

## FEDERAL MARITIME COMMISSION (FMC)

### Statement of Regulatory Priorities

The Federal Maritime Commission's (Commission or FMC) regulatory objectives are guided by the agency's basic mission. The Commission's mission is to administer the shipping statutes as effectively as possible to provide an efficient, economic, and nondiscriminatory ocean transportation system in an environment free of unfair foreign maritime trade practices. Commission regulations are designed to implement each of the various statutes the agency administers in a manner consistent with this mission and in a way that minimizes regulatory costs, fosters economic efficiencies, and promotes international harmony.

Proposed legislation pending in Congress could alter significantly the regulatory scheme regarding ocean commerce. This same legislation could also affect the continued existence of the Commission. The Commission will be monitoring this legislation closely as it obviously would affect the Agency's regulatory planning and priorities, and depending on the effective date(s) of its provisions, could require regulatory action during the coming year. Until any such legislation is enacted and an implementation schedule is determinable, the principal objective or priority of the Agency's current regulatory plan will be to continue to assess its major existing regulations for continuing need, effectiveness, burden on the regulated industry, fairness, and clarity. The Commission has under review, *inter alia*, regulations regarding passenger vessel operator financial responsibility, and co-loading arrangements between non-vessel-operating common carriers.

Review of the above mentioned passenger vessel financial responsibility regulations represents an important regulatory action and serves as an example of the Commission's objective to regulate fairly and effectively while imposing a minimum burden on the regulated entities, following the principles stated by the President in Executive Order 12866. Passenger vessel financial responsibility regulations are issued pursuant to the provisions of Pub. L. 89-777, 46 U.S.C. app. 817e and 817d. These regulations set forth the procedures whereby owners or operators of vessels having berth or stateroom accommodations for 50 or more passengers and embarking at U.S. ports shall establish their financial responsibility to indemnify passengers

for nonperformance of transportation to which they would be entitled and to meet any liability which may be incurred for death or injury to passengers or other persons on voyages to or from U.S. ports. The Commission's review of its current regulations in this area is for the purpose of assuring that the Commission's requirements provide adequate coverage for passenger vessel customers in regard to performance and casualty, while not imposing an undue burden or cost on the passenger vessel industry. A more detailed description of this important significant regulatory action is contained in section B of this plan.

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## FMC

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### FINAL RULE STAGE

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#### 166. FINANCIAL RESPONSIBILITY REQUIREMENTS FOR NONPERFORMANCE OF TRANSPORTATION AND INQUIRY INTO ALTERNATIVE FORMS (DOCKET NO. 94-06; FURTHER NOTICE OF PROPOSED RULEMAKING)

##### Priority:

Other Significant

##### Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

##### Legal Authority:

5 USC 552 to 553; 46 USC app 817d to 817e; 46 USC app 841a; 46 USC app 1716

##### CFR Citation:

46 CFR 540.5; 46 CFR 540.9

##### Legal Deadline:

None

##### Abstract:

This further proposed rule would amend financial responsibility requirements regarding nonperformance by passenger vessel operators by eliminating the \$15 million unearned passenger revenue ceiling. It would be replaced by sliding scale coverage requirements keyed to operators' financial rating, length of operations in U.S. trades, and satisfactory explanation of any claims of nonperformance. For self-insurers, the rule proposes to reestablish a working

capital requirement and require third-party coverage for 25 percent of unearned passenger revenue. The action also proposes to require applications for Certificates (Performance) to be filed at least 90 days prior to advertising, arranging, or providing transportation. Suggestions for alternative approaches also are solicited.

##### Statement of Need:

The Federal Maritime Commission (Commission or FMC) administers section 3, Public Law 89-777, 46 U.S.C. app. 817e (section 3). Section 3 requires certain passenger vessel operators (PVOs) to establish financial responsibility for nonperformance of transportation. Section 3 provides, in pertinent part: (a) No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation. The Commission's regulations implementing section 3, contained in 46 CFR 540, subpart A, generally provide that a PVO may evidence its financial responsibility by one or more of the following methods: a guaranty, escrow arrangement, surety bond, insurance or self-insurance. The amount required must equal 110 percent of the PVO's highest unearned passenger revenue (UPR) over a two-year period. (UPR is defined under 46 CFR 540.2(i) as: that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed.) The maximum coverage amount currently required is \$15 million, subject to a sliding scale.

The Commission monitors activity of PVOs subject to Public Law 89-777 and by rule requires semiannual UPR reports. Additionally, the Commission periodically surveys PVOs' future U.S. cruise schedules and fare structures. Developments since the Commission's actions in Docket Nos. 92-19 (Revision of Financial Responsibility Requirements for Nonperformance of

Transportation, (57 FR 51887, September 14, 1992)) and 92-50 (Financial Responsibility Requirements for Nonperformance of Transportation -- Revision of Self-Insurance Qualification Standards, Final Rule (57 FR 62749, December 31, 1992) prompted the Commission to reconsider existing UPR coverage requirements with regard to the sliding scale, the ceiling and self-insurance. One development concerns the involuntary bankruptcy of a cruise line. Another is the extent to which some PVOs' UPR now exceeds the current \$15 Million ceiling, leaving an estimated \$700 Million in passengers' deposits and prepaid fares without coverage. Further, with regard to self-insuring PVOs that are not State or Federal entities, the Commission is concerned that sufficient funds may not be available to indemnify passengers for nonperformance of transportation. The Commission has proposed to amend its rules to: (1) replace the ceiling with sliding-scale coverage requirements keyed to a passenger vessel operators' financial rating, length of operation in United States trades and satisfactory explanation of claims for nonperformance of transportation; and (2) require third-party coverage for 25 percent of unearned passenger revenue for self-insuring passenger vessel operators and to require self-insurers to present evidence with regard to working capital in addition to the current requirement concerning net worth. The Commission has also proposed a revision to its escrow agreement guideline to make clear that escrow funds are not debtor's property and should be made available to passengers. Finally, the Commission has proposed revising its rules to require that, in the absence of good cause shown, applications be filed at least 90 days (instead of the 60 days currently required) prior to the arranging, offering, advertising, or providing of any water transportation or tickets in connection therewith.

Industrywide, for the approximately \$1 billion in current UPR, the Commission's staff has estimated that the proposed rule would increase coverage from the current \$300 million to \$850 million.

It is important to note that the further notice of proposed rulemaking only relates to passenger revenue which has not yet been earned by the involved PVO. The changes set forth in the further notice of proposed rulemaking were deemed necessary to ensure that cruise passengers are adequately

protected in the event of nonperformance of transportation.

#### Summary of the Legal Basis:

This proposal is made pursuant to section 3 of Public Law 89-777, which requires certain passenger vessel operators (POVs) to establish financial responsibility for nonperformance of transportation.

#### Alternatives:

The further notice of proposed rulemaking is based on alternatives previously proposed by the Commission. Moreover, the further notice of proposed rulemaking again solicits suggestions for other alternatives to consider under its Public Law 89-777 program.

The initial proposed rule in this proceeding requested comments on an alternative approach of requiring 110 percent coverage for up to \$25 million in UPR per operator; coverage of 75 percent for UPR between \$25 million and \$50 million per operator; and 50 percent coverage for UPR over \$50 million per operator. There, the Commission also invited the PVO industry and other interested parties to suggest alternative proposals to ensure adequate financial responsibility coverage for UPR subject to section 3. Twelve comments generally critical of the proposed rule were received. To ensure full consideration of other approaches potentially more acceptable to the industry, while still providing appropriate protection for the cruising public, the Commission had placed the initial proposed rule in this proceeding in abeyance pending an Inquiry into the viability of other approaches, Docket No. 94-21, Inquiry into Alternative Forms of Financial Responsibility for Nonperformance of Transportation, 59 FR 5233, October 26, 1994 (Inquiry). Two such approaches are set forth in the Inquiry. The first is the concept of voluntary associations; the second is retained but strengthened self-insurance requirements. The further notice of proposed rulemaking in this proceeding is based upon the Commission's assessment of the record developed in the Inquiry.

#### Anticipated Costs and Benefits:

The further notice of proposed rulemaking represents a significant Commission action. It may not, however, ultimately be within the ambit of a significant regulatory action as defined under section 3(f) of Executive Order 12866. The proposed rule will probably not have an annual effect on the economy of \$100 million

or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The net effect of the rule would be to require an additional \$700 million in financial responsibility coverage, which should not cost \$100 million in today's financial markets. Moreover, inasmuch as the Commission is the sole administrator of the underlying statute (section 3 of Public Law 89-777), the proposed rule would appear unlikely to create any inconsistency or other interference with an action taken or planned by another agency. In addition, the proposed rule would not appear to have any budgetary impact whatsoever on entitlements, grants, user fees, or loan program or the rights and obligations of recipients thereof. Finally, the proposed rule does not appear to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

As background, the Commission undertook this rulemaking proposal as a consequence of its concern that some PVOs' UPR now greatly exceeds the current \$15 million ceiling -- in some instances by a factor of several times the current ceiling, leaving some \$700 million in UPR without section 3 coverage. Under the proposed rule, every dollar in additional coverage obtained by a PVO will result in an additional dollar's protection to the travelling public. Ultimately, the proposed rule would reduce the exposure of the travelling public's deposits and prepaid fares to loss by 80 percent -- from the current level of approximately \$700 million to \$138 million -- with a corresponding reduction in uncovered UPR from 70 percent to 14 percent. The alternative proposal would reduce this exposure by 62 percent -- from \$700 million to \$268 million -- with a corresponding reduction in uncovered UPR from 70 percent to approximately 27 percent.

#### Risks:

Docket No. 94-06 does not involve risk reduction efforts involving health, public safety, or environmental concerns. The proposal does, however, contemplate a substantial reduction in potential risk exposure for passengers' deposits and prepaid fares for unperformed transportation.

#### Timetable:

Action	Date	FR Cite
NPRM	03/31/94	59 FR 15149

Action	Date	FR Cite	Action	Date	FR Cite	Government Levels Affected:
NPRM Comment Period End	05/02/94		Discontinuance of Proceeding for Docket No. 94-21	07/03/96	61 FR 39940	None
Comment Period Extended to	06/10/94	59 FR 23182	Further NPRM Comment Period End	08/26/96	61 FR 33059	<b>Agency Contact:</b> Bryant L. VanBrakle Director, Bureau of Tariffs Certification and Licensing Federal Maritime Commission 800 North Capitol Street NW. Washington, DC 20573 Phone: 202 523-5796 Fax: 202 523-5830  <b>RIN:</b> 3072-AB80 <b>BILLING CODE</b> 6730-01-F
Comment Period Extended to	06/24/94	59 FR 30567	Comment Period Extended to	09/25/96	61 FR 43209	
Notice of Inquiry (Docket No. 94-21)	10/14/94	59 FR 52133	Comment Period Extended to	10/15/96	61 FR 50265	
Clarification of Notice of Inquiry	11/02/94	59 FR 54878	Final Action	01/00/97		
Comment Period End for Notice of Inquiry	11/28/94	59 FR 52133	Final Action Effective	07/00/97		
Further NPRM (Docket No. 94-06)	06/26/96	61 FR 33059				
			<b>Small Entities Affected:</b>			
			None			