AMERICAN CRUISE LINES INC

741 Boston Post Road, Suite 200 • Guilford, CT 06437 • (800) 814-6880 • (203) 453-0417 Fax
www.americancruiselines.com

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2010 FEB 12
FEDERAL MARITIME COMM

February 5, 2010

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W., Room 1046
Washington, DC 20573-0001

SENT VIA FEDEX AND US MAIL

Re: Response to Notice of Inquiry, December 9, 2009

Dear Ms. Gregory:

I write this letter on behalf of American Cruise Lines, Inc. ("ACL"), to provide information in response to the Notice of Inquiry published by the Federal Maritime Commission at 74 Fed. Reg. 65125-26 (Dec. 9, 2009).

American Cruise Lines operates luxury overnight passenger vessels in the coastwise cruise business along the United States' Atlantic and Pacific Coasts. ACL has a fleet of four vessels, each with berths or state room accommodations for fifty or more passengers. ACL is quite atypical to its industry, however, and is not operated on the basis of a "bigger is better" thesis. Our ships t carry approximately 100 overnight passengers and are not intended for the mass market. Our fleet calls at ports whose cultural and historic attractions offer educational and aesthetic experiences appropriate to our well-travelled, sophisticated clientele.

I preface these remarks by noting that, ACL has maintained an unblemished record of financial responsibility to passengers, having always fulfilled the requirements of the applicable statutes and regulations and having never been subject to any default or claim of default or other claim under any bond or other security posted with the Federal Maritime Commission for ACL's obligations.

The regulations promulgated by the Commission to implement the statutory requirements for overnight passenger vessel operator financial responsibility at 46 USC § 44101 are unfortunately clearly discriminatory against smaller, domestic operators such as ACL by requiring them to tie up a much greater percentage of their capital as security.

The requirement to post security based on unearned passenger revenues (UPR), now set at 110% of UPR appears superficially to be structured to impose a burden equally applicable throughout the industry and proportionate to the size of the operator. The truth is, however, that the impact of this burden is not equally applicable or proportionate to operator size because it is limited to a $15 million maximum. In fact, the industry has some smaller domestic coastwise operators, such as ACL, which are profitable and financially strong but which do not serve the mass market, and other operators, most of them operating much larger foreign flag vessels for international voyages, which do serve the mass market and which must operate on a "bigger is better" premise in order to survive. The effect of the current regulations is very different on these different groups of cruise line operators and very damaging to the smaller US flag operators such as ACL in at least two ways.

Specifically, the $15 million cap unfairly discriminates against smaller US flag operators, such as ACL, whose total UPR are significant but amount to less than $15 million. We smaller operators must bond out the entire amount of our UPR, and even add a 10% overage, while the large foreign flag operators whose UPR is well over $15 million are required to post security for only a small fraction of their UPR. This ties up operating capital, of smaller operators, to a much greater extent (as a proportion of total assets) than in the case of larger foreign operators. There is no good reason for this manifestly unfair discrimination in the regulations. Certainly the simple matter of the size of the operator is not a valid justification for this discrimination, as the global financial debacle of the last two years has proven that larger businesses may be just as prone to failure as smaller ones.

In addition to tying up a greater proportion of the capital of the smaller, domestic operators, the current regulations also impose an unreasonable, discriminatory burden on smaller businesses in the disproportionate cost of compliance. The issuers of bonds and other securities approved to be filed with the Commission, and escrow agents, all impose charges for their services. For smaller domestic operators that are required to post security of 110% of their UPR, those costs are indeed significant. But for larger international operators for which the bonding requirement is just a small percentage of UPR, so too is the cost of compliance with the regulations a relatively small and unimportant percentage. This is just not fair to the smaller operators and actively discriminates against smaller, domestic operators on an important fiscal basis. The regulations just should not require smaller operators to bear costs of posting security which are much higher on a proportionate basis to overall revenues than is the case with their much larger competitors.

We at American Cruise Lines hope that these inequities and the discriminatory effect of the current regulations on small businesses are the reason the Commission has solicited

responses to its Notice of Inquiry and an opportunity to be heard publicly on March 3, 2010. There is an alternative means by which compliance with 46 USC § 44101 could be designed by the Commission which would not be discriminatory or unfair. It is simply this:- eliminate the $15 million cap and reduce the set percentage of UPR, so that there is no longer a system that discriminates against small US-flag operators. We hope that the Commission will consider this approach, and thereby discharge its obligation to protect the public without thereby discriminating against small business.
We at American Cruise Lines hope the foregoing comments will prove useful to the Commission in its rule making process.

Thank you for your consideration.

Yours truly,

Charles A. Robertson, President

CAR/maa

cc: David McI. Williams, Esq.