59,711
TOTALS		5469	\$479,715