

**NARRATIVE SUPPORTING STATEMENT
FOR 46 CFR PART 540 AND
RELATED FORMS 132A AND 133A**

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the information collection.

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 with passenger berths or stateroom accommodations for at least 50 passengers, and embarking passengers at United States ports, to establish their financial responsibility to meet liability incurred for death or injury and to indemnify passengers in the event of nonperformance of transportation.

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 a 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 a Certificate (Performance) evidencing compliance with Section 3 of Public Law 89-777.

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 Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages* are issued to the applicant/certificant. The certificates 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 cap on passenger vessel financial responsibility under Section 3 (Performance) of Public Law 89-777, 46 U.S.C. 44101-44106, is adjusted biennially to the nearest \$1 million using the Bureau of Labor Statistics's Consumer Price Index for all Urban Consumers (CPI-U).

Smaller passenger vessel operators' (PVO) financial responsibility requirements may be adjusted by requesting consideration for alternative forms of protection from the Director of the Bureau of Certification and Licensing.

The FMC's PVO Certificates (Performance) are required to be renewed every 5 years. The renewal of the certificates assists U.S. Customs and Border Protection officers in determining the validity of a certificate, and ensures that the FMC periodically confirms PVO information previously submitted.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information is used by the Commission's staff to determine whether PVOs meet the financial responsibility requirements and qualify for passenger vessel certificates, to keep the information current, and to assure a domestic agent for service of process. The information is required to ensure that PVOs have adequate financial responsibility to indemnify passengers in the event of nonperformance or casualty. The Commission will 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 embarking passengers from United States ports without establishing their financial responsibility.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

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 <https://www.fmc.gov/forms-and-applications/>. The regulations allow 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*, can also be filed electronically.

4. Describe efforts to identify duplication.

The information requested is unique to passenger vessel certification and is not available from any other source. The information is collected every five years, unless there are changes in ownership, charterers, or operators, or an application needs to be amended to reflect a material change in fact.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

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

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

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. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. (a) requiring respondents to report information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to product valid and reliable results that can be generalized to the universe of study; (f) requiring the use of statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in statute of regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

This information collection (IC) does not: require respondents to report information to the agency more often than quarterly, except for weekly recomputation certificates for escrow arrangements; require respondents to submit more than an original of any document; contain a statistical survey; require respondents to retain records for more than three years; include confidentiality pledges that are not supported by established statutory authority; 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. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside FMC to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or report.

In accordance with the Paperwork Reduction Act and OMB's regulations, notice was published in the *Federal Register* on August 25, 2021, at 86 FR 47441, requesting public comments. Respondents had 60 days to respond with their views regarding the collection of information. The Commission received no comments.

The FMC also occasionally consults with U.S. CBP and Coast Guard since the PVO certificates are subject to inspection by these agencies. A vessel may be refused clearance to embark passengers without these certificates (see 46 U.S.C. 44105 and 46 U.S.C. 60105).

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

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

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The information filed by applicants, certificants and underwriters is subject to the limitations of the Freedom of Information Act, Trade Secrets Act, and 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. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why FMC considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

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

12. Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, FMC should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample fewer than 10 potential respondents is desirable.

The estimated reporting respondent universe is 236. 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 of 46 CFR part 540. 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 FY2021 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 Part 540: Estimates for the reporting and recordkeeping requirements contained in the rules are based on the type and complexity of the reports required (1043 hours).¹
- b. Application Form FMC-131: At present there is a maximum estimated respondent universe of 236 from 48 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 25 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 (200 hours).

The annual cost to respondents for wages, benefits and overhead is estimated at \$154,077. The cost has been calculated in consideration of the time to gather information and furnish it to the Commission, and comply with the requirements of 46 CFR Part 540. It also includes clerical time as well as overhead and operational expenses. [See Attachment 1.]

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

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 FY2021. 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.

*** The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**

*** If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**

*** Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

Respondents incur costs for required filing fees² as follows -- 46 CFR 540.4(e): Passenger Vessel Certificate (Performance) - \$4,332; Addition or Substitution of Vessel - \$2,180; 46 CFR 540.23(b): Passenger Vessel Certificate (Casualty) - \$1,889; and Addition or Substitution of Vessel - \$921.

The total costs for filing fees in FY 2021 are shown below:

Passenger Vessel Certificate (Performance)	2 @ \$4,332	\$ 8,664
Add/Substitute Vessel (Performance)	18 @ \$2,180	\$39,240
Add/Substitute Vessel (Casualty)	18 @ \$ 921	<u>\$16,578</u>
	TOTAL	\$64,482

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

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 \$4,332 for an initial Certificate (Performance) and \$1,889 for an initial Certificate (Casualty). To add subsequent vessels under the Commission's passenger vessel program, the application fees are \$2,180 for a Certificate (Performance) and \$921 for a Certificate (Casualty). There are no filing fees to amend an application.

14. Provide estimates of annualized cost to the Federal government.

Total annual cost to the Federal Government for this rule and application form is estimated to be approximately \$165,280, 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 Part 540. [See Attachment 2.] This cost is offset by the collection of \$64,482 in required filing fees. The net estimated total annual cost to the government of this collection of information is \$100,798.

15. Explain the reasons for any program changes or adjustments reported in Items 13 (or 14) of OMB Form 83-I.

Form FMC-131 is being revised to include a required field for PVOs to provide the web page address of their refund instructions on how passengers may obtain refunds in the event of nonperformance of transportation. The process for obtaining refunds in the event of nonperformance are outlined in revised forms FMC-132A, FMC-133A, and the escrow account. The passenger must make a written request for a refund from the PVO in accordance with the respective PVO's claims procedures. If the PVO claims procedure provides less than 180 days for submission of claims after nonperformance of transportation, the passenger may seek reimbursement from the financial instrument provider after providing written notification to the PVO.

In the event the passenger is unable to resolve the claim within 180 days after nonperformance of transportation occurs or if the claim is denied by the PVO, the passenger may submit a claim against the financial instrument as per instructions on the Commission website. The claim must include a copy of the boarding pass, proof and amount of payment, the cancellation or delay notice, and dated proof of properly filed claim against the PVO or written notification as required in the paragraph above. All documentation must clearly display the vessel and voyage with the scheduled and actual date of sailing.

Additionally, every person who has been issued a Certificate (Performance) will include within their semi-annual statement any instances of nonperformance of transportation. The information will be collected in a data format, as opposed to receiving this information in a narrative format, which will assist us in analyzing the submissions.

16. For collections whose results will be published, outline the plans for tabulation and publication.

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

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

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

18. Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.

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.

Attachment 1

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

1043 hours (reporting and recordkeeping requirements) + 200 hours (Form FMC-131) = 1,243 total hours

10% CEO (124 hours)

20% Lawyer (249 hours)

60% CPA (746 hours)

10% Secretary (124 hours)

The annual salary calculations have been formulated using the Department of Labor's May 2020 National Industry-Specific Occupational Employment and Wages Estimates for Water Transportation (overhead of 114.89% has been added to the basic salary).

Formula: Annual salary/2080 + overhead rate = adjusted hourly salary

$\$262,360/2080 + 114.89\% = \$271.04 = \text{CEO adjusted hourly salary}$

$\$169,860/2080 + 114.89\% = \$175.48 = \text{Lawyer adjusted hourly salary}$

$\$90,050/2080 + 114.89\% = \$93.03 = \text{CPA adjusted hourly salary}$

$\$57,560/2080 + 114.89\% = \$59.46 = \text{Secretary adjusted hourly salary}$

Employee	Hourly Salary	Number of Hours	Total
CEO	\$271.04	124	\$ 33,609
Lawyer	\$175.48	249	\$ 43,695
CPA	\$93.03	746	\$ 69,400
Secretary	\$59.46	124	\$ 7,373
TOTALS		1,243	\$154,077

Attachment 2

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

The annual salary calculations have been formulated using the Federal Government's 2022 salary table (overhead of 114.89% has been added to the basic salary).

Bureau Director (GS 15/5) – 3% (62 hours)

$\$168,282/2080 + 114.89\% = \173.84 adjusted hourly salary

Program Manager (GS 14/5) – 10% (208 hours)

$\$143,064/2080 + 114.89\% = \147.80 adjusted hourly salary

Sr. Industry Analyst (GS 13/5) – 12% (250 hours)

$\$121,065/2080 + 114.89\% = \125.07 adjusted hourly salary

5 Industry Analyst (GS 7/5) – 15% (1560 hours)

$\$57,393/2080 + 114.89\% = \59.29 adjusted hourly salary

Employee	Hourly Salary	Number of Hours	Total
Bureau Director	\$173.84	62	\$ 10,778.08
Program Manager	\$147.80	208	\$ 30,742.40
Sr. Industry Analyst	\$125.07	250	\$ 31,267.50
Industry Analyst	\$59.29	312	\$ 18,498.48
Industry Analyst	\$59.29	312	\$ 18,498.48
Industry Analyst	\$59.29	312	\$ 18,498.48
Industry Analyst	\$59.29	312	\$ 18,498.48
Industry Analyst	\$59.29	312	\$ 18,498.48
TOTALS		2,080	\$165,280.38

Estimated Burden Cost to the Federal Government:	\$165,280
Offset by Respondent Filing Fees:	<u>\$ 64,482</u>
Total Cost to Government	\$ 100,798

Submitted: 10/19/2021

