

## Federal Maritime Commission

## § 540.5

vessel for a particular voyage or series of voyages; and

(2) Whereby the involved corporate or institutional entity provides such accommodations to the ultimate passengers free of charge and such accommodations are not resold to the public.

[49 FR 36313, Sept. 14, 1984, as amended at 57 FR 41891, Sept. 14, 1992]

### § 540.3 Proof of financial responsibility, when required.

No person in the United States may arrange, offer, advertise or provide passage on a vessel unless a Certificate (Performance) has been issued to or covers such person.

### § 540.4 Procedure for establishing financial responsibility.

(a) In order to comply with section 3 of Public Law 89-777 (80 Stat. 1357, 1358) enacted November 6, 1966, there must be filed an application on Form FMC-131 for a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation. Copies of Form FMC-131 may be obtained from the Secretary, Federal Maritime Commission, Washington, DC 20573.

(b) An application for a Certificate (Performance) shall be filed in duplicate with the Secretary, Federal Maritime Commission, by the vessel owner or charterer at least 60 days in advance of the arranging, offering, advertising, or providing of any water transportation or tickets in connection therewith except that any person other than the owner or charterer who arranges, offers, advertises, or provides passage on a vessel may apply for a Certificate (Performance). Late filing of the application will be permitted only for good cause shown. All applications and evidence required to be filed with the Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency. The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart. An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of \$2,767. An application

for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of \$1,382.

(c) The application shall be signed by a duly authorized officer or representative of the applicant with a copy of evidence of his or her authority. In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than five (5) days following such change. For the purpose of this subpart, a material change shall be one which: (1) Results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart, or (2) requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility. Notice of the application for, issuance, denial, revocation, suspension, or modification of any such Certificate shall be published in the FEDERAL REGISTER.

[49 FR 36313, Sept. 14, 1984, as amended at 59 FR 59172, Nov. 16, 1994; 63 FR 50537, Sept. 22, 1998; 67 FR 39861, June 11, 2002; 70 FR 10330, Mar. 3, 2005]

### § 540.5 Insurance, guaranties, and escrow accounts.

Except as provided in § 540.9(j), the amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue of the applicant on the date within the two fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue. The Commission, for good cause shown, may consider a time period other than the previous two-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required. Evidence of adequate financial responsibility for the purposes of this subpart may be established by one or a combination (including § 540.6 Surety Bonds) of the following methods:

## § 540.6

## 46 CFR Ch. IV (10-1-06 Edition)

(a) Filing with the Commission evidence of insurance, issued by an insurer, providing coverage for indemnification of passengers in the event of the nonperformance of water transportation.

(1) Termination or cancellation of the evidence of insurance, whether by the assured or by the insurer, and whether for nonpayment of premiums, calls or assessments or for other cause, shall not be effected: (i) Until notice in writing has been given to the assured or to the insurer and to the Secretary of the Commission at its office, in Washington, DC 20573, by certified mail, and (ii) until after 30 days expire from the date notice is actually received by the Commission, or until after the Commission revokes the Certificate (Performance), whichever occurs first. Notice of termination or cancellation to the assured or insurer shall be simultaneous to such notice given to the Commission. The insurer shall remain liable for claims covered by said evidence of insurance arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

(2) The insolvency or bankruptcy of the assured shall not constitute a defense to the insurer as to claims included in said evidence of insurance and in the event of said insolvency or bankruptcy, the insurer agrees to pay any unsatisfied final judgments obtained on such claims.

(3) No insurance shall be acceptable under these rules which restricts the liability of the insurer where privity of the owner or charterer has been shown to exist.

(4) Paragraphs (a)(1) through (a)(3) of this section shall apply to the guaranty as specified in paragraph (c) of this section.

(b) Filing with the Commission evidence of an escrow account, acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. Parties filing escrow agreements for Commission approval may execute such agreements in the form set forth in appendix A of subpart A of this part.

(c) Filing with the Commission a guaranty on Form FMC-133A, by a Protection and Indemnity Association with established assets, reserves and reinsurance acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC-133A, however, may be amended by the Commission in a particular case for good cause.

(d) Revenues derived from whole-ship charters, as defined in § 540.2(l), may be exempted from consideration as unearned passenger revenues, on condition that, in the case of a new operator or within 30 days of the execution of the whole-ship charter if the operator has a Performance Certificate for the vessel in question: (1) A certified true copy of the contract or charter is furnished with the application; (2) The chartering party attests that it will redistribute the vessel's passenger accommodations without charge; and (3) A document executed by the chartering party's Chief Executive Officer or other responsible corporate officer is submitted by which the chartering party specifically acknowledges that its rights to indemnification under section 3 of Public Law 89-777 may be affected by the reduction in section 3, Public Law 89-777, financial responsibility coverage attributable to the exclusion of such funds from the operator's UPR.

[49 FR 36313, Sept. 14, 1984, as amended at 55 FR 1824, Jan. 19, 1990; 57 FR 41891, Sept. 14, 1992; 57 FR 62480, Dec. 31, 1992; 67 FR 44776, July 5, 2002]

### § 540.6 Surety bonds.

(a) Where financial responsibility is not established under § 540.5, a surety bond shall be filed on Form FMC-132A. Such surety bond shall be issued by a bonding company authorized to do business in the United States and acceptable to the Commission for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC-132A, however, may be amended by the Commission in a particular case for good cause.

(b) In the case of a surety bond which is to cover all passenger operations of the applicant subject to these rules,