Secretary

From: Dan Blanchard [DanB@americansafaricruises.com]
Sent: Monday, February 08, 2010 7:25 PM
To: Secretary; James A. Nussbaumer
Cc: eric gier; Tim Jacox
Subject: Comments on 46 CFR part 540

February 8, 2010

Karen V Gregory Secretary
Federal Maritime Commission
800 North Capitol Street NW
Washington DC 20573 - 0001

Madam Secretary,

As an operator of US Flagged passenger Vessels, we would like to submit comments on the current regulations regarding passenger vessel financial responsibility (46 CFR Part 540). We would like to submit our comments into the public records and are willing to participate in any further questions or discussions.

Please do not hesitate to contact me if you have any further questions.

NOTICE OF INQUIRY QUESTIONS

1. Do you expect your company's unearned passenger revenue to increase decrease or remain the same over the next twelve to twenty months? If you expect it to change by what percent

   We are experiencing very robust 2010 sales and expect our unearned revenue to be at least 75% greater than at the same time in 2009. We are also adding two recently leased ships to the fleet in 2011 and expect our sales to increase significantly due to the addition of the new berths.

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 PVO regulations for Nonperformance Coverage

   All boats currently operational in our fleet have less than 49 berths and are not subject to 46 CFR Part 540. However, we have recently leased two new vessels having greater than 50 berths and these vessels will fall under these regulations. In order to be compliant, we are required to either obtain a surety bond of sufficient size or establish an appropriate escrow program to hold all prepayment from passengers. In the current market obtaining an acceptable surety bond was found to be economically unfeasible, as underwriters are currently requiring a deposit of the full bond value in a secure account prior to its issuance. Larger companies with public equity and longer credit histories are able to obtain these bonds at a considerably lower price.

   Therefore in order to enter the FMC PVO program for newly leased vessels, our only option is to fully comply with FMC escrow requirements before we are allowed to advertise specific rates and dates of voyages. In our situation, given the marketing

lead time required to build a new brand in the travel industry, we are expecting that our FMC application will occur approximately 18 months prior to our first departure date. This long lead time creates a significant economic burden for our Company. As per FMC requirements, we are required to deposit 10% of the estimated maximum yearly revenue for the new vessels upon entry into the FMC PVO program. At this point, we will begin to market and sell future passage on these vessels. Because a significant portion of our sales go through travel agents and travel wholesalers, we are required to "be on their radar screen" over a year before any voyage is planned. However, we have found that sales from these groups to individuals typically occur 3 to 6 months prior to voyage date. What does this mean economically? During the first 12 months of the FMC escrow arrangement, 10% of the estimated total revenue will be held in reserve. During this period, given that no sales have occurred, they do not afford protection to any potential passenger and only cause an undue economic burden on the Company. As sales begin, because of the initial 10% deposit, the total escrow amount ALWAYS remains significantly above the required 110% minimum level. Even at the time when the escrow account reaches its maximum level, because the cruise season is longer than the time prior to departure when full payment is required, the Company's escrow account WILL NEVER REACH THE 110% LEVEL AND WILL ALWAYS REMAIN SIGNIFICANTLY ABOVE THIS MANDATED LEVEL. It is very clear from this analysis that the current regulations requiring the maintenance of a minimum of 10% above yearly sales is poorly conceived and inappropriate especially for Companies that have business that is seasonal in nature. The current system always affords financial reserves significantly greater than the mandated 110% level which is clearly exceeds the intent of the regulations.

We would suggest, if in fact the 110% reserve level is maintained in the new regulations, that ONLY this amount is held in escrow and that a minimum escrow level be based not on total projected yearly sales but rather on a percentage of actual sales. This would be more in line with the spirit of the regulations.

We must add an additional comment on current FMC Escrow requirements. In our search for a bank that can offer the escrow services as required by FMC, we were shocked to find no local banking group willing or able to deliver this service. We requested a list of banks from the FMC currently delivering this service and promptly received a list of the 4 banks that are involved in the FMC PVO program. We contacted Wells Fargo, the largest of the 4 recommended entities and only entity with a local Seattle presence. After conversations with the bank's trust department, we were informed that Wells Fargo would no longer be accepting any new FMC escrow account. The current escrow agreement required by FMC was unacceptable to the Bank. Major changes in the escrow agreement, specifically regarding the banks ability to act in a way appropriate for a fiduciary in the event of non-performance, would be required before they would be willing to offer this service.

We believe that other qualified banks will respond in a similar fashion. Given the relatively active nature of the required Escrow account, for cash management purposes, it is critical that this account is housed at the same bank were the Company complete its commercial banking activities. Because of the highly restricted nature of the FMC's regulations, this may be impossible to achieve, placing yet another unnecessary compliance burden that is above and beyond the original intent of 46 CFR Part 540.

3. With respect to passenger bookings and payments

(i) What is your company policy with regard to passenger reimbursement in the event of nonperformance of a cruise

As a company policy, we have always maintained all passenger fares in a reserve account and have not released these fares into general funds and booked as sales until the departure of the respective voyage. Because of this policy, we have always maintained the necessary funds to refund passenger fares in the event of cancellation or nonperformance. It should be noted that we have maintained this policy voluntarily as our operational fleet does not exceed 49 berths per vessel. In the event of a passenger fare refund, we have not found that our administrative refund costs are even close to the 10% as is implied by the 110% FMC nonperformance coverage. To date, our costs for refunding fares is minimal and well below 1% of refunded amount.

(ii) What is your company booking policy regarding the timing and amount of booking deposit and for payment of any fare balance

A deposit of $600 per person is required to secure a reservation. The deposit/payment must be received within three business days of the reservation. Reservations are not confirmed until a deposit is received. The initial deposit is refundable up to 72 hours after payment is received.
Final payment must reach our office 60 days prior to the passengers' departure from their home city or in full at the time reservations are confirmed if less than 60 days prior to the departure.

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

The adequacy of the $15M ceiling is dependent on the specific vessel or company under discussion. This amount is grossly inadequate for the large cruise lines. For example the following foreign flag, foreign built and foreign crewed vessels are given preferential treatment by the FMC over US Flag vessels, Carnival Corp has yearly revenues in excess of $14 Billion and Royal Caribbean Cruises Ltd has yearly revenue in excess of $6 Billion. For these and similar companies, a $15M ceiling is clearly inadequate. The ceiling as set forth in the regulations begs the question, why are US Flag small ship companies effectively required to maintain a minimum 110% coverage of unearned passenger revenue, when the large foreign flag ship companies (examples given above) are effectively required to only cover a very small percentage of their unearned passenger revenue. It would seem much more appropriate to remove the ceiling and set the level at a percentage of total sales and treat all cruise companies in a fairer and even handed fashion. Further, we believe that this coverage should be extended to include all vessels carrying 13 or more revenue passengers. This change would be

consistent with USCG, FCC, FDA and other US agencies that require SOLAS Certification, Certificate of Inspection, Center for Disease Control inspections, STCW training etc. This is also consistent with International maritime regulations adopted by the far majority of maritime nations. It would also level the playing field for all vessels carrying 13 or more revenue passengers.

5. Should the Commission consider adjusting the $15 million cap periodically based on an inflation factor (Consumer Price Index)?

   As discussed in the question above, we do not believe that the current $15M cap is fare or appropriate. We believe that a more appropriate level should be based on a percentage of sales. As such, it would not need to be adjusted periodically as this amount would increase as fare revenue changed. If an adjusted cap is utilized, should be adjusted as the average industry fare changes. I do not believe that CPI is the best adjustment metric as increased competition, sensitivity to fuel costs, etc. have a greater impact on pricing and revenue than inflation as represented by the CPI.

6. Should the Commission consider alternatives to the current $15 million cap? Please provide a detailed explanation with your response

   As discussed above, the current arbitrary cap is inadequate and without reason. The Cap should be based on a percentage of sales of all voyages originating from US ports set at a maximum of 100%. The other alternative would be to establish an industry wide passenger protection insurance program with premiums based on numbers of berths and supported by the entire PVO industry expanded to include all vessels carrying 12 or more passengers. The majority of this cost of insurance would be covered by the larger carriers.

7. If the $15 million cap is modified what would be the likely benefits or burdens upon PVOs related companies and the shipping public?

   When these regulations were established the PVO industry was very different from the industry of today. No one expected that cruise ships would have grown to their current gargantuan size and that there would be so many vessels offering such a wide range of products to the consumer. At the regulations inception, the original $10M was perhaps an appropriate cap for funds to protect the consumer from nonperformance. This is simply not the case today.

   When reading 46 CFR Part 540, it is very clear that these regulations are in the favor of the larger PVOs as their effective cost of compliance is significantly lower than the smaller PVOs. Further, because of the ludicrously low $15 M cap, the current regulations do not protect the largest number of passengers on the larger vessels from nonperformance and unnecessarily punish the smaller <u>US flag</u> companies that actually do offer in all cases greater than the full 110% nonperformance coverage as required by law. <u>This inequity must be eliminated.</u> Modification of the $15 M cap would clearly benefit the passengers, marginally increase the cost of operations for the large cruise ship companies and have a limited or positive impact on the small ship cruise companies.

8. What other methodologies could the Commission use to establish adequate coverage amounts as required by current regulations?

The intent of the law is to protect passengers from loss of fare in the event of non-performance. There are numerous alternatives to effect this result. Perhaps, as discussed above, it would be possible to establish an industry wide insurance policy with premiums paid by industry. Further to this, if these requirements were amended to include all PVOs carrying 13 or more passengers, the greatest degree of consumer protections would be achieved.

9. Should the Commission consider legislative alternatives to the current Nonperformance Coverage requirement? If so set forth a detailed response

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?

Because of recent turmoil in the travel industry, Credit Card companies generally view PVOs as high risk businesses and are now requiring relatively high reserves to be kept in place to minimize their exposure to non-performance risk. As a Company, we do what ever we can to minimize out dependence on Credit Cards. Never the less, in today's market, most consumers want the convenience and protection afforded by credit card usage. Recently we have observed the credit card companies have begun (specifically AMEX) holding funds for a relatively long periods after we have fully realized the sales (and passage has been delivered). In one case, a significant amount was withheld for over 4 months past the normal payment period. The credit card's new approach has created yet another way to increase our required working capital and to give passengers yet another layer of financial protection.

11. What are the factors credit card issuers use to assess a cruise line creditworthiness or financial fitness How does a credit card issuer determine whether to implement additional security holdbacks letters of credit collateral

We believe that the Credit Card industry is casting a fairly wide net and including all PVOs as the industry is viewed as generally high risk due to recent failures. The credit card companies typically place the burden of proving financial health on the Companies.

12. What are the factors that sureties or guarantors use to assess a cruise line? Credit worthiness 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?

We have had detailed discussions with numerous financial institutions regarding establishing the surety bond required to meet FMC requirements for our newly leased vessels. Regulations require that the bond is valued at 110% of the full year revenue of the largest ship in our fleet. Because of the current industry risk (i.e. high default rate) and because of the small size of our company, we were required to deposit the entire value of the bond in a reserve account in order to obtain this bond. Few small ship companies are financially capable of doing this. Because of this we are opting to 1) reduce the number of berths in a vessel to 49 to avoid these requirements during the first year of the vessels operations to minimize capital outlay during the launch of our new vessels and 2) utilize the escrow method to meet FMC requirements. As a small US flagged operator, we have limited ability through the capital markets to reduce the overall economic cost of compliance with the FMC PVO program.

Sincerely,

Captain Dan Blanchard, CEO| (206) 838-9484
***American Safari Cruises** ~ 888-862-8881 ~ www.AmericanSafariCruises.com*
***InnerSea Discoveries** ~ 877-901-1009 ~ www.InnerSeaDiscoveries.com*
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