a.m. to 3 p.m., Monday through Thursday, telephone: (617) 918–1990.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Unit, Office of Ecosystems Protection, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023, telephone: (617) 918–1642.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: October 17, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02–27342 Filed 10–30–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 02–15]

Passenger Vessel Financial Responsibility

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules regarding the establishment of passenger vessel financial responsibility under sections 2 (Casualty) and 3 (Performance) of Pub. L. 89–777. The amendments would: eliminate the current ceiling on required Performance coverage; adjust the amount of coverage required by providing for consideration of the obligations of credit card issuers; provide for the use of Alternative Dispute Resolution (''ADR''), including the Commission's ADR program, in resolving passenger performance claims; revise the application form; and make a number of technical adjustments to the Performance and Casualty rules.

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications, no later than January 8, 2003. As the Commission continues to experience some difficulty with mail delivery, commenters are encouraged to use e-mail, courier or express delivery services.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001. E-mail: *secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT:

Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing; 202–523–5787; E-mail: *sandrak@fmc.gov;* or

Ronald D. Murphy, Commission Dispute Resolution Specialist and Deputy Director, Bureau of Consumer Complaints and Licensing; 202–523–5787; E-mail: *ronaldm@fmc.gov;* or

David R. Miles, Acting General Counsel, 202–523–5740; E-mail: *davidm@fmc.gov;* Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

SUPPLEMENTARY INFORMATION: Section 3 of Public Law 89–777 (''section 3'') [1], 46 U.S.C. app. 817e, requires passenger vessel operators (''PVOs'') [2] to establish their financial responsibility to indemnify passengers for nonperformance of transportation. Section 2 of Public Law 89–777 (''section 2''), 46 U.S.C. app. 817d, requires owners and charterers of vessels with berth or stateroom accommodations for fifty or more passengers, and embarking passengers at U.S. ports, to establish financial responsibility to meet liability for death or injury to passengers or other persons on voyages to and from U.S. ports.

Effective August 5, 2002, the Commission amended its section 3 implementing regulations at 46 CFR part 540, subpart A, to eliminate self-insurance as a means of evidencing financial responsibility, to limit those entities acceptable as a guarantor, and to eliminate certain sliding scale provisions as to the amount of coverage required, 67 FR 44774 (July 5, 2002). A number of comments received in that rulemaking proceeding addressed concerns outside the scope of the proceeding. In particular, several commenters suggested that the current $15 million ceiling on the amount of the unearned passenger revenue (''UPR'') [3] required to be covered be substantially raised or eliminated completely. Some who advocated lifting the ceiling were concerned about an apparent competitive advantage to larger vessel operators required to cover only a fraction of their total UPR, while smaller operators with less than $15 million UPR must cover all of their UPR. One of the larger operators suggested that coverage requirements adjust upwards as UPR increases, in order to remedy the increasing shortfall in coverage as the larger fleets continue to increase in size. Partially in response to those comments, and in light of industry circumstances more fully described herein, the Commission has reviewed its rules and has determined that a number of changes should be made, including eliminating the ceiling.

The Commission also proposes minor amendments to its section 2 implementing regulations for casualty coverage, 46 CFR part 540, subpart B. Those changes would eliminate references to escrow agreements and make other technical changes.

State of the Industry

The current $15 million ceiling set forth at 46 CFR 540.9(j) has been in existence since 1991, when it was raised from $10 million.[4] In 1994, the Commission proposed to remove the $15 million ceiling, but following receipt of comments, the Commission opted to revise its proposal by imposing a sliding scale requirement that would increase the amount of coverage required for those cruise lines exceeding $15 million in unearned passenger revenues, without requiring coverage of the total amount of UPR. Docket No. 94–06, *Financial Responsibility Requirements for Nonperformance of Transportation;* Proposed Rule, 59 FR 15149 (March 31, 1994); Further Proposed Rule, 61 FR 33059 (June 26, 1996). That proceeding was discontinued earlier this year, without producing changes to the ceiling. *Id.,* Proceeding Discontinued, 67 FR 19535 (April 22, 2002).

Part of the reason the Commission stepped back from its prior efforts to require total coverage protection was the

[1] 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.

[2] For the purposes of section 3, a PVO is considered to be any person in the United States that arranges, offers, advertises or provides passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which embarks passengers at U.S. ports.

[3] As currently defined, UPR means ''passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed.'' 46 CFR 540.2(i).

[4] The UPR coverage ceiling initially was set in 1967 at $5 million (Docket No. 66–67, Final Rule, 67 FR 2723 (March 10, 1967)), rose in 1981 to $10 million (Docket No. 79–93, 45 FR 234328, (April 1, 1980)), and rose again in 1990 to $15 million (Docket No. 90–1, Final Rule, 55 FR 34564 (August 23, 1990); Correction, 55 FR 35983 (September 4, 1990)).

experience under the Commission's program at that time. The Commission was not aware of any instance in which passengers had lost funds as a result of cruise line bankruptcies or other failures to perform, and the economy and the cruise industry were thriving. The risk of nonperformance appeared minimal.

The past two years have seen a dramatic shift in that scenario. Since September 2000, five cruise lines that participated in the Commission's program have ceased operations: Premier Cruise Operations Ltd. (''Premier''), New Commodore Cruise Lines Limited (''Commodore''), Cape Canaveral Cruise Lines, Inc. (''Cape Canaveral''), MP Ferrymar, Inc. and American Classic Voyages Company (''AMCV''). In addition, the Commission is aware of at least two other cruise lines that ceased operating. Even though they sold almost all passages to U.S. citizens within the United States, Renaissance Cruises, Inc. (''Renaissance'') and Great Lakes Cruises, Inc.[5] did not participate in the Commission's program because they embarked passengers only from ports outside of the U.S. Of those cruise lines, Premier and Renaissance are in the process of being liquidated through bankruptcy proceedings in other countries, Commodore and AMCV filed for reorganization under the U.S. bankruptcy laws, and the remaining lines ceased operations without filing for bankruptcy. Financial coverage under the Commission's program was necessary to meet passenger claims for Premier, Commodore, and, to a small extent, Cape Canaveral.

AMCV had evidenced its financial responsibility by means of self-insurance and thus, most of its passengers received no reimbursement other than through credit cards. Self-insurance is a coverage option that no longer is permitted. *See* Docket No. 02–07, *Financial Responsibility Requirements for Nonperformance of Transportation—Discontinuance of Self-Insurance and the Sliding Scale, and Guarantor Limitations,* 67 FR 44774 (July 5, 2002). Despite Commodore having a surety bond that covered its total UPR at the time it ceased operations, many of its passengers have yet to be reimbursed almost two years later. Premier's $15 million surety bond did not cover the entire amount of its UPR, estimated to have been approximately $22 million. Only by reliance on the obligation of credit card issuers to reimburse those passengers who had charged their purchases will Premier's surety bond be sufficient to satisfy all passenger claims.

The bankruptcies we have seen are symptomatic of the economic circumstances of the past few years and the decline in tourism after the events of September 11, 2001. The environment has changed significantly from that of 1996 when the Commission decided to hold in abeyance its efforts to require coverage for all UPR. The industry continues to consolidate. Large industry conglomerates own a number of cruise lines.[6] Carnival Corporation and Royal Caribbean Cruises Limited each are attempting to purchase P&O Princess Cruises Plc., which operates P&O Cruises and Princess Cruises. The size and number of vessels continue to increase, thus raising capacity. Recent reports indicate that six new vessels are anticipated to be launched in the remainder of 2002, another thirteen vessels in 2003, and still another seven in 2004.[7] Most of those vessels will have a capacity significantly exceeding 2,000 passengers, and three will have a capacity of 3,000 passengers or more.

Another indicator of concern is the number of complaints received by the Commission. For much of the history of the Commission's administration of Pub. L. 89–777, the agency received few complaints from passengers. In recent years, however, the Commission has been receiving several hundred complaints per year. In addition, the Commission now receives an ever-increasing number of inquiries from members of Congress about problems experienced by their constituents.

The $15 Million Ceiling

The Commission has examined its current $15 million ceiling in light of the above-described circumstances. Since 1967, when the ceiling was set at $5 million, the consumer price index has increased more than five-fold. Simply keeping pace with that index would indicate a ceiling of over $25 million. Yet the cruise industry itself and the amount of UPR outstanding at any one time has increased to a much greater degree. A coverage requirement capped at $25 million would be wholly inadequate for some cruise lines whose fleets consistently have outstanding UPR in the hundreds of millions of dollars. In addition, smaller operators may be at a competitive disadvantage vis-à-vis larger operators by having to cover all of their outstanding UPR, a requirement that is not imposed on larger operators under the present rule.

Finally, recent experience has demonstrated that increased coverage requirements must be put in place *before* a PVO begins to experience financial difficulty. Once a PVO is in financial peril, any Commission action to increase coverage requirements could increase the risk of nonperformance to passengers.

For all of these reasons, the Commission proposes to eliminate the ceiling on coverage requirements, and to require coverage based on the total amount of UPR for all PVOs. However, the Commission recognizes this could be costly to many in the industry. Accordingly, it is proposed that coverage of all passenger funds for voyages not yet performed be achieved in part by relying on the obligations of credit card issuers under the Fair Credit Billing Act (''FCBA''), 15 U.S.C. 1666–1666j, thus reducing the amount of coverage that must be filed with the Commission. This combination of credit card responsibilities and the coverage filed with the Commission would protect all UPR within the scope of section 3. Section 540.5 of the rules would be modified to implement this new approach, and will utilize a newly defined term, ''excepted passenger revenue,'' as defined in proposed section 540.3(i)(2), which is described below. UPR would be redefined to exclude excepted passenger revenue (''EPR'').

Excepted Passenger Revenue

The Commission is mindful of the tremendous cost and difficulty that may be faced by some PVOs in covering all UPR (as currently defined), and therefore proposes to exclude revenue received from credit card charges made within 60 days of sailing from the computation of UPR. Reliance on the current statutory obligations of credit card issuers to provide protections to their cardholders would substantially reduce coverage requirements for almost all PVOs, while not diminishing passenger protection. Performance bonds, guaranties, and escrow accounts established under the Commission's program will protect passengers not otherwise protected by their credit card issuers. The purpose of these bonds, guaranties, and escrow accounts is to provide passenger protection. They do not represent an asset of the cruise line, but a separate asset available to reimburse passengers.

[5] Great Lakes Cruises, Inc. operated the vessel MTS ARCADIA and is not to be confused with the Great Lakes Cruise Company that markets the vessels COLUMBUS and LE LEVANT.

[6] Carnival Corporation now owns Carnival Cruises, Holland America Line, Windstar Cruises, Cunard Line, Seabourn Cruise Line, and Costa Cruises. Royal Caribbean Cruises Limited owns Celebrity Cruises and Royal Caribbean International. Star Cruises Plc. owns Star Cruises, Norwegian Cruise Line, and Orient Lines.

[7] www.cruise-news.com/coming.html, ''Coming Attractions—Index of Future Liners Now Under Construction,'' August 28, 2002.

The proposal to exclude certain credit card charges from the computation of UPR is based upon construing Pub. L. 89–777 in a manner consistent with the FCBA. The FCBA requires credit card issuers to refund money for ''billing errors'' when a purchaser notifies the credit card issuer of the billing error in writing within 60 days after the credit card issuer transmits a statement containing the billing error. The term ''billing error'' is defined in such a way as to include ''goods or services * * * not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction.'' 15 U.S.C. 1666(b)(3). The nonperformance of a cruise appears to fit within this statutory definition of a failure to provide goods or services as agreed.

The FCBA was enacted after the passage of Pub. L. 89–777. There is a general presumption in the law that a subsequent statute and a prior statute should be construed in a reasonable manner that ''makes sense.'' *See, e.g., United States* v. *Fausto*, 484 U.S. 439, 453 (1988) (''reconciling many laws enacted over time, and getting them to ''make sense'' in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute.''). In Pub. L. 89–777, Congress intended to protect passengers from nonperformance of transportation by requiring the Commission to ensure that PVOs are able to reimburse passengers if voyages are not performed. In the FCBA, Congress intended to provide protection for consumers from a failure in the delivery of goods or services within 60 days of the transmission of a bill. Both Pub. L. 89–777 and the FCBA are consumer protection statutes, and should be construed so as to maximize the protections available to consumers. Our proposed rule is premised on the notion that the best way to understand the relationship between the two complementary and overlapping statutes is for the Commission to require PVOs to provide proof of adequate financial responsibility for tickets that are purchased by credit card more than sixty days before a passenger is scheduled to embark, and for tickets that are purchased at any time by other means not covered by the FCBA. Passengers will be covered adequately by the FCBA for tickets purchased with a credit card less than 60 days before a cruise takes place, and will have an obligation to inform their credit card issuer in writing in the event of nonperformance of a cruise. It will be incumbent on affected passengers to comply with time or other requirements to obtain compensation from their credit card issuer.

Based on this analysis, it also would appear that requiring PVOs to provide coverage for UPR from tickets purchased by credit card within 60 days of embarkation, given the existence of the FCBA, would be redundant and would impose a needless financial burden. Therefore, pursuant to its statutory authority to determine what is ''necessary to establish the financial responsibility of'' PVOs, 46 U.S.C. app. 817e(a), the Commission proposes that passenger revenues received within 60 days of embarkation and paid for by a credit card that is subject to the FCBA be excluded from the calculation of UPR. This proposal is located in the ''definitions'' section of the rule, in such a way that UPR will be defined as passenger revenues received except for revenues received by credit card for a voyage to take place within 60 days.[8]

The proposed rule, however, would not permit a PVO to rely exclusively on excepted passenger revenue and thereby avoid supplying any evidence of financial responsibility. All PVOs would be required to provide, as a minimum, an amount of financial responsibility equal to ten percent of the sum of the highest amount of UPR plus EPR within the two years immediately preceding the filing of the application. This amount would be in addition to the amount required to cover UPR.

Technical Changes

A number of technical changes that are expected to have little, if any, impact also are proposed. They include the elimination of references to insurance as a means of performance coverage and escrow accounts as a means of casualty coverage. Insurance has never been used by any PVO to provide performance coverage, and it appears in any event to be inappropriate as a device for providing such coverage. Similarly, escrow accounts are designed to provide coverage for performance, and not casualty.

The Commission's rules formally require the filing of an application with the Secretary of the Commission in order to obtain a performance or casualty certificate. In practice, however, applications have always been filed with the appropriate operating bureau. Accordingly, the proposed rule reflects this by requiring the filing of documents with the Bureau of Consumer Complaints and Licensing. The proposed rule also would effect changes with respect to the filing of information. Prior requirements to file certain information by certified or registered mail would be replaced with a requirement that service in certain situations be by certified mail or other methods that would provide actual notice. This change would make the requirements consistent with the Commission's requirements in 46 CFR part 515, concerning Ocean Transportation Intermediaries.

Section 540.1 (b) would be modified to emphasize that failure to comply with subpart A may result not only in denial of an application, but also revocation of an existing certificate. The rule's language would be changed slightly to make it consistent with the statutory language. A similar provision applicable to subpart B would also be added to section 540.20.

Section 540.2 would be modified by deleting definitions of ''Insurer'' and ''Evidence of Insurance,'' for the reasons explained above. In addition, the definition of ''whole-ship'' charter would be expanded to include ''partial-ship'' charters. A definition for the term ''Principal(s)'' would be added. Previously, provisions of subpart A imposed requirements on ''Owners or Charterer(s).'' However, section 3 of Pub. L. 89–777 imposes performance certificate requirements on ''any person'' performing a number of functions. The Commission always has insisted on the coverage being in the name of the ticket or passage contract issuer at a minimum, even though that entity may not be the same as an owner or charterer. Accordingly, the term ''Principal'' will refer to all entities deemed necessary to be covered.

Reporting Requirements

The Commission proposes to create new sections 540.8 and 540.26, consolidating reporting requirements for each subpart within a single section. Previously, reporting requirements have been interspersed within various sections. It is hoped that this consolidation will make it easier for affected entities to understand and comply with reporting requirements. This restructuring of the rules requires renumbering of all sections that follow the new sections in each subpart.

Two other changes have been made with respect to reporting requirements. First, the description of a material change required to be reported within five days would be expanded to include

[8] This proposed rule does not create any right of subrogation to the UPR covered by the Commission's program by credit card issuers that have reimbursed passengers for transactions involving excepted passenger revenue. Whatever means credit card issuers use to cover risks posed by excepted passenger revenue or the FCBA is beyond the scope of this proceeding.

a change in Principal for performance coverage and owner or charterer for casualty coverage. Second, in order for the Commission to have better information on the adequacy of coverage, the frequency of reporting requirements has been increased from semiannually to quarterly in sections 540.8 and 540.26.

Renumbered sections 540.9 and 540.27 have been reworded for clarification purposes. In addition, a new subsection (d) has been added to each section that would provide for automatic suspension or revocation of a certificate upon ten days' notice, for failure to comply in a timely manner with reporting requirements. On occasion, the Commission has experienced significant delays in obtaining information from some certificants. In such circumstances, it is hoped that this change will be more effective in obtaining required reports than the threat of Commission enforcement action.

Resolution of Passenger Claims in the Event of Nonperformance

In order to encourage PVOs to settle claims for nonperformance and to provide protection to passengers who are otherwise unable to obtain relief, the proposed rule would allow passengers to seek arbitration through a private arbitrator or the Commission's Alternative Dispute Resolution (''ADR'') program, 46 CFR part 502, subpart U, if after six months their section 3 claims have not been settled by the PVO. In addition, passengers may utilize other means of ADR at any time. The Commission would offer ADR services in such cases since its ADR program is designed to resolve issues which are ''material to a decision concerning a program of the Commission and with which there is a disagreement, between,'' *inter alia,* ''the persons who would be substantially affected by the decision.'' 46 CFR 502.402(f).

ADR provides a variety of means to resolve disputes, some more formal than others. Arbitration, the most formal of the choices, may be used when all parties consent. 46 CFR 502.406(a)(1). ''Consent may be obtained either before or after an issue in controversy has arisen.'' *Id.* Arbitration awards are binding. ''It is an adjudicatory process, the scope of which in a particular controversy is defined in an arbitration agreement. Awards in such proceedings are enforceable in federal District Court pursuant to title 9 of the U.S. Code.'' Notice of Proposed Rulemaking, 46 CFR part 502, 66 FR 27922 (May 21, 2001).

The Commission generally would prefer that parties utilize other, less formal means than arbitration. They include conciliation, facilitation, mediation, fact-finding, and the use of ombudsmen.[9] 46 CFR 502.402(a). These proceedings are not inherently binding; even though the parties may agree to be bound by a determination in one of these proceedings. Participation in any of these processes is also voluntary. 46 CFR 502.403(c).

Most passenger claims presumably would be resolved through mediation or the Commission's ombuds services, with arbitration reserved for those instances where an agreement resolving the dispute cannot be reached between the parties. Should passengers seek to utilize the Commission's ADR services, the Commission's Dispute Resolution Specialist, 46 CFR 501.5(h)(1), will determine the means most useful for each situation, but arbitration would be available only with respect to claims not paid within six months.

The proposed rule would effectuate the availability of ADR by adding provisions consenting to arbitration to the bond, guaranty, and escrow agreement forms in the rule. *See* 46 CFR part 540, subpart A. As proof of financial responsibility PVOs must present to the Commission a bond, guaranty, or escrow agreement.[10] This mechanism to ensure financial responsibility is set in place to protect and reimburse passengers in the event that the PVO does not perform the voyage for which the passenger paid.

The language of Pub. L. 89–777 stipulates that PVOs must supply ''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.'' 46 U.S.C. app. 817e(a). Currently the guaranty and escrow agreement forms contain language requiring the financial responsibility provider to make indemnification payments to the aggrieved passenger if, within 21 days after such passenger has obtained a ''final judgment (after appeal, if any) against [the PVO] from a United States Federal or State Court of competent jurisdiction,''[11] the PVO has not paid the claim. However, obtaining such a court judgment is time-consuming and can cost more than the monetary value of the underlying claim. Therefore, the proposed rule would require that payment will also be due if the passenger has received an arbitration award through a private arbitrator or the Commission's ADR program. Moreover, consent to such a proceeding would be provided as part of the PVO's proof of financial responsibility. Thus, if a passenger elects to initiate a request for resolution of its claim, the PVO would be obligated to participate. Passengers who elect to use the Commission's services may request such action directly from the Commission's Dispute Resolution Specialist, who may appoint a third party neutral. Although the third party neutral may be a Commission employee, it is very likely that a neutral from the private sector would be appointed. In such case, fees and expenses would be borne by the parties as they agree, in accordance with 46 CFR 502.404(d).

The proposed rule would enact this requirement by adding a new section 540.10(f). In addition, in the bond (Form FMC–132A) and guaranty (Form-133A) forms and sample escrow agreement in Appendix A, language would be added to obligate the financial responsibility provider to honor arbitration awards, and to provide for consent by the passenger vessel operator to the use of arbitration under the Commission's ADR program.

Forms

The Commission's application form would be revised by the proposed rule to comport more closely with the information needed in an application. Although our rules require submission of the application form, the current version is not very useful to filers or staff reviewing the filing. The new

[9] These procedures were more thoroughly explained in the Notice of Proposed Rulemaking, 66 FR 27922 (May 21, 2001), for the ADR rule as follows:

(1) Mediation ''is a process in which a mediator facilitates communication and negotiation between or among parties to a controversy and assists them in reaching a mutually acceptable resolution of the controversy * * *. [T]he key aspect of [mediation] is that the parties control the terms of any agreement to resolve the dispute.''

(2) ''Conciliation is similar [to mediation], but is relatively informal and unstructured.''

(3) Facilitation ''is a group process that is usually goal-oriented.''

(4) Fact-finding ''involves the use of a neutral third party to investigate and determine a disputed fact. It is usually used for technical issues or significant factual issues which are part of a larger dispute. Sometimes, fact-finding is used in conjunction with mediation to resolve a fact which may be important to resolution of the controversy.''

(5) The use of ombuds ''involves the use of an employee or organization component to whom complaints or problems can be brought with the hopes of quick, informal resolution.''

[10] Self-insurance was eliminated in Docket No. 02–07, Financial Responsibility Requirements for Nonperformance of Transportation—Discontinuance of Self-Insurance and the Sliding Scale, and Guarantor Limitations, 67 FR 44774 (July 5, 2002). Insurance would be eliminated by this proposed rule.

[11] This language, and any new language added in this rulemaking, will also be added to the bond form so that all forms of financial responsibility would be consistent.

application form would be shorter, but include a separate Vessel Schedule (Form FMC–131–VS) for each vessel.

The Commission would add a new form to subpart B, Form FMC–140, Uniform Endorsement. Such a Uniform Endorsement has been in use for a number of years to protect passengers from the application of high deductibles and exclusions that may otherwise exist in insurance policies.

Other Matters

To thoroughly evaluate the impact of this proposed rule, the Commission encourages those commenting to provide cost data reflecting any changes in cost, whether an increase or decrease, to those affected. Any such cost data will be provided confidential treatment to the full extent allowable by law.

The reporting requirements in sections 540.8 and 540.26 and the revised application form FMC–131 with accompanying vessel schedules (Form FMC–131–VS) are being submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Public burden of this collection of information for 42 respondents is estimated to be 684 hours annually (180 hours for Forms FMC–131 and 131–VS and 504 hours for sections 540.8 and 540.26). Send comments regarding the burden estimate to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Federal Maritime Commission, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503 within 30 days of publication of this Notice of Proposed Rulemaking in the **Federal Register**.

The Chairman certifies, pursuant to 5 U.S.C. 605, that the proposed rule would not have a significant impact on a substantial number of small entities.

List of Subjects in 46 CFR part 540

Insurance, Maritime carriers, Penalties, Reporting and record keeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; section 3 Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e); and section 17(a) of the Shipping Act of 1984, as amended (46 U.S.C. app. 1716(a)), and for the reasons stated above, the Federal Maritime Commission proposes to amend 46 CFR part 540 to read as follows:

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

Sec.
540.1 Scope.
540.2 Definitions.
540.3 Proof of financial responsibility, when required.
540.4 Procedure for establishing financial responsibility.
540.5 Guaranties and escrow accounts.
540.6 Surety bonds.
540.7 Evidence of financial responsibility.
540.8 Reporting requirements.
540.9 Denial, revocation, suspension, or modification.
540.10 Miscellaneous.
Form FMC–131
Form FMC–132A
Form FMC–133A
Appendix A—Example of Escrow Agreement for use under 46 CFR 540.5(b)

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

540.20 Scope.
540.21 Definitions.
540.22 Proof of financial responsibility, when required.
540.23 Procedure for establishing financial responsibility.
540.24 Insurance, surety bonds, self-insurance, and guaranties.
540.25 Evidence of financial responsibility.
560.26 Reporting requirements.
540.27 Denial, revocation, suspension, or modification.
540.28 Miscellaneous.
Form FMC–132B
Form FMC–133B
Form FMC–140

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356—1358, 46 U.S.C. app. 817e, 817d; 46 U.S.C. 1716.

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

§ 540.1 Scope.

(a) The regulations contained in this subpart set forth the procedures whereby persons in the United States who arrange, offer, advertise or provide passage on a vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility or, in lieu thereof, file a bond or other security for obligations under the terms of ticket contracts to indemnify passengers for nonperformance of transportation to which they would be entitled. Included also are the qualifications required by the Commission for issuance of a Certificate (Performance) and the basis for the denial, revocation, modification, or suspension of such Certificates.

(b) Failure to comply with this subpart may result in denial of an application for a certificate or revocation of an existing certificate. Vessels operating without the proper certificate may be denied clearance. In addition, any person who shall violate this part shall be subject to a civil penalty of not more than $6,000 in addition to a civil penalty of $220 for each passage sold, such penalties to be assessed by the Federal Maritime Commission (46 U.S.C. app. 91, 817e).

§ 540.2 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States, or the laws of any foreign country.

(b) *Vessel* means any commercial vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports.

(c) *Commission* means the Federal Maritime Commission.

(d) *United States* includes the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(e) *Berth or stateroom accommodation or passenger accommodations* includes all temporary and all permanent passenger sleeping facilities.

(f) *Certificate (Performance)* means a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation issued pursuant to this subpart.

(g) *Passenger* means any person who is to embark on a vessel at any U.S. port and who has paid any amount for a ticket contract entitling him to water transportation.

(h) *Passenger revenue* means those monies wherever paid by passengers who are to embark at any U.S. port for water transportation and all other accommodations, services and facilities relating thereto.

(i) (1) *Unearned passenger revenue* means that passenger revenue received for water transportation and all other

accommodations, services, and facilities relating thereto not yet performed, but does not include excepted passenger revenue.

(2) *Excepted passenger revenue* means that passenger revenue received for transportation and all other accommodations, services, and facilities relating thereto not yet performed, when payment is tendered by the passenger within 60 days of the date the passenger is scheduled to embark through the use of a credit card that is subject to the provisions governing the correction of billing errors at 15 U.S.C. 1666. An extension of credit by the person arranging, offering, advertising or providing passage shall not be considered excepted passenger revenue.

(j) *Whole-ship or partial-ship charter* means an arrangement between a passenger vessel operator and a corporate or institutional entity:

(i) Which provides for the purchase of all, or a significant part of, the passenger accommodations on a vessel for a particular voyage or series of voyages; and

(ii) Whereby the involved corporate or institutional entity provides such accommodations to the ultimate passengers free of charge and such accommodations are not resold to the public.

(k) *Principal(s)* include the ticket or passage contract issuer(s) and all other persons arranging, offering, advertising, or providing passage on a vessel subject to this subpart.

§ 540.3 Proof of financial responsibility, when required.

No person in the United States may arrange, offer, advertise, or provide passage on a vessel unless a Certificate (Performance) has been issued to or covers such person.

§ 540.4 Procedure for establishing financial responsibility.

(a) In order to comply with section 3 of Pub. L. 89–777 (80 Stat. 1357, 1358) enacted November 6, 1966, there must be filed an application on Form FMC–131, Application for Passenger Vessel Certificate, with accompanying Vessel Schedule(s) on Form FMC–131–VS. Copies of Forms FMC–131 and FMC–131–VS may be obtained from the Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, Washington, DC 20573, or the Commission Web site, *http://www.fmc.gov.*

(b) An application for a Certificate (Performance) shall be filed in duplicate with the Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, by the Principal(s) at least 60 days in advance of the arranging, offering, advertising, or providing of any water transportation or tickets in connection therewith. Late filing of the application will be permitted only for good cause shown. All applications and evidence required to be filed with the Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency. The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart. An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of $2,549. An application for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of $1,276.

(c) The application shall be signed by a duly authorized officer or representative of the applicant with a copy of evidence of his or her authority. Notice of the application for issuance, denial, revocation, suspension, or modification of any such Certificate shall be published in the **Federal Register**.

§ 540.5 Guaranties and escrow accounts.

The amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 100 percent of the unearned passenger revenue of the applicant on the date within the 2 fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue, plus an additional fixed amount of ten percent of the sum of the unearned passenger revenue and the excepted passenger revenue on the date within the two fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue plus excepted passenger revenue. The Commission, for good cause shown, may consider a time period other than the previous two-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required. Evidence of adequate financial responsibility for the purposes of this subpart may be established by one or a combination (including § 540.6 Surety Bonds) of the following methods:

(a) Filing with the Commission a guaranty on Form FMC–133A, by a shipowners' Protection and Indemnity Association acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC–133A, however, may be amended by the Commission in a particular case for good cause.

(1) Termination or cancellation of a guaranty, whether by the assured or by the guarantor, and whether for nonpayment of fees, assessments, or for other cause, shall not be effected:

(i) Until notice in writing has been given to the assured or to the guarantor and to the Bureau of Consumer Complaints and Licensing at its office, in Washington, DC 20573, by certified U.S. mail or other method reasonably calculated to provide actual notice, and

(ii) until after 30 days expire from the date notice is actually received by the Commission, or until after the Commission revokes the Certificate (Performance), whichever occurs first. Notice of termination or cancellation to the assured or guarantor shall be simultaneous to such notice given to the Commission. The guarantor shall remain liable for claims covered by said guaranty arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

(2) The insolvency or bankruptcy of the assured shall not constitute a defense to the guarantor as to claims included in said guaranty and in the event of said insolvency or bankruptcy, the guarantor agrees to pay any unsatisfied final judgments obtained on such claims.

(3) No guaranty shall be acceptable under these rules which restricts the liability of the guarantor where privity of the Principal(s) has been shown to exist.

(4) In the case of a guaranty which is to cover an individual voyage, such guaranty shall be in an amount determined by the Commission to equal the passenger revenue for that voyage.

(b) Filing with the Commission evidence of an escrow account, acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. Parties filing escrow agreements for Commission approval may execute such agreements in the form set forth in Appendix A of Subpart A of this Part.

(c) Revenues derived from whole-ship or partial-ship charters, as defined in section 540.2(1), may be exempted from consideration as unearned passenger revenues, on condition that, in the case of a new operator or within 30 days of

the execution of the charter if the operator has a Certificate (Performance) for the vessel in question: (1) A certified true copy of the contract or charter is furnished with the application;

(2) the chartering party attests that it will redistribute the vessel's passenger accommodations without charge; and

(3) a document executed by the chartering party's Chief Executive Officer or other responsible corporate officer is submitted by which the chartering party specifically acknowledges that its rights to indemnification under section 3 of Public Law 89–777 are waived by the reduction in section 3, Public Law 89–777, financial responsibility coverage attributable to the exclusion of such funds from the operator's unearned passenger revenue.

§ 540.6 Surety bonds.

(a) Where financial responsibility is not established under § 540.5, a surety bond shall be filed on Form FMC–132A. Such surety bond shall be issued by a bonding company authorized to do business in the United States and acceptable to the Commission for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form-132A, however, may be amended by the Commission in a particular case for good cause.

(b) In the case of a surety bond which is to cover all passenger operations of the applicant subject to these rules, such bond shall be in an amount calculated as in the introductory text of § 540.5.

(c) In the case of a surety bond which is to cover an individual voyage, such bond shall be in an amount determined by the Commission to equal the passenger revenue for that voyage.

(d) The liability of the surety under the rules of this subpart to any passenger shall not exceed the amount paid by any such passenger, except that, no such bond shall be terminated while a voyage is in progress.

§ 540.7 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been given, a Certificate (Performance) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to indemnify passengers for nonperformance of water transportation. The period covered by the Certificate (Performance) shall be indeterminate, unless a termination date has been specified thereon.

§ 540.8 Reporting requirements.

(a) In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than five (5) days following such change. For the purpose of this subpart, a material change shall be one which: (1) Results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart, (2) requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility, or (3) includes a change in Principal(s).

(b) In addition, every person who has been issued a Certificate (Performance) must submit to the Commission a quarterly statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. The quarterly statements must cover each month of the quarter and include a statement of the highest unearned passenger vessel revenue and the highest excepted passenger revenue accrued for each month in the reporting period. In addition, the statements will be due within 30 days after the close of every quarter.

(c) Each applicant, escrow agent, and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of its death, disability, or unavailability, the Secretary of the Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary in accordance with the above provision must also serve the Certificant, escrow agent, or guarantor, as the case may be, by certified U.S. mail or other method reasonably calculated to provide actual notice at its last known address on file with the Commission.

(d) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person(s) to whom the Certificate (Performance) is to be issued, and in case of a partnership, all partners shall be named.

(e) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to § 540.8 (c).

§ 540.9 Denial, revocation, suspension, or modification.

(a) A Certificate (Performance) shall become null and void upon cancellation or termination of the surety bond, guaranty, or escrow account.

(b) A Certificate (Performance) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Performance);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

(c) Prior to the denial, revocation, suspension, or modification of a Certificate (Performance), the Commission shall advise the applicant of its intention to deny, revoke, suspend, or modify and shall state the reasons therefor. If the applicant, within 20 days after the receipt of such advice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission.

(d) Notwithstanding the above provisions, failure to comply timely with the reporting requirements in this part may subject a certificant to automatic suspension or revocation of their Certificate (Performance) upon ten days' notice, without hearing. A certificant may avoid such suspension or revocation by filing within the ten days the required reports or proof that the reports had been timely filed.

§ 540.10 Miscellaneous.

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason fails to provide adequate or satisfactory protection to the public, the Commission will notify the applicant stating the deficiencies thereof.

(b) The Commission's bond (Form FMC–132A), guaranty (Form FMC–133A), and application (Form FMC–131) forms are hereby incorporated as a part of the rules of this subpart. Any such forms filed with the Commission under this subpart must be in duplicate.

(c) Any securities or assets accepted by the Commission (from applicants, guarantors, escrow agents, or others), under the rules of this subpart must be physically located in the United States.

(d) Every person in whose name a Certificate (Performance) has been issued shall be deemed to be responsible for any unearned passage money or deposits in the hands of its agents or of any other person or organization authorized by the certificant to sell the certificant's tickets. Certificants shall promptly notify the Commission of any arrangements, including charters and subcharters, made by it or its agent with any person pursuant to which the certificant does not assume responsibility for all passenger fares and deposits collected by such person or organization and held by such person or organization as deposits or payment for services to be performed by the certificant. If responsibility is not assumed by the certificant, the certificant also must inform such person or organization of the certification requirements of Pub. L. 89–777 and not permit use of its name or tickets in any manner unless and until such person or organization has obtained the requisite Certificate (Performance) from the Commission.

(e) Passengers with claims for nonperformance under this subpart should file such claims with the appropriate Principal(s) and their providers of financial responsibility. In the event that such a passenger claim has not been resolved within six months after, but no more than three years after, filing with the Principal(s) and providers of financial responsibility, a passenger has the option to request arbitration under 46 CFR 502.406. This six month time requirement may be waived by the Dispute Resolution Specialist for good cause.

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

§ 540.20 Scope.

(a) The regulations contained in this subpart set forth the procedures whereby Owners and Charterer(s) having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility 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. Included also are the qualifications required by the Commission for issuance of a Certificate (Casualty) and the basis for the denial, revocation, suspension, or modification of such Certificates.

(b) Failure to comply with this subpart may result in denial of an application for a certificate or revocation of an existing certificate. Vessels operating without the proper certificate may be denied clearance. In addition, any person who shall violate this part shall be subject to a civil penalty of not more than $6,000 in addition to a civil penalty of $220 for each passage sold, such penalties to be assessed by the Federal Maritime Commission (46 U.S.C. app. 91, 817d).

§ 540.21 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any state thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States, or the laws of any foreign country.

(b) *Vessel* means any commercial vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports.

(c) *Commission* means the Federal Maritime Commission.

(d) United States includes the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(e) *Berth or stateroom accommodations or passenger accommodations* includes all temporary and all permanent passenger sleeping facilities.

(f) *Certificate (Casualty)* means a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages issued pursuant to this subpart.

(g) *Voyage* means voyage of a vessel to or from U.S. ports.

(h) *Insurer* means any insurance company, underwriter, corporation or association of underwriters, ship owners' protection and indemnity association, or other insurer acceptable to the Commission.

(i) *Evidence of insurance* means a policy, certificate of insurance, cover note, or other evidence of coverage acceptable to the Commission.

(j) For the purpose of determining compliance with § 540.22, ''passengers embarking at United States ports'' means any persons, not necessary to the business, operation, or navigation of a vessel, whether holding a ticket or not, who board a vessel at a port or place in the United States and are carried by the vessel on a voyage from that port or place.

§ 540.22 Proof of financial responsibility, when required.

No vessel shall embark passengers at U.S. ports unless a Certificate (Casualty) has been issued to or covers the Owners and Charterer(s) of such vessel.

§ 540.23 Procedure for establishing financial responsibility.

(a) In order to comply with section 2 of Pub. L. 89–777 (80 Stat. 1357, 1358) enacted November 6, 1966, there must be filed an Application on Form FMC–131, Application for Passenger Vessel Certificate, with accompanying Vessel Schedule(s) on Form FMC–131–VS. Copies of Form FMC–131 and Form FMC–131–VS may be obtained from the Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, Washington, DC 20573.

(b) An application for a Certificate (Casualty) shall be filed in duplicate with the Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, at least 60 days in advance of the sailing. Late filing of the application will be permitted only for good cause shown. All applications and evidence required to be filed with the Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency. The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart. An application for a Certificate (Casualty), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of $1,111. An application for a Certificate (Casualty) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of $557.

(c) The application shall be signed by a duly authorized officer or representative of the applicant with a copy of evidence of his authority.

§ 540.24 Insurance, surety bonds, self-insurance, and guaranties.

Evidence of adequate financial responsibility for the purposes of this subpart may be established by one of the following methods:

(a) Filing with the Commission evidence of insurance by means of a policy (accompanied by Form FMC–140), issued by an insurer providing coverage for liability which may be incurred for death or injury to passengers or other persons on voyages in an amount based upon the number of

passenger accommodations aboard the vessel, calculated as follows:

Twenty thousand dollars for each passenger accommodation up to and including 500; plus

Fifteen thousand dollars for each additional passenger accommodation between 501 and 1,000; plus

Ten thousand dollars for each additional passenger accommodation between 1,001 and 1,500; plus

Five thousand dollars for each passenger accommodation in excess of 1,500;

Except that, if the applicant is operating more than one vessel subject to this subpart, the amount prescribed by this paragraph shall be based upon the number of passenger accommodations on the vessel being so operated which has the largest number of passenger accommodations.

(1) Termination or cancellation of the evidence of insurance, whether by the assured or by the insurer, and whether for nonpayment of premiums, calls or assessments, or for other cause, shall not be effected: (i) Until notice in writing has been given to the assured or to the insurer and to the Bureau of Consumer Complaints and Licensing at its office in Washington, DC 20573, by certified U.S. mail or other method reasonably calculated to provide actual notice, and (ii) until after 30 days expire from the date notice is actually received by the Commission, or until after the Commission revokes the Certificate (Casualty), whichever occurs first. Notice of termination or cancellation to the assured or insurer shall be simultaneous to such notice given to the Commission. The insurer shall remain liable for claims covered by said evidence of insurance arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

(2) The insolvency or bankruptcy of the assured shall not constitute a defense to the insurer as to claims included in said evidence of insurance and in the event of said insolvency or bankruptcy, the insurer agrees to pay any unsatisfied final judgments obtained on such claims.

(3) No insurance shall be acceptable under these rules which restricts the liability of the insurer where privity of the Owners or Charterer(s) has been shown to exist.

(4) Paragraphs (a)(1) through (a)(3) of this section shall apply to the guaranty as specified in paragraph (d) of this section.

(b) Filing with the Commission a surety bond on Form FMC–132B issued by a bonding company authorized to do business in the United States and acceptable to the Commission. Such surety bond shall evidence coverage for liability which may be incurred for death or injury to passengers or other persons on voyages in an amount calculated as in paragraph (a) of this section, and shall not be terminated while a voyage is in progress. The requirements of Form FMC–132B, however, may be amended by the Commission in a particular case for good cause.

(c) Filing with the Commission for qualification as a self-insurer such evidence acceptable to the Commission as will demonstrate continued and stable passenger operations over an extended period of time in the foreign or domestic trade of the United States. In addition, applicant must demonstrate financial responsibility by maintenance of working capital and net worth, each in an amount calculated as in paragraph (a) of this section. The Commission will take into consideration all current contractual requirements with respect to the maintenance of working capital and/or net worth to which the applicant is bound. Evidence must be submitted that the working capital and net worth required above are physically located in the United States. This evidence of financial responsibility shall be supported by and subject to the following which are to be submitted on a continuing basis for each year or portion thereof while the Certificate (Casualty) is in effect:

(1) A current quarterly balance sheet, except that the Commission, for good cause shown, may require only an annual balance sheet;

(2) A current quarterly statement of income and surplus except that the Commission, for good cause shown, may require only an annual statement of income and surplus;

(3) An annual current balance sheet and an annual current statement of income and surplus to be certified by appropriate certified public accountants;

(4) An annual current statement of the book value or current market value of any assets physically located within the United States together with a certification as to the existence and amount of any encumbrances thereon;

(5) An annual current credit rating report by Dun and Bradstreet or any similar concern found acceptable to the Commission;

(6) A list of all contractual requirements or other encumbrances (and to whom the applicant is bound in this regard) relating to the maintenance of working capital and net worth;

(7) All financial statements required to be submitted under this section shall be due within a reasonable time after the close of each pertinent accounting period;

(8) Such additional evidence of financial responsibility as the Commission may deem necessary in appropriate cases.

(d) Filing with the Commission a guaranty on Form FMC–133B by a guarantor acceptable to the Commission. Any such guaranty shall be in an amount calculated as in paragraph (a) of this section. The requirements of Form FMC–133B, however, may be amended by the Commission in a particular case for good cause.

(e) Filing with the Commission evidence of an escrow account, acceptable to the Commission, the amount of such account to be calculated as in paragraph (a) of this section.

(f) The Commission will, for good cause shown, consider any combination of the alternatives described in paragraphs (a) through (e) of this section for the purpose of establishing financial responsibility.

§ 540.25 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been established, a Certificate (Casualty) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to meet any liability which may be incurred for death or injury to passengers or other persons on voyages. The period covered by the certificate shall be indeterminate unless a termination date has been specified therein.

§ 540.26 Reporting requirements.

(a) In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than five (5) days following such change. For the purpose of this subpart, a material change shall be one which: (1) Results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart,

(2) requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility, or

(3) involves a change in Owner(s) or Charterer(s). Notice of the application for, issuance, denial, revocation, suspension, or modification of any such Certificate shall be published in the **Federal Register**.

(b) In addition to reports required under § 540.23(d), every person who has

been issued a Certificate (Casualty) must submit to the Commission a quarterly statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. The quarterly statements must cover each month of the quarter. In addition, the statements will be due within 30 days after the close of every quarter.

(c) Each applicant, insurer, and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of death, disability, or unavailability, the Secretary of the Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary of the Commission in accordance with the above provision must also serve the certificant, insurer, or guarantor, as the case may be, by certified U.S. mail or other method reasonably calculated to provide actual notice, at its last known address on file with the Commission.

(d) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person to whom the Certificate (Casualty) is to be issued, and in case of a partnership, all partners shall be named.

(e) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to § 540.26(a) or § 540.26(b).

§ 540.27 Denial, revocation, suspension, or modification.

(a) A Certificate (Casualty) shall become null and void upon cancellation or termination of the surety bond, evidence of insurance, or guaranty.

(b) A Certificate (Casualty) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Casualty);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

(c) Prior to the denial, revocation, suspension, or modification of a Certificate (Casualty), the Commission shall advise the applicant of its intention to deny, revoke, suspend, or modify and shall state the reasons therefor. If the applicant, within 20 days after the receipt of such advice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission.

(d) Notwithstanding the above provisions, failure to comply timely with the reporting requirements in this part may subject a certificant to automatic suspension or revocation of their Certificate (Casualty) upon ten days' notice, without hearing. A certificant may avoid such suspension or revocation by filing within the ten days the required reports or proof that the reports had been filed timely.

§ 540.28 Miscellaneous.

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason, fails to provide adequate or satisfactory protection to the public, the Commission will notify the applicant stating the deficiencies thereof.

(b) The Commission's bond (Form FMC–132B), guaranty (Form FMC–133B), and application (Form FMC–131 as set forth in Subpart A of this part) forms are hereby incorporated as a part of the rules of this subpart. Any such forms filed with the Commission under this subpart must be in duplicate.

(c) Any securities or assets accepted by the Commission (from applicants, insurers, guarantors, or others) under the rules of this subpart must be physically located in the United States.

(d) In the case of any charter arrangements involving a vessel subject to the regulations of this subpart, the vessel owner (in the event of a subcharter, the charterer shall file) must within 10 days file with the Bureau of Consumer Complaints and Licensing evidence of any such arrangement.

By the Commission.

Bryant L. VanBrakle

Secretary.

BILLING CODE 6730–01–P

Form FMC-131

APPLICATION FOR PASSENGER VESSEL CERTIFICATE
FEDERAL MARITIME COMMISSION
Washington, DC 20573-0001
(202) 523-5821 • www.fmc.gov

Type of Certificate
☐ Performance
☐ Casualty
☐ Both

1. (a) Applicant's legal business name and trade name(s) used (provide English translation if other than English) :

_____

_____

(b) Street address:

_____

_____

_____

(c) Telephone: _____

(d) Fax: _____

(e) U.S. Taxpayer Identification Number (TIN), if applicable:

_____

2. (a) Applicant's form of organization, i.e., corporation, partnership, or other form of business association:

_____

(b) If incorporated, name the state or country in which incorporated and date of incorporation:

_____

(c) If partnership or joint venture, give name and address of each partner or member (attach additional page(s) if necessary):

_____

_____

_____

3. Name and street address of applicant's U.S. agent or other person authorized to accept legal service in U.S.: (Submit statement of acknowledgment from agent.)

_____

_____

_____

Telephone: *Fax:* *E-mail:*

4. Number of vessels included in application: _____. Complete and attach a Vessel Schedule (Form FMC-131-VS) for each vessel.

5. Declaration: I declare under penalty of perjury under the laws of the United States of America that the information provided herein is true, correct, and complete.

X_____ *Date:* _____
(Signature of authorized official)

_____ *Address:* _____
Printed Name

_____
Title

If not a corporate officer or partner, please submit Power of Attorney to demonstrate your authority to submit this application.

Submit original application and a Vessel Schedule (Form FMC-131-VS) for each vessel to:
Federal Maritime Commission • 800 N. Capitol Street, NW • Washington, DC 20573-0001 • Fax (202)523-5830

Form FMC-131-VS

☐ New Schedule
☐ Amended Schedule

VESSEL SCHEDULE for _____
(Full Name of Vessel)

Submit the following documents: Copy of U.S. cruise itinerary ▪ Specimen copy of passenger ticket/passage contract ▪ Documentation of payment and cancellation policy ▪ Proof of principal(s) names (e.g., corporate charter or partnership agreement) ▪ Copy of all applicable charter agreements ▪ Power of attorney/application signing authority

Applicant:

Previous Vessel Name, if any:

Total passenger capacity: _____ *Total number of passenger berths, including 3rd and 4th berths:* _____

Attach information showing fare structure, i.e., number of passenger berths in each price category.

Payment Policy (percentage of payment due at each of the following intervals before sailing date):

60 or more days: _____ *45-59 days:* _____ *30-44 days:* _____ *Less than 30 days:* _____

Principal(s) Information - Provide information on all principals, indicating which of the following describes each principal. Use the letter code(s) below to identify all that apply to each principal.

A. Owner	*D. Parent Company*	*G. Time Charterer*	*J. Other (describe)*
B. Marketing Agent	*E. Operator*	*H. Bare-boat Charterer*	
C. Ticket/Contract Issuer	*F. Technical Manager*	*I. Space Charterer*	

Legal Name of Principal and Trade Name(s) used (provide English translation if not English):

Enter Principal code(s) from above:

Address:

Telephone: *Fax:* *E-mail:*

U.S. Agent for Service of Process and Street Address (if other than agent designated by applicant in item 3 of Application (Form FMC-131)):

Telephone: *Fax:* *E-mail:*

Submitted by: _____ _____
Signature *Date*

_____ _____
Printed Name and Title *Telephone*

Submit this Vessel Schedule (Form FMC-131-VS) for each vessel to:
Federal Maritime Commission • 800 N. Capitol Street, NW • Washington, DC 20573-0001 • fax (202)523-5830

Attach continuation sheet(s) to list additional principals.

Form FMC-131-VS , Vessel Schedule Continuation Sheet No. _____ of _____ pages.

Continuation Sheet for _____
(Full Name of Vessel)

Legal Name of Principal and Trade Name(s) used (provide English translation if not English):	*Enter Principal code(s) from above:*
Headquarters Address:	
Telephone: *Fax:*	*E-mail:*
U.S. Agent for Service of Process and Street Address (if other than agent designated by applicant in item 3 of Application (Form FMC-131)):	
Telephone: *Fax:*	*E-mail:*
Legal Name of Principal and Trade Name(s) used (provide English translation if not English):	*Enter Principal code(s) from above:*
Headquarters Address:	
Telephone: *Fax:*	*E-mail:*
U.S. Agent for Service of Process and Street Address (if other than agent designated by applicant in item 3 of Application (Form FMC-131)):	
Telephone: *Fax:*	*E-mail:*
Legal Name of Principal and Trade Name(s) used (provide English translation if not English):	*Enter Principal code(s) from above:*
Headquarters Address:	
Telephone: *Fax:*	*E-mail:*
U.S. Agent for Service of Process and Street Address (if other than agent designated by applicant in item 3 of Application (Form FMC-131)):	
Telephone: *Fax:*	*E-mail:*

Submit this Vessel Schedule (Form FMC-131-VS) for each vessel to:
Federal Maritime Commission • 800 N. Capitol Street, NW • Washington, DC 20573-0001 • fax (202)523-5830

Form FMC-132A

FEDERAL MARITIME COMMISSION

Surety Co. Bond No. _____

Passenger Vessel Surety Bond
(46 CFR Part 540, Subpart A)

Know all men by these presents, that we _____ _____ (Name of applicant), of _____ (City), _____ (State and country), as Principal (hereinafter called Principal), and _____ (Name of surety), a company created and existing under the laws of _____ (State and country) and authorized to do business in the United States as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of _____ , for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Principal intends to become a holder of a Certificate (Performance) pursuant to the provisions of Subpart A of Part 540 of Title 46, Code of Federal Regulations and has elected to file with the Federal Maritime Commission ("FMC") such a bond to insure financial responsibility and the supplying transportation and other services subject to Subpart A of Part 540 of Title 46, Code of Federal Regulations, and

Whereas this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Performance) pursuant to Subpart A of Part 540 of Title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers to whom the Principal may be held legally liable for any of the damages herein described in the event that such legal liability has not been discharged by the Principal within 21 days after any such passenger has obtained a final judgment (after appeal, if any) against the Principal from a United States Federal or State Court of competent jurisdiction, or has obtained an arbitration award. By filing this proof of financial responsibility with the FMC, Principal consents to arbitration of passenger claims for nonperformance in an arbitration proceeding under the FMC's Alternative Dispute Resolution program (46 CFR part 502) by an arbitrator selected by the FMC Dispute Resolution Specialist.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to provide such transportation and other accommodations and services while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of Subpart A of Part 540 of Title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger shall not exceed the price paid by or on behalf of such passenger.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the _____ day of _____ , 20____ , 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by actual written notice sent to the other and to the Federal Maritime Commission at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any refunds by the Principal for the supplying of

transportation and other services after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for refunds made by the Principal for the supplying of transportation and other services prior to the date such termination becomes effective.

In witness whereof, the said Principal and Surety have executed this instrument on _____ day of _____ , 20 _____ .

PRINCIPAL

Name _____

By _____
(Signature and title)

Witness _____

SURETY

[SEAL] Name _____

By _____

(Signature and title)

Witness _____

Only corporations or associations of individual insurers may qualify to act as surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

Form FMC-133A

FEDERAL MARITIME COMMISSION

Guaranty No. _____

Guaranty in Respect of Liability for Nonperformance, Section 3 of Public Law 89-777

1. Whereas _____ (Name of applicant) (Hereinafter referred to as the "Applicant") is the Operator and/or Ticket Issuer of the passenger Vessel(s) specified in the annexed Schedule ("the Vessels"), which are or may become engaged in voyages to or from United States ports, and the Applicant desires to establish its financial responsibility in accordance with section 3 of Pub. L. 89-777, 89th Congress, approved November 6, 1966 ("the Act") then, provided that the Federal Maritime Commission ("FMC") shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Performance) ("Certificate"), the undersigned Guarantor hereby guarantees to discharge the Applicant's legal liability to indemnify the passengers of the Vessels for nonperformance of transportation within the meaning of section 3 of the Act, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger has obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger for such nonperformance, or has obtained an arbitration award. By filing this proof of financial responsibility with the FMC, Applicant consents to arbitration of passenger claims for nonperformance in an arbitration proceeding under the FMC's Alternative Dispute Resolution program (46 CFR part 502) by an arbitrator selected by the FMC Dispute Resolution Specialist.

2. The Guarantor's liability under this Guaranty in respect to any passenger shall not exceed the amount paid by such passenger; and the aggregate amount of the Guarantor's liability under this Guaranty shall not exceed $ _____

3. The Guarantor's liability under this Guaranty shall attach only in respect of events giving rise to a cause of action against the Applicant, in respect of any of the Vessels, for nonperformance of transportation within the meaning of Section 3 of the Act, occurring after the Certificate has been granted to the Applicant, and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing (including email or facsimile) that the Guarantor has elected to terminate this Guaranty except that:

(i) If, on the date which would otherwise have been the expiration date under the foregoing provisions (a) or (b) of this Clause 3, any of the Vessels is on a voyage whereon passengers have been embarked at a United States port, then the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have finally disembarked; and

(ii) Such termination shall not affect the liability of the Guarantor for refunds arising from payments made to the Applicant for the supplying of transportation and other services prior to the date such termination becomes effective.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing (including email or facsimile), then, provided that within 30 days of receipt of such notice, FMC shall have granted a Certificate, such Vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates _____, with offices at _____, as the Guarantor's legal agent for service of process for the purposes of the Rules of the Federal Maritime Commission, Subpart A of Part 540 of Title 46, Code of Federal Regulations, issued under Section 3 of Pub. L. 89-777 (80 Stat. 1357, 1358), entitled "Security for the Protection of the Public."

_____
(Place and Date of Execution)

_____
(Name of Guarantor)

_____
(Address of Guarantor)

By _____
(Signature and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to This Schedule in Accordance With Clause 4

Appendix A - Example of Escrow Agreement for use under 46 CFR 540.5(b)
Escrow Agreement

1. Legal name(s), state(s) of incorporation, description of business(es), trade name(s) if any, and domicile(s) of each party.

2. Whereas, [name of the passenger vessel operator] ("Operator") and/or [name of the issuer of the passenger ticket] ("Ticket Issuer") wish(es) to establish an escrow account to provide for the indemnification of certain of its passengers utilizing [name vessel(s)] in the event of nonperformance of transportation to which such passengers would be entitled, and to establish the Operator's and/or Ticket Issuer's financial responsibility therefor; and

3. Whereas, [name of escrow agent] ("the Escrow Agent") wishes to act as the escrow agent of the escrow account established hereunder.

4. The Operator and/or Ticket Issuer will determine, as of the day prior to the opening date, the total amounts of U.S. unearned passenger revenues ("UPR") which it had in its possession. Unearned passenger revenues are defined as [incorporate the elements of 46 CFR 540.2(i)].

5. The Operator and/or Ticket Issuer shall on the opening date deposit an amount equal to UPR as determined above, plus a cash amount equal to [amount equal to no less than 10% of the Operator's and/or Ticket Issuer's UPR on the date within the 2 fiscal years immediately prior to the filing of the escrow agreement which reflects the greatest amount of UPR, except that the Commission, for good cause shown, may consider a time period other than the previous 2-fiscal-year requirement or other methods acceptable to the Commission to determine the amount of coverage required] ("initial deposit").

6. The Operator and/or Ticket Issuer may at any time deposit additional funds into the account.

7. The Operator and/or Ticket Issuer shall, at the end of each business week, recompute UPR by first computing:

A. the amount by which UPR has decreased due to: (1) Refunds due to cancellations; (2) amount of cancellation fees assessed in connection with (1) above; and (3) the amount earned from completed cruises; and

B. the amount by which UPR has increased due to receipts from passengers for future water transportation and all other related accommodations and services not yet performed.

The difference between the above amounts is the amount by which UPR has increased or decreased ("new UPR"). If the new UPR plus the amount of the initial deposit exceeds the amount in the escrow account, the Operator and/or Ticket Issuer shall deposit the funds necessary to make the account balance equal to UPR plus the initial deposit. If the account balance exceeds new UPR plus the initial deposit, the balance shall be available to the Operator and/or Ticket Issuer. The information computed in paragraph 7 shall be furnished to the Commission and the Escrow Agent in the form of a recomputation certificate signed and certified by a competent officer of the Operator and/or Ticket Issuer. Copies sent to the Commission are to be addressed to the Director, Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

8. A monthly report shall be prepared by the Escrow Agent and provided to the Operator and/or Ticket Issuer and the Commission within 15 days of the end of each month and shall list the investment assets of the account, their original cost, their current market value, and the beginning and ending balance of the account.

9. The Operator's and/or Ticket Issuer's independent auditors shall prepare quarterly reports, such reports to be furnished to the Escrow Agent and the Commission, and any shortfall is to be covered within one business day.

10. The Escrow Agent shall invest the funds of the account in qualified investments as directed by the Operator and/or Ticket Issuer. Some examples of qualified investments are, to the extent permitted by law:

(a) Government obligations of the United States or its agencies;

(b) Certificates of deposit, time deposits or acceptances of any bank, savings institution or trust company whose debt obligations are in the two highest categories rated by Standard and Poor's or Moody's, or which is itself rated in the two highest categories by Keefe, Bryette and Woods;

(c) Commercial paper similarly rated;

(d) Certificates or time deposits issued by any bank, savings institution or trust company when fully insured by the FDIC or the FSLIC;

(e) Money market funds utilizing securities of the same quality as above; and/or

(f) Corporate bonds of the three highest categories, as rated by Standard and Poor's or Moody's.

11. Income derived from the investments shall be credited to the escrow account.

12. The purpose of the escrow agreement is to establish the financial responsibility of the Operator and/or Ticket Issuer pursuant to section 3 of Public Law 89 - 777, approved November 5, 1966, and the account is to be utilized to discharge the Operator's and/or Ticket Issuer's legal liability to indemnify passengers for nonperformance of transportation via the [name of vessel(s)]. The Escrow Agent is to make such payments on instructions from the Operator and/or Ticket Issuer, or, in the absence of such instructions, 21 days after final judgment against the Operator and/or Ticket Issuer in a U.S. Federal or State court having jurisdiction, or has obtained an arbitration award. [Operator and/or Ticket Issuer] consents to arbitration of passenger claims for nonperformance in an arbitration proceeding under the FMC's Alternative Dispute Resolution program (46 CFR part 502) by an arbitrator selected by the FMC Dispute Resolution Specialist. The Operator and/or Ticket Issuer will pledge to each passenger holding a ticket for future passage on the Operator's/Ticket Issuer's vessel(s) an interest in the Escrow Account equal to the Fares amount shown on the face of such ticket. The Escrow Agent agrees to act as nominee for each passenger until transportation is performed or until passenger has been compensated.

13. Escrow Agent shall waive right to offset.

14. The Operator and/or Ticket Issuer will indemnify and hold Escrow Agent harmless.

15. Statement of the parties' agreement concerning warranty of *bona fides* by the Operator and/or Ticket Issuer and Escrow Agent.

16. Statement of the parties' agreement concerning fees to be paid by the Operator and/or Ticket Issuer to Escrow Agent, reimbursable expenses to be paid by the Operator and/or Ticket Issuer to Escrow Agent. A statement that fees for subsequent terms of agreement are to be negotiated.

17. Statement of the parties' agreement concerning the term of agreement and renewal/termination procedures.

18. Statement of the parties' agreement concerning procedures for appointment of successor Escrow Agent.

19. Statement that disposition of funds on termination shall be to the Operator and/or Ticket Issuer, if evidence of the Commission's acceptance of alternative evidence of financial responsibility is furnished; otherwise, all passage fares held for uncompleted voyages are to be returned to the passengers. The Operator and/or Ticket Issuer shall pay all fees previously earned to the Escrow Agent.

20. The agreement may be enforced by the passengers, the Escrow Agent, the Operator and/or Ticket Issuer or by the Federal Maritime Commission.

21. All assets maintained under the escrow agreement shall be physically located in the United States and may not be transferred, sold, assigned, encumbered, etc., except as provided in the agreement.

22. The Commission has the right to examine the books and records of the Operator and/or Ticket Issuer and the Escrow Agent, as related to the escrow account, and the agreement may not be modified unless agreed in writing by the Operator and/or Ticket Issuer and Escrow Agent and approved in writing by the Commission.

Form FMC-132B

FEDERAL MARITIME COMMISSION

Surety Co. Bond No. _____

Passenger Vessel Surety Bond
(46 CFR Part 540, Subpart B)

Know all men by these presents, that We _____ (Name of applicant), of _____ (City), _____(State and country), as Principal (hereinafter called Principal), and _____ (Name of surety), a company created and existing under the laws of _____(State and country) and authorized to do business in the United States, as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of _____, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Principal intends to become a holder of a Certificate (Casualty) pursuant to the provisions of Subpart B of Part 540 of Title 46, Code of Federal Regulations, and has elected to file with the Federal Maritime Commission such a bond to insure financial responsibility to meet any liability it may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, and

Whereas, this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Casualty) pursuant to Subpart B of Part 540 of Title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers or other persons to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers or other persons any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to meet any liability the Principal may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, while this bond is in effect pursuant to and in accordance with the provisions of Subpart B of Part 540 of Title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger or other persons shall lin no event exceed the amount of the Principal's legal liability under any final judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of Public Law 89-777, then the Surety's total liability under this surety bond shall be limited to an amount computed in accordance with such formula.

The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the _____ day of _____, 20___, 12:01 a.m., standard time, at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by actual written notice provided to the other and to the Federal Maritime Commission at its Office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports after the termination of this bond as herein provided, but such

termination shall not affect the liability of the Surety hereunder for such liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports prior to the date such termination becomes effective.

In witness whereof, the said Principal and Surety have executed this instrument on the _____day of _____, 20_____.

PRINCIPAL

Name _____

By _____
(Signature and title)

Witness _____

SURETY

Name _____

By _____
(Signature and title)

Witness _____

Only corporations or associations of individual insurers may qualify to act as Surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

Form FMC-133B

FEDERAL MARITIME COMMISSION

Guaranty No. _____

Guaranty in Respect of Liability for Death or Injury, Section 2 of Public Law 89-777

1. Whereas _____ (name of Applicant) (hereinafter referred to as the "Applicant") is the Owner or Charterer of the passenger Vessel(s) specified in the annexed Schedule ("the Vessels"), which are or may become engaged in voyages to or from U.S. ports, and the Applicant desires to establish its financial responsibility in accordance with section 2 of Public Law 89-777, 89th Congress, approved November 6, 1966 ("the Act") then, provided that the Federal Maritime Commission ("FMC") shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Casualty) ("Certificate"), the undersigned Guarantor hereby guarantees to discharge the applicant's legal liability in respect of claims for damages for death or injury to passengers or other persons on voyages of the Vessels to or from U.S. ports, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger or other person, or, in the event of death, his or her personal representative, has obtained a final judgment (after appeal, if any) against the Applicant from a U.S. Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger or other person, or to such personal representative, with respect to such claim.

2. The Guarantor's liability under this Guaranty shall in no event exceed the amount of the Applicant's legal liability under any such judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of the Act, then the Guarantor's total liability under this Guaranty shall be limited to an amount computed in accordance with such formula.

3. The Guarantor's liability under ths Guaranty shall attach only in respect of events giving rise to causes of action against the Applicant in respect of any of the Vessels for damages for death or injury within the meaning of section 2 of the Act, occurring after the Certificate has been granted to the Applicant and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing (including e-mail or facsimile) that the Guarantor has elected to terminate this Guaranty, except that if, on the date which would otherwise have been the expiration date of this Guaranty under the foregoing provisions of this Clause 3, any of the Vessels is on a voyage in respect of which such Vessel would not have received clearance in accordance with section 2(e) of the Act without the Certificate, then on the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have fully disembarked.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel owned or operated by the Applicant, and not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing (including e-mail or facsimile), then provided that, within 30 days of receipt of such notice FMC shall have granted a Certificate, such vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

5. The Guarantor hereby designates _____, with offices at _____, as the Guarantor's legal agent for Service of process for the purposes of the Rules of the Federal Maritime Commission, Subpart B of Part 540 of Title 46, Code of Federal Regulations, issued under section 2 of Public Law 89-777 (80 Stat. 1357, 1358), entitled "Security for the Protection of the Public."

_____
(Place and Date of Execution)

_____
(Name of Guarantor)

_____
(Address of Guarantor)

By _____
(Signature and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to this Schedule in Accordance with Clause 4

Form FMC-140

Insurance Policy
Uniform Endorsement

Section 2 of Public Law 89-777

Notwithstanding anything to the contrary herein contained, it is herein understood and agreed:

1. The Association (or other insurer) agrees that the risks covered by this policy include the Assured's losses arising from its legal liability in respect of claims for damages for death or personal injury to passengers or other persons on voyages (of the vessels designated in the annexed schedule) to and from United States ports subject to the provisions of Section 2 of Public Law 89-777 (80 Stat. 1356, 1357) as to which the Federal Maritime Commission shall have issued a Certificate (Casualty).

2. The Association's (or other insurer's) liability as to losses relating to claims defined above in Paragraph 1 of this Endorsement shall in no event exceed the amount of the Assured's legal liability under any final judgement (after appeal, if any) against the Assured from a United States federal or state court of competent jurisdiction or under a compromise settlement agreement made with the approval of the Association (or other insurer), provided, however, that the Association's (or other insurer's) total liability in respect of any one accident or occurrence as to each vessel shall be limited to the amount of the policy as specified therein.

3. Notice of termination or cancellation as provided for by the terms of the policy (Certificate) shall apply as to any and all losses, except those relating to claims for death or personal injury defined above in Paragraph 1 of this Endorsement. As to losses relating to said claims only, termination or cancellation whether for nonpayment of premiums, calls, assessments, or for other cause, shall not be effected (i) until notice in writing (including e-mail or facsimile) has been given to the Assured and to the Federal Maritime Commission at its office in Washington, D.C. and (ii) until after thirty (30) days expire from the date notice is actually received by the Commission or until after the Commission revokes the Certificate (Casualty), whichever occurs first. Such notice of termination or cancellation to the Assured shall be simultaneous to such notice given to the Commission. The Association (or other insurer) shall remain liable for claims covered by this policy arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

4. Notwithstanding anything contained herein to the contrary, the insolvency or bankruptcy of the Assured shall not constitute a defense to the Association (or other insurer) as to claims for death or personal injury defined above in Paragraph 1 of this Endorsement. As to said claims only, in the event of insolvency or bankruptcy of the Assured the Association (or other insurer) agrees to pay any unsatisfied final judgements obtained against the Assured on such claims. Provided, however, that such payments shall discharge, to the extend thereof, the insurer's obligations under this policy to the Assured or its trustee in bankruptcy, liquidator, receiver, conservator or statutory successor.

5. Fault, knowledge or privity of the Assured shall not constitute a defense to the Association (or other insurer) nor restrict the Assured's right of recovery under this policy or otherwise lessen the Association's (or other insurer's) obligation in respect of claims for death or personal injury as defined above in Paragraph 1 of this Endorsement.

6. If during the currency of this policy, the Assured requests that a vessel owned or operated by the Assured, and not designated in the annexed schedule, should become subject to this policy (Certificate), and if the Association (or other insurer) accedes to such request and so notifies the Federal Maritime Commission in writing (including e-mail or facsimile), then, provided that within thirty (30) days of receipt of such notice the Federal Maritime Commission grants a Certificate (Casualty) covering such vessel, the vessel shall thereupon be deemed to be one of the vessels included in said schedule and subject to this policy.

7. The Association (or other insurer) hereby designates _____

_____ with offices at _____ as the Association's (or other insurer's) legal agent for service of process for purposes of the Rules of the Federal Maritime Commission, Subpart B of Part 540 of Title 46 Code of Federal Regulations issued under Section 2 of Public Law 89-777 (80 Stat. 1356, 1357) entitled Security for the Protection of the Public.

All other terms and conditions, not in conflict with this Endorsement, remain unchanged.

Attached to Policy No.: _____

Association/Insurer: _____

_____/____/_____ _____
Month/Date/Year Signature

_____
Printed Name

_____
Title

Schedule of Vessels Covered by this Endorsement

Vessels Added to this Schedule in Accordance with Paragraph 6

[FR Doc. 02–27642 Filed 10–30–02; 8:45 am]
BILLING CODE 6730–01–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2603; MB Docket No. 02–141; RM–10428]

Radio Broadcasting Services; Exmore and Belle Haven, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: At the request of petitioners Commonwealth Broadcasting, LLC, licensee of Station WEXM(FM), Exmore, Virginia, and Sinclair Telecable, d/b/a Sinclair Communications, licensee of Station WROX–FM, Cape Charles, Virginia, this document dismisses the petition for rule making that underlies the *Notice of Proposed Rulemaking* in this proceeding. *See* 67 FR 42524 (June 24, 2002). The Notice proposed that the Commission reallot Channel 291B from Exmore to Belle Haven, Virginia, and reallot Channel 241B from Cape Charles to Exmore, Virginia, and modify the licenses of Stations WEXM(FM) and WROX–FM to reflect the changes. On June 21, 2002, petitioners filed a request for withdrawal of petition and expression of interest in this matter.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–141, adopted October 2, 2002, and released October 18, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202 863–2893. facsimile 202 863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–27692 Filed 10–30–02; 8:45 am]
BILLING CODE 6712–01–P