STATEMENT OF COMMISSIONER REBECCA DYE

REVISIONS TO THE COMMISSION'S PASSENGER VESSEL REGULATIONS

SEPTEMBER 8, 2011

- At our last meeting, I explained that my position on the need to increase the level of financial responsibility for passenger ship operators has not changed.

- I believe that the only really effective passenger indemnification requirement is based on the actual risk that a cruise ship passenger will not be reimbursed for cruise ship nonperformance.

- An effective regulatory system should also take into consideration all available sources of indemnification, and avoid the "one size fits all" approach.

MAJOR RULES

- I am disappointed to see that this proposed rule does not follow the principles of regulation contained in Executive Order 12866 and Office of Management and Budget Circular A-4, by identifying in writing the specific market failure or other specific problem that it intends to address, as well as assessing the significance of that problem, to determine whether any new regulation is warranted.

- Alternatives, risks, and cost-effectiveness are not identified and assessed in this proposal.

- In addition, under Executive Order 12866 and Public Law 104-121, agencies must identify which regulatory actions are “significant regulatory actions” or “major rules.”

- The proposed rule contains a conclusion that this rule is not a “major rule.”

- However, this conclusion does not attempt to address the total annual effect on the economy of this proposed rule, as required by Chapter 8 of title 5, United States Code.

REGULATORY FLEXIBILITY ACT

- The draft proposed rule contains a certification by our Chairman under the Regulatory Flexibility Act that the draft rule will not have a “significant economic impact on a substantial number of small entities.”

- Section 605(b) of the Regulatory Flexibility Act requires that when agencies certify that proposed rules do not have a significant small business impact, the proposed rule must also contain a statement providing the factual basis for the certification.

- This certification is based on an FMC rebuttable presumption that passenger vessel operators are not small businesses.

- This presumption was not created by statute or Formal Rule, and yet, we assume that it provides us with an exemption from the Regulatory Flexibility Act for passenger vessel operators.

- I do not agree that this proposed rule will not have a significant economic impact on small businesses. Currently, 23 out of 39 passenger vessel operators in our financial responsibility program have unearned passenger revenues under the $15 cap.

- Of course, just yesterday we received a copy of a letter to the Chairman from the Passenger Vessels Association clarifying the status of several passenger vessel operators as “small businesses.”

- I appreciate the additional vessel cost information added to this proposed rule last night by the Chairman, but I believe we are still required to perform a complete Regulatory Flexibility Analysis to allow the public and the Small Business Administration to comment on its accuracy.

REDUCING REGULATORY BURDENS

- Our priority should be to reduce the regulatory burden and encourage additional job creation.

- In the maritime industry, unnecessary regulatory compliance expenses discourage ship building and job creation.

- In 2009, cruise lines and their passengers generated nearly 314,000 American jobs, paying over $14 billion in wages and salaries.

- I look forward to consideration of our analysis of our existing rules under the President's Executive Order 13579 to determine which of our regulations may be revised to make the agency's regulatory program more effective and less burdensome.

- Under the current economic conditions, I believe the Commission should suspend the consideration of additional economic regulatory requirements without considering every possible alternative.

- Our priority should be to reduce current regulatory burdens and create a business environment conducive to job creation.