



CRUISE LINES  
INTERNATIONAL  
ASSOCIATION, INC.

November 21, 2011

Ms. Karen V. Gregory, Secretary  
Office of the Secretary  
Federal Maritime Commission  
Room 1046  
800 North Capitol Street, N.W.  
Washington, D.C. 20573-0001

Dear Ms. Gregory,

The Cruise Lines International Association respectfully submits the attached comments on Docket No. 11-16, Notice of Proposed Rulemaking on Passenger Vessel Operator Financial Responsibility Requirements for Nonperformance of Transportation.

Sincerely,

A handwritten signature in blue ink, which appears to read "Christine M. Duffy". The signature is fluid and cursive, with the first name being the most prominent.

Christine M. Duffy  
President and CEO

BEFORE THE FEDERAL MARITIME COMMISSION  
Washington, DC

Passenger Vessel Financial Responsibility – Notice of Proposed Rulemaking

**Comments of the Cruise Lines International Association**

The Cruise Lines International Association (CLIA) respectfully submits the following comments on the Commission’s Notice of Proposed Rulemaking (NPRM) on Passenger Vessel Financial Responsibility (FMC Docket No. 11-16).

**Introduction**

CLIA is North America’s largest cruise industry organization. It has existed pursuant to FMC Agreement No. 010071 and a predecessor agreement for over 35 years. CLIA represents the vast majority of cruise lines embarking passengers in the United States and is subject to the passenger vessel operator financial responsibility requirements of Public Law 89-777 (46 U.S.C. 44101-44106) and the Commission’s regulations (46 CFR Section 540). CLIA’s membership is comprised of 26 cruise lines, more than 15,000 affiliated travel agencies and 120 Executive Partners. CLIA member lines include U.S. and foreign-flag operators with vessels ranging in size from 50 to 5,400 passengers. CLIA estimates that the North American cruise industry in 2010 generated \$37.85 billion in total economic benefits including \$18.01 billion in direct spending by the cruise lines and passengers on U.S. goods and services, with 329,943 total U.S. jobs generated and \$15.24 billion in total wages for U.S. employees.

**Summary of Position**

CLIA believes that the intent of Public Law 89-777 has been achieved under the current regulatory arrangement. In the event that the status quo is not an option, CLIA does not oppose increasing the \$15 million cap on each line’s security arrangement to \$30 million. CLIA does

not oppose an inflationary trigger to automatically increase the cap for inflation based on the Consumer Price Index (CPI). CLIA supports the Commission's recognition, on a case-by-case basis, of alternative protections submitted by certain applicants in consideration of a reduction in the amount required to be furnished. CLIA opposes the proposal to model nonperformance financial responsibility requirements on current financial requirements for casualty administered by the Commission.

### **Discussion**

CLIA believes that a \$30 million cap is more than adequate to cover the actual risk of nonperformance. As the Commission is aware, additional protections are in place for passengers in the event of nonperformance of transportation by a cruise line including coverage under the Fair Credit Billing Act and the U.S Bankruptcy Code. These protections are in addition to the 110 percent coverage requirement up to the amount of the cap and result in duplicative coverage.

CLIA supports the Commission's recognition of alternative forms of protection as satisfying the requirement to provide evidence of financial responsibility for nonperformance by smaller cruise lines. However, CLIA believes the 150 percent limitation is too low and will exclude some of the smaller cruise lines that we believe the Commission intended to capture in this provision. For example, CLIA's membership includes lines with as few as two ships whose UPR would exceed 150 percent of the \$30 million cap. As written, the NPRM creates a disincentive for small lines to embark passengers at U.S. ports, especially if their UPR is approaching the 150 percent limitation.

In addition, the 110 percent coverage required of passenger vessel operators with UPR below \$30 million is burdensome on smaller lines and the Commission should eliminate the 10 percent administrative fee. Requiring dollar-for-dollar coverage below the cap is in itself

burdensome. An additional cost of 10 percent over and above 100 percent coverage just adds to the burden of those lines whose UPR falls below the cap and should be eliminated.

**Modeling nonperformance financial responsibility requirements  
on current financial requirements for casualty**

The NPRM invites comments on a proposal to model nonperformance financial responsibility requirements on current financial requirements for casualty administered by the Commission by: (1) calculating the revenue generated by the top two rate tiers of berths on a first-class or premium voyage for an appropriate number (for example five largest vessels) of each passenger vessel operator's fleets; and (2) applying appropriate discount factors to prevent coverage that exceeds UPR. CLIA believes that such an approach was not the intention of Congress, that it would be harmful to the cruise industry and that it would not provide additional protections to the cruising public.

First of all, had Congress intended to apply a casualty type formula to nonperformance it would have enacted the statutory requirement to do so, as it did for casualty. Public Law 89-777 (Section 2) expressly delineates the levels of liability for death or injury based upon the number of passenger accommodations aboard the vessel. Section 3 of the same law describes the means of providing evidence of financial responsibility for nonperformance of the transportation and does not base those requirements on the number of passenger accommodations aboard the vessel. Congress clearly intended that nonperformance claims be treated differently than claims for death or injury aboard a vessel.

Such an approach, as laid out in the Supplementary Information section of the NPRM, could dramatically increase coverage requirements well beyond unearned passenger revenues of individual lines without affording any additional protection. In addition, such a proposal deviates

from the approach taken by the Commission when it first set the coverage ceiling and when it subsequently raised the ceiling in 1981 and 1991, roughly raising the cap for inflation.

**Conclusion**

CLIA respectfully requests that the Commission consider the foregoing comments.

Respectfully submitted,

Christine M. Duffy  
President and CEO  
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