

**December 3, 2009**

**FEDERAL MARITIME COMMISSION  
NOTICE OF INQUIRY REGARDING  
PASSENGER VESSEL FINANCIAL RESPONSIBILITY**

**AGENCY:** Federal Maritime Commission

**ACTION:** Notice of Inquiry

**SUMMARY:** The Federal Maritime Commission is issuing this Inquiry to solicit information and comments concerning the benefits and burdens of the current Commission requirements by which passenger vessel operators establish proof of financial responsibility in the event of nonperformance of a contracted cruise from a U.S. port. Comments received from the public and interested segments of the passenger cruise industry will assist in determining whether or not the Commission should amend its regulations at 46 CFR Part 540, Subpart A.

**DATES:** Comments are due on or before February 10, 2010.

**ADDRESSES:** Address all comments concerning this Inquiry to:

Karen V. Gregory, Secretary  
Federal Maritime Commission  
800 North Capitol Street, NW  
Washington, DC 20573-0001  
Email: [secretary@fmc.gov](mailto:secretary@fmc.gov)

**FOR FURTHER INFORMATION CONTACT:**

Sandra L. Kusumoto, Director  
Bureau of Certification & Licensing  
Telephone: (202) 523-5787  
Email: [skusumoto@fmc.gov](mailto:skusumoto@fmc.gov)

## **SUPPLEMENTARY INFORMATION:**

The Commission administers Chapter 441 of Title 46 of the U.S. Code, entitled Evidence of Financial Responsibility for Passenger Transportation. 46 U.S.C. 44101-44106. As relevant, this Chapter requires operators of vessels having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports to evidence proof of financial responsibility to reimburse passengers for the water portion of their fare in the event of nonperformance (46 U.S.C. 44102), and provide coverage in the event of death or injury to passengers or other persons on voyages to or from United States ports (46 U.S.C. 44103).

In order to indemnify passengers for nonperformance of contracted cruises, passenger vessel operators (PVOs) must establish proof of financial responsibility (Nonperformance Coverage) in an amount determined by the Commission. Current Commission regulations require that Nonperformance Coverage be set at no less than 110 percent of the highest unearned passenger revenue<sup>1</sup> of the applicant within two fiscal years prior to filing an application with the Commission. 46 C.F.R. § 540.5-6. The amount of Nonperformance Coverage required is presently capped at \$15 million dollars. 46 C.F.R. § 540.9(j).

The \$15 million ceiling for Nonperformance Coverage has been in existence since 1991, when it was raised from \$10 million. The Commission is issuing this Notice of Inquiry (NOI) to gather information that will assist in assessing comprehensively the benefits or burdens that the Nonperformance Coverage requirement has on all sectors of the passenger vessel industry. Information derived through this Inquiry may determine whether changes to our program may be called for at this time. PVOs, ports, industry associations, credit and financial companies, sureties, guarantors, insurers, travel agents, cruise passengers and other interested parties are

---

<sup>1</sup> Unearned passenger revenue is defined as "that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed," 46 C.F.R. 540.2(i).

encouraged to participate by providing responses to the questions herein and information pertaining to the impact of Nonperformance Coverage.

To promote maximum participation, the NOI questions will be made available on the Commission's website, [www.finc.gov](http://www.finc.gov). The NOI questions also may be obtained by contacting the Commission's Secretary, Karen V. Gregory, by telephone at (202) 523-5725, or by email at [secretary@finc.gov](mailto:secretary@finc.gov). In addition, non-confidential comments may be submitted as an attachment to an email submission. These attachments must be submitted in Microsoft Word (2007 or prior version), Rich Text format (.rtf), or plain text (.txt).

Some commenters may wish to include some commercially sensitive information as necessary or relevant, whether by way of explaining their experience or detailing in practical terms the impact of Nonperformance Coverage. Any such information should be identified as commercially sensitive by the filer and the document or relevant portions thereof must be marked as confidential. Confidential treatment must be specifically requested for those marked portions, and one additional copy of the comments with the confidential portions redacted must be provided along with the original and one copy of the complete comments. Confidential comments should not be submitted by email. The Commission will provide confidential treatment to the extent allowable by law for submissions, or parts of submissions, for which the parties request confidentiality.

While the Commission intends that this review of Nonperformance Coverage be as thorough as possible, *there is no requirement that participants answer all NOI questions.* Commenters are free to answer only those questions for which they have direct experience or specific views.

The Commission accordingly invites written comments from interested parties responding to the following inquiries:

### **NOTICE OF INQUIRY QUESTIONS**

#### **A. PVOs' Cost of Complying with Nonperformance Regulations**

1. Do you expect your company's unearned passenger revenue to increase, decrease or remain the same over the next twelve to twenty-four months? If you expect it to change, by what percent?
2. Set forth a detailed description of your actual costs for 2008, and actual or projected costs for 2009, directly related to satisfying the FMC's PVO regulations for Nonperformance Coverage.
3. With respect to passenger bookings and payments:
  - (i) What is your company's policy with regard to passenger reimbursement in the event of nonperformance of a cruise?
  - (ii) What is your company's booking policy regarding the timing and amount of booking deposit and for payment of any fare balance?

#### **B. Adequacy of Nonperformance Coverage**

The Commission is interested in assessing whether Nonperformance Coverage remains adequate for the purpose of protecting cruise passengers. The following questions are addressed to all interested parties:

4. What is your position with regard to the adequacy of the current ceiling of \$15 million?  
Please provide a detailed explanation with your response.
5. Should the Commission consider adjusting the \$15 million cap periodically based on an inflation factor (i.e., Consumer Price Index)?

6. Should the Commission consider alternatives to the current \$15 million cap? Please provide a detailed explanation with your response.
7. If the \$15 million cap is modified, what would be the likely benefits or burdens upon PVOs, related companies and the shipping public?
8. What other methodologies could the Commission use to establish adequate coverage amounts as required by current regulations?
9. Should the Commission consider legislative alternatives to the current Nonperformance Coverage requirement? If so, set forth a detailed response.

**C. Practices of Sureties, Credit Card Companies and Others**


The Commission is interested in assessing whether and to what extent the practices of sureties, credit card issuers or other companies may affect the availability of Nonperformance Coverage. The following questions are addressed primarily to financial entities, but may be answered by PVOs or other interested parties:

10. Have credit card companies added specific requirements for servicing PVOs?
11. What are the factors credit card issuers use to assess a cruise line's creditworthiness or financial fitness? How does a credit card issuer determine whether to implement additional security (i.e., holdbacks, letters of credit, collateral)?
12. What are the factors that sureties or guarantors use to assess a cruise line's creditworthiness or financial fitness? Please describe the factors that affect premiums for passenger vessel operators. What indicators will cause an increase or decrease in premiums for bonds or guarantees?

## **FURTHER PROCEEDINGS AND SCHEDULING**

Following receipt of written comments, the Commission anticipates holding one or more hearings to receive public testimony from interested parties. The Commission will announce the dates and locations of such hearings by subsequent Order.

By the Commission.

  
Karen V. Gregory  
Secretary