

JANUARY 16, 1990

FEDERAL MARITIME COMMISSION

46 CFR PART 540

[DOCKET NO. 89-25]

SECURITY FOR THE PROTECTION
OF THE PUBLIC

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: The Commission is adding a new provision to Subparts A and B of its rules requiring proof of financial responsibility for passenger vessels. The new language provides that the Commission may permit, for good cause, deviations from the standard language prescribed in Forms FMC-132A, FMC-133A, FMC-132B and FMC-133B, which are the surety bond and guaranty forms for financial responsibility vis-a-vis nonperformance and casualty. The new regulations will afford greater flexibility for the Commission to consider surety bonds and guaranties which, because of the particular circumstances of the applicant, may differ from the standard prescribed language.

DATES: Effective upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

The Commission's rules implementing Public Law 89-777, 46 U.S.C. app. 817d and 817e, are contained in Part 540 of 46 CFR. They prescribe requirements for certification of financial responsibility for passenger vessels against nonperformance or liability for death or injury (casualty). Codified in the rules are the following forms which are to be used by applicants for certificates:

FMC-132A - Passenger Vessel Surety
Bond (46 CFR Part 540) [Performance]

FMC-133A - Guaranty in Respect of
Liability for Nonperformance,
Section 3 of the Act

FMC-132B - Passenger Vessel
Surety Bond (46 CFR Part 540) [Casualty]

FMC-133B - Guaranty in Respect of
Liability for Death or Injury, Section
2 of the Act

Under the present rules, applicants must submit surety bonds and guaranties using the language and format of the forms.

On December 15, 1989, the Commission published for comment in the Federal Register, 54 FR 51,243, a Proposed Rule which would add the following provision to the relevant sections of the regulations: "The requirements of Form ____, however, may be amended by the Commission in a particular case for good cause." This change was proposed to allow the Commission flexibility in considering evidence of financial responsibility when particular, unusual circumstances may justify a deviation from the forms. The proposal was not

intended to effect a lower or relaxed standard of evidence of financial responsibility, but rather to accommodate variations in arrangements which may be necessary in particular situations, lest a rigid adherence to form result in undue hardship on applicants.

No comments on the Proposed Rule were submitted. The Commission has determined to adopt the Proposed Rule as written as a Final Rule.

The Federal Maritime Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this Final Rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

The Final Rule does not contain information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. Accordingly, OMB approval of the Final Rule is not required.

The Commission has determined that this rule is excepted from the 30-day effective date requirement of 5 U.S.C. 553 because it relieves a restriction from existing requirements.

List of Subjects in 46 CFR Part 540:

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; secs. 2 and 3, Pub. L. 89-777, 80 Stat. 1356-1358, 46 U.S.C. app. 817e, 817d; sec. 43 of the Shipping Act, 1916, 46 U.S.C. app. 841a; sec. 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716, the Federal Maritime Commission amends Part 540 of Title 46 of the Code of Federal Regulations as follows:

1. The authority citation for Part 540 continues to read as follows:

AUTHORITY: 5 U.S.C. 553; secs. 2 and 3, Pub. L. 89-777, 80 Stat. 1356-1358, 46 U.S.C. app. 817e, 817d; sec. 43 of the Shipping Act, 1916, 46 U.S.C. app. 841a; sec. 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716.

2. Section 540.5 is amended to add a new sentence to paragraph (c) as follows:

Section 540.5 Insurance, guaranties, escrow accounts, and self insurance.

* * * * *

(c) * * *

The requirements of Form FMC-133A, however, may be amended by the Commission in a particular case for good cause.

3. Section 540.6 is amended to add a new sentence to paragraph (a) as follows:

Section 540.6 Surety bonds.

(a) * * *

The requirements of Form FMC-132A, however, may be amended by the Commission in a particular case for good cause.

4. Section 540.24 is amended to add new sentences to paragraphs (b) and (d) as follows:

Section 540.24 Insurance, surety bonds, self-insurance, guaranties, and escrow accounts.

(b) * * *

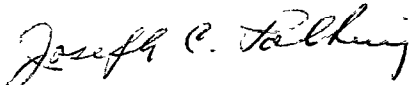
The requirements of Form FMC-132B, however, may be amended by the Commission in a particular case for good cause.

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(d) * * *

The requirements of Form FMC-133B, however, may be amended by the Commission in a particular case for good cause.

By the Commission.


Joseph C. Polking
Secretary