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Federal Maritime Commission
Notice of Inquiry
Passenger Vessel Financial Responsibility

Comments Submitted by Passenger Vessel Association
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Edmund B. Welch
Legislative Director

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Washington, DC

Chairman Lidinsky and Members of the Commission:

Thank you for conducting this hearing as part of your current Notice of Inquiry regarding Passenger Vessel Financial Responsibility. I am Edmund Welch, Legislative Director for the Passenger Vessel Association.

The Passenger Vessel Association (PVA) is the national trade association representing owners and operators of U.S.-flagged passenger vessels of all types, including overnight cruise vessels.

U.S.-flagged overnight cruise vessels operate primarily in the coastwise trades (Hawaii, Alaska, on the Columbia, Sacramento, and Mississippi River systems, along the U.S. East and Gulf coasts, and on the Great Lakes). In contrast to larger cruise ships carrying thousands of passengers, U.S.-flagged overnight cruise vessels are smaller (with one exception operating in Hawaii), most carrying between 50 and 250 passengers.

The following PVA vessel members are subject to the Commission's financial responsibility regulations:

American Canadian Caribbean Line
American Cruise Line
American Safari Cruises/InnerSea Discoveries
Cruise West
Lindblad Expeditions
NCL America

<u>The Commission Should Seek to Close a Glaring Loophole in the Law.</u>

Section 3 of Public Law 89-777 (Title 46 *United States Code* section 44101-44106) is conspicuously flawed. It fails to provide protection against nonperformance of transportation to substantial numbers of American consumers who embark on certain cruises popular with U.S. citizens. Although the Commission cannot correct this legal deficiency on its own, it should bring the problem to the attention of Congress immediately and ask for corrective legislation.

The basic problem is that passengers are not covered by the Commission's financial responsibility program if their vessel does not board passengers at a port in the United States.

The statute applies to a "vessel having berth or stateroom accommodations for at least 50 passengers and [that] ***boards passengers at a port in the United States.***" Because of the geographic limitation, customers on a vessel that boards U.S. passengers at a foreign port and then carries them to U.S. waters, points, and destinations do not enjoy the protection of this consumer protection law.

For instance, there has long existed a large market for carrying U.S. citizens as passengers in Alaskan waters. Most passengers travel on large foreign-flagged vessels, many of which embark their passengers in Vancouver, British Columbia. Because of their embarkation port, these Vancouver-based foreign-flagged ships carrying Americans to and in Alaska are not subject to the financial responsibility law, even though they spend much of their itineraries in U.S. waters and visit multiple Alaskan ports. In contrast, competing vessels that embark passengers in Seattle and that cruise in the same Alaskan waters are subject to the financial responsibility requirement. Also, smaller cruise ships flying the U.S. flag offer coastwise cruising in Alaska. Because the U.S.-flagged vessels embark their passengers from U.S. ports, they are subject to the Commission's financial responsibility requirement.

It would be prudent public policy to provide financial responsibility protection for passengers on vessels that sail predominantly in U.S. waters to U.S. destinations, even if the vessels board passengers in a nearby foreign port. Vessels that sail in the same waters and that compete with one another for passengers should be subject to the same regulatory regime as a matter of fairness. The Commission should urge Congress to correct the current statute.

The $15 Million Cap for Unearned Passenger Revenue Discriminates Against U.S.-Flagged Vessels, Most of Which are "Small Ship" Cruise Vessels.

Larger passenger vessel operators carry so many passengers that they collect Unearned Passenger Revenue (UPR) in amounts far greater than $15 million. However, under the Commission's regulation (not pursuant to statute), the amount of UPR used for the purpose of calculating financial responsibility requirements is capped at $15 million.

The existence of the $15 million cap on UPR has an unintended consequence. It favors larger cruise ships (nearly all of which are foreign-flagged) at the expense of smaller U.S.-flagged passenger vessels.

With one exception, U.S.-flagged overnight cruise vessels typically carry between 50 and 250 passengers. In most instances, a smaller operator must obtain a bond or surety or create an escrow account in an amount based on all of the operator's unearned passenger revenue. In contrast, a larger operator may have unearned passenger revenue in amounts many times higher than the $15 million cap.

Although smaller U.S.-flagged ships market their special characteristics and itineraries, and although some might say they occupy a niche market, it is naive to conclude that they do not compete for customers with their larger counterparts, especially in Alaska. Therefore, the $15 million cap creates a severe disadvantage. The smaller operator must devote a substantially larger percentage of its capital to satisfy its consumer protection responsibility, whereas the comparable expense for a larger operator imposes a far lesser financial burden. In effect, as one smaller operator has commented to the Commission, the smaller operators "must fund security for all of their passengers while larger operators are responsible for providing security for only a small portion of their unearned passenger revenue."

PVA urges the Commission to eliminate this competitive discrepancy. One way of doing so, of course, would be to raise the $15 million cap or remove it entirely. However, PVA suggests that the Commission might be able to accomplish the same result by injecting flexibility into the calculation of a vessel operator's UPR by taking into account other existing measures of financial protection for passengers.

For instance, comments to the Commission from several vessel operators describe how essential credit cards are for payment for cruises. Credit card issuers apparently impose contractual requirements on passenger vessel operators to maintain reserves and other methods of financial security to protect the issuers in the event of nonperformance or even unsatisfactory experiences. The Commission could ascertain how these privately-required systems function and could adjust downward a vessel operator's UPR to take them into account. Also, the Commission could make a similar downward adjustment for statutory protections of credit card customers under the Fair Credit Billing Act.

Finally, the Commission may wish to examine new methods of providing financial protection for consumers. Might it be possible to establish an industry-wide insurance program that would be available to compensate passengers in the event of nonperformance? Each operator would be required to pay a proportionate share of the cost of such insurance; this share could be based on the number of passengers carried, although adjustments might be needed to prevent too much of the financial burden from being borne by a particular operator. Having a single industry-wide insurance program or policy might be less expensive to the passenger vessel industry cumulatively than requiring each passenger vessel operator to obtain its own separate evidence of financial security.

In closing, the Commission's goals in this Notice of Inquiry should be to provide continued financial protection for passengers, to ensure that the system does not inadvertently discriminate against U.S.-flagged "small ship" operators, and to accomplish this in the most efficient, least costly way for all vessel operators.