

**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). The Shipping Act requires non-vessel-operating common carriers (NVOCCs) that are not “in the United States” to 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.

This proceeding 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. Following review of those comments, Commission instructed staff as to preparation of an NOPR. Numerous concepts and proposals were dropped from further consideration.

After further outreach to the industry, the Commission voted at its meeting of September 25, 2014 to proceed with the NOPR. The NOPR in FMC Docket No. 13-05, *Amendments to Regulations Governing Ocean Transportation Intermediary Licensing & Financial Responsibility Requirements, & General Duties* was published in the *Federal Register*. 79 Fed. Reg. 61543 (October 10, 2014).

The NOPR proposes to make 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*. No new forms are included in the NOPR for comment.

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. This would require no additional information collection from OTIs. 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.

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.

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. .

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 under them be provided to the Director, Bureau of Certification and Licensing. Forms FMC-48A and FMC-69A are available from the FMC homepage or via www.forms.gov.

License Renewal

The NOPR would implement a new 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 stage, the Commission's intention is that the renewal process will be entirely on-line and user friendly. The license renewal requirement is intended to ensure that information essential to the Commission's oversight of OTIs is verified periodically. Renewal will require licensed OTIs to verify on-line only certain information material to a licensee's ongoing status and contact information. ■

The online renewal process requests the licensee to review certain data elements previously submitted by the licensee, and maintained in the Commission's licensing database. OTIs would only update information that is no longer accurate.

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

License renewal is completed upon an OTI's verification of, and updating as needed, the information in the on-screen renewal function at the Commission's website. Though renewal is complete upon such verification, material changes may trigger existing requirements of the Commission's regulations, such as a QI change or a business structure change.

The Commission does not intend to implement license renewals until it is able to ensure that the renewals can be completed entirely on-line. The Commission is currently developing the requisite elements of its IT systems to permit on-line renewals. The Commission also intends that there will be no fee assessed for the renewal process.

2. Information obtained under this part and through these revised 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. 46 CFR 515.33 requires that certain records be kept for five years. This requirement is consistent with the statute of limitations, provisions 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. The FMC welcomes feedback from the industry on clarity of instructions, reporting format, and data elements relative to the two new forms.

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		150	15 minutes	38 hours	
FMC-65 Renewal		1300	15 minutes	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