

the opportunity to comment on EPA's proposal.

## VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket for this action. Because this action does not impose or propose any requirements, and instead seeks comments and suggestions for the Agency to consider in possibly developing a subsequent proposed rule, other statutory and Executive Order reviews that apply to rulemaking do not apply to this action. Should EPA subsequently determine to pursue a rulemaking, EPA will address the statutes and Executive Order as applicable to the rulemaking.

Nevertheless, the Agency welcomes comments and/or information that would help the Agency to assess any of the following: The potential impact of a rule on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*); potential impacts on federal, state, or local governments pursuant to the Unfunded Mandates Reform Act ((UMRA) (2 U.S.C. 1531–1538); federalism implications pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, November 2, 1999); availability of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113; tribal implications pursuant to Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000); environmental health or safety effects on children pursuant to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997); energy effects pursuant to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001); Paperwork burdens pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501); or human health or environmental effects on minority or low-income populations pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). The Agency will consider such comments during the

development of any subsequent proposed rulemaking.

## List of Subjects in 40 CFR Part 257

Environmental protection, Coal combustion products, Coal combustion residuals, Coal combustion waste, Disposal, Hazardous waste, Landfill, Surface impoundment.

**Andrew Wheeler,**

*Administrator.*

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## FEDERAL MARITIME COMMISSION

### 46 CFR Part 540

[Docket No. 20–15]

RIN 3072–AC82

### Passenger Vessel Financial Responsibility

**AGENCY:** Federal Maritime Commission.

**ACTION:** Advance Notice of Proposed Rulemaking (ANPRM).

**SUMMARY:** The Federal Maritime Commission (Commission) is issuing this ANPRM to seek comment on potential regulatory changes to its passenger vessel operator financial responsibility requirements. These changes were recommended in an Interim Report issued by the Fact Finding Officer in Commission Fact Finding 30: COVID–19 Impact on Cruise Industry.

**DATES:** Submit comments on or before November 13, 2020.

**ADDRESSES:** You may submit comments, identified by Docket No. 20–15, by the following methods:

- *Email:* [secretary@fmc.gov](mailto:secretary@fmc.gov). For comments, include in the subject line: “Docket No. 20–15, Comments on PVO Financial Responsibility Rulemaking.” Comments should be attached to the email as a Microsoft Word or text-searchable PDF document.

*Instructions:* For detailed instructions on submitting comments, including requesting confidential treatment of comments, and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to the Commission's website, unless the commenter has requested confidential treatment.

*Docket:* For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room

at: <https://www2.fmc.gov/readingroom/proceeding/20-15/>.

**FOR FURTHER INFORMATION CONTACT:** Rachel E. Dickon, Secretary; Phone: (202) 523–5725; Email: [secretary@fmc.gov](mailto:secretary@fmc.gov).

## SUPPLEMENTARY INFORMATION:

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### I. Executive Summary

Before a passenger vessel operator (PVO) may arrange, offer, advertise, or provide transportation on a vessel, the PVO must file with the Commission evidence of responsibility to indemnify passengers in the event of nonperformance of transportation.<sup>1</sup> Satisfactory evidence includes a copy of a bond, insurance, guaranty, or escrow agreement meeting the Commission's requirements in 46 CFR part 540. The Commission reviews the PVO's submission and if it meets the Commission's requirements, it will issue the PVO a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation (Certificate (Performance)).<sup>2</sup>

Following the arrival of Coronavirus disease 2019 (COVID–19) in the United States, the Centers for Disease Control and Prevention (CDC) issued a “No Sail Order and Suspension of Further Embarkation,” (CDC No Sail Order) causing PVOs to cease all operations and raising questions regarding passengers' ability to obtain refunds of monies paid for transportation disrupted by COVID–19. In response, the Commission initiated Fact Finding 30: COVID–19 Impact on Cruise Industry, on April 30, 2020.

The Fact Finding Officer issued an Interim Report on PVO Refund Policies

<sup>1</sup> 46 U.S.C. 44102; 46 CFR part 540, subpart A.

<sup>2</sup> 46 CFR 540.7.

on July 27, 2020, concluding that clearer guidance is needed in determining whether a passenger is entitled to obtain a refund if a PVO cancels a voyage, makes a significant schedule change, or significantly delays a voyage.<sup>3</sup> The Fact-Finding Officer proposed, among other things, that the Commission provide a clear interpretation of nonperformance of transportation and modify the appropriate provisions of the Commission's PVO regulations to make clear how passengers may obtain refunds under the PVOs' financial responsibility instruments filed with the Commission. The Commission voted on August 10, 2020, to initiate a rulemaking to implement the recommended changes.

The Commission is requesting comment on these recommended changes and their effects on PVOs and passengers. In addition to general comments, the Commission is requesting focused comment on the issues identified below in section III for each of the recommended changes.

## II. Background

### A. PVO Program

On November 6, 1966, Congress enacted Public Law 89-777. Section 2 of the statute (codified at 46 U.S.C. 44103) requires owners and charterers of vessels having berth or stateroom accommodations for 50 or more passengers, and embarking passengers at United States ports, to establish financial responsibility to meet any liability incurred for death or injury to passengers or other persons on voyages to or from United States ports. Section 3 of the statute (codified at 46 U.S.C. 44102) requires persons arranging, offering, advertising, or providing passage on such vessels to establish financial responsibility for indemnification of passengers for nonperformance of transportation. The Commission published implementing regulations at 46 CFR part 540 in 1967.<sup>4</sup>

Under this program, the Commission issues two types of certificates to PVOs of vessels that: (1) Have berths for 50 or more passengers; and (2) embark passengers from U.S. ports. The first type of Certificate (Performance) is issued by the Commission when a PVO provides the Commission with acceptable coverage to satisfy liability incurred for nonperformance of

transportation up to the amount of unearned passenger revenue (UPR) held by the PVO or the monetary cap set in the Commission's regulation. Such coverage may be in the form of insurance, a guaranty, a surety bond, or escrow agreement (collectively referred to as financial responsibility instruments).<sup>5</sup> The coverage is used to reimburse passengers when the PVO fails to perform cruises as contracted and has taken no further actions to refund passengers.<sup>6</sup> The second type of Certificate (Casualty) is issued by the Commission when a PVO provides the Commission with acceptable coverage to satisfy any liability incurred for death or injury during a voyage, as provided in the regulations and statute.

There have been few changes to the regulations in part 540 since its inception. Changes have included several increases to the monetary cap for required performance coverage under section 44102, the elimination of the self-insurance option for PVOs, some limitations on the types of entities acceptable as guarantors, and the elimination of certain sliding-scale provisions as to the amount of coverage required. Most recently, the Commission increased the cap on required performance coverage in two annual steps, from \$15 million to \$22 million in 2014, and then from \$22 million to \$30 million in 2015.<sup>7</sup> Since 2015, the cap has been adjusted for inflation every two years based upon the U.S. Bureau of Labor Statistics' Consumer Price Index. The current cap is \$32 million.<sup>8</sup>

### B. Fact Finding 30

In response to COVID-19, the Centers for Disease Control and Prevention (CDC) issued a "No Sail Order and Suspension of Further Embarkation" (CDC No Sail Order) on March 14, 2020, causing PVOs to cease all operations. Due to the unpredictable nature of the disease, the CDC has extended the term of the order through September 30,

2020.<sup>9</sup> Consequently, questions arose concerning future cruises and passengers' ability to obtain refunds of monies paid for transportation disrupted by COVID-19.

The Commission initiated Fact Finding 30 on April 30, 2020, to investigate COVID-19's impact and identify commercial solutions to COVID-19-related issues that interfere with the operation of the cruise industry. The Commission's Fact Finding Officer has been meeting with PVOs, marine terminal operators, and other stakeholders to understand COVID-19's effects on the cruise industry.

On July 27, the Fact Finding Officer issued an Interim Report recommending certain regulatory changes to the Commission's regulations with respect to PVOs. The Fact Finding Officer concluded that clearer guidance is needed in determining whether a passenger is entitled to obtain refunds if a PVO cancels a voyage, makes a significant schedule change, or significantly delays a voyage.

The Fact Finding Officer stated that a clear and consistent policy toward ticket refunds would eliminate any uncertainty on the part of passengers and would provide clear terms upon which the industry may plan for future operations. The Fact Finding Officer proposed, among other things, that the Commission provide a clear interpretation of nonperformance of transportation and modify the appropriate provisions of the Commission's PVO regulations in part 540 to make clear how passengers may obtain refunds under the PVOs' financial instruments filed with the Commission. These recommendations were as follows:

Therefore, it is proposed that the Commission: (1) Interpret "nonperformance of transportation" to include cancelling a sailing or delaying passenger boarding by twenty-four (24) hours or more; and (2) modify the appropriate provisions of the Commission's PVO regulations to make clear how passengers may obtain refunds under the PVOs' financial instruments:

1. When a sailing is cancelled or consumer boarding is delayed by twenty-four (24) hours or more for any reason other than due to a government order or declaration in paragraph 2 below, full refunds must be paid within sixty (60) days following a passenger refund request.

2. When a sailing is cancelled or consumer boarding is delayed by twenty-four (24) hours or more due to a governmental order or declaration, full refunds must be paid within one hundred eighty (180) days following a passenger refund request. This includes all

<sup>3</sup> See Fact Finding Investigation No. 30: COVID-19 Impact on Cruise Industry, *Interim Report: Refund Policy*, at 11-13 (July 27, 2020) (Fact Finding 30 Interim Report or Interim Report).

<sup>4</sup> 32 FR 3986 (Mar. 11, 1967) (establishing regulations governing nonperformance coverage); 32 FR 7282 (May 16, 1967) (establishing regulations governing casualty coverage).

<sup>5</sup> The Commission's regulations also permit smaller PVOs to request to substitute alternative forms of financial protection as evidence of financial responsibility. See 46 CFR 540.9(l).

<sup>6</sup> In practice, passengers generally receive refunds for canceled cruises from the PVOs directly or, if the passenger paid by credit card, from the credit card issuer. Refund payments under the PVO financial responsibility instruments are rare and usually only occur if the PVO ceases operations or declares bankruptcy.

<sup>7</sup> 46 CFR 540.9(j); Final Rule: Passenger Financial Responsibility Requirements for Nonperformance of Transportation, 78 FR 13268 (Feb. 27, 2013).

<sup>8</sup> Notice: Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation—Cap Adjustment, 84 FR 17410 (June 24, 2019).

<sup>9</sup> CDC Newsroom, <https://www.cdc.gov/media/releases/2020/s0716-cruise-ship-no-sail-order.html>.

consumers who, at their own discretion, cancelled their booking within sixty (60) days prior to said governmental action and commensurate cancelled or delayed sailing.

3. If, following a declaration of a public health emergency, any consumer cancels a cruise booking of a sailing that may be affected by such emergency after the PVO's refund deadline, but the sailing is not cancelled, the PVO will provide a credit for a future cruise equal to the consumer's amount of deposit. In all other cases in which a consumer cancels and embarkation and sailing occur within the prescribed timeline, the cruise line's rules for cancellation will apply.

4. A PVO may set a reasonable deadline for a consumer entitled to a refund to request the refund which shall not be less than 6 months after the scheduled voyage.

5. Refunds should include all fees paid to carrier by consumer to include all ancillary fees remitted to the carrier by the consumer.

6. Refunds to be given in same fashion as monies were originally remitted to the carrier. The PVO will be deemed to have made a refund payment if the deposited revenue as to a passenger requesting a refund is remitted by the PVO in the same manner as the passenger's original payment, by: (1) Mailing a check payable in immediately available funds to the passenger at an address furnished by the passenger, (2) issuing an electronic funds transfer, including wire transfer, automated clearinghouse (ACH) or other electronic means, in immediately available funds, or (3) posting of a credit to the credit card processor for the benefit of the credit card account used by passenger to make payments to the applicant. The refund will be deemed timely notwithstanding that passenger may not immediately have access to the transferred funds in its account or any credit card account due to rules and processes of any third-party services provider.

7. Nothing in this rule shall be interpreted to preclude the consumer and the PVO from entering into an alternative form of compensation in full satisfaction of a required refund, such as a future cruise credit.<sup>10</sup>

The Fact Finding Officer also recommended the Commission mandate that: (1) PVOs provide on their websites clear instructions on how passengers may obtain refunds; and (2) PVOs submit current web addresses showing their refund instructions to the Commission for publication on the Commission's website.<sup>11</sup>

### III. Proposed Changes and Request for Comments

#### A. Defining Nonperformance of Transportation

As discussed above, 46 U.S.C. 44102 requires that PVOs file with the Commission evidence of financial responsibility to indemnify passenger

for nonperformance of transportation. The Commission's regulations in 46 CFR part 540 do not expressly define what constitutes nonperformance of transportation, but the substantive provisions and required financial responsibility instrument terms indicate that it means the PVO's failure to provide transportation or other accommodations and services subject to part 540, subpart A,<sup>12</sup> in accordance with the terms of the ticket contract between the PVO and passenger.<sup>13</sup>

As noted in the Fact Finding 30 Interim Report, what constitutes nonperformance of transportation under the current regulations depends on the specific terms of each PVO's ticket contract and may vary from PVO to PVO or from contract to contract.<sup>14</sup> Accordingly, the Interim Report recommended interpreting nonperformance of transportation under 46 U.S.C. 44102 to include: (1) Canceling a voyage; and (2) delaying passenger boarding by 24 hours or more. Similar to the U.S. Department of Transportation's policy (cited in the Interim Report) addressing when airline passengers are entitled to refunds from air carriers, a delay would only constitute nonperformance if the passenger chooses not to embark on the delayed voyage.

The Commission is seeking comment on adopting this definition of nonperformance of transportation. The Commission anticipates that implementing this change would involve amending the regulations in part 540, subpart A, to include the definition and revising the language of the forms for financial responsibility instruments (surety bonds, guaranties, and escrow agreements) to reflect coverage in situations under the definition.<sup>15</sup> To that end, the

<sup>12</sup> The scope of the transportation, accommodations, and services covered is described in the definition of "unearned passenger revenue" in § 540.2 and includes water transportation and all other accommodations, services, and facilities relating thereto, but excludes air transportation, hotel accommodations, or tour excursions. 46 CFR 540.2(i).

<sup>13</sup> See 46 CFR 540.1(a) (stating that PVOs must file evidence of financial responsibility or 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; Form FMC-132A to Subpart A of Part 540 (stating that: (1) The purpose of the bond is to insure financial responsibility and the supplying transportation and other services subject to subpart A of part 540, in accordance with the ticket contract between the PVO and the passenger; and (2) the scope of the surety's liability is for refunds due under ticket contracts made by the PVO for the supplying of transportation and other services).

<sup>14</sup> Fact Finding 30 Interim Report at 11.

<sup>15</sup> These forms include Form FMC-132A, Passenger Vessel Surety Bond (Performance); Form

Commission has developed the following draft definition:

*Nonperformance of transportation* means: (1) Canceling a voyage; or (2) delaying the boarding of passengers by more than twenty-four (24) hours if the passenger elects not to embark on the substitute or delayed voyage.

The Commission predicts that this interpretation may change the situations in which passengers could make claims for refunds against the PVO's financial responsibility instrument. In addition to a request for comments on the draft definition provided above, the Commission requests comments on:

- Necessary changes to the Commission's regulations, including the financial responsibility instrument forms, to implement the revised definition of nonperformance of transportation;

- Whether this change will increase or decrease claims for refunds against PVO financial responsibility instruments (*i.e.*, bond, insurance, guaranty, or escrow agreement), and if so, the magnitude of the increase or decrease (including number of claims and total dollar amounts paid to passengers);

- Whether this change will increase or decrease the cost to PVOs of obtaining compliant financial responsibility instruments (*e.g.*, higher or lower premiums or collateral requirements), and if so, the magnitude of the increase or decrease (*i.e.*, dollar amount);

- Other effects of this change the Commission should consider.

#### B. Process for Obtaining Refunds From PVO Instruments for Nonperformance of Transportation

##### 1. General

Although the Commission regulations require certain coverage and terms to be included in financial responsibility instruments, the regulations do not include uniform procedures regarding how and when passengers may make claims for refunds against the various financial responsibility instruments. The Fact Finding 30 Interim Report recommended that the Commission revise its regulations to make clear how passengers may obtain refunds under these instruments and include specific provisions related to such claims and the timing of refund payments.<sup>16</sup>

Neither part 540 nor the financial responsibility instrument forms provide

FMC-133A, Guaranty in Respect of Liability for Nonperformance, Section 3 of the Act; Appendix A, Example of Escrow Agreement for Use Under 46 CFR 540.5(b)). There is no required or optional form for insurance, which must meet the requirement in § 540.5(a).

<sup>16</sup> Fact Finding 30 Interim Report at 11-12.

<sup>10</sup> Fact Finding 30 Interim Report at 11-12.

<sup>11</sup> *Id.* at 12.

specific instructions on how or when passengers may obtain refunds under a PVO's financial responsibility instrument. For example, the Guaranty Form (Form FMC-133A) provides that Guarantor will make refund payments to passengers when: (1) The PVO and passenger enter into settlement agreement, approved by the Guarantor; or (2) the passenger obtains a final judgment against the PVO and the PVO does not make payment within 21 days. Similarly, the suggested language for Escrow Agreements in Appendix A states that an Escrow Agent will make refund payments to passengers when either: (1) The PVO provides written instructions to the Escrow Agent to make such payment; or (2) the passenger obtains a final judgment against the PVO, the PVO does not make payment within 21 days, and the Escrow Agent receives a certified copy of the court order.

The Fact Finding 30 Interim Report recommended the following general procedure: (1) The passenger makes a request for a refund from a PVO financial responsibility instrument when nonperformance has occurred; and (2) the refund payment is made within a certain period, depending on certain conditions.<sup>17</sup> Under this procedure, the passenger would not need a final court judgment in order to obtain a refund. The Commission anticipates that implementing these changes would involve amending the regulations in part 540, subpart A and the language of the financial responsibility instruments forms to reflect the new procedure. The Commission requests comment on the following issues related to this procedure that would need to be resolved in any proposed revisions to the Commission's regulations:

- To whom passengers should submit requests for refunds under the revised procedures.
- Should passengers submit refund claims to the financial responsibility instrument providers directly (*e.g.*, surety company, insurer, guarantor, or escrow agent)? Alternatively, should passengers submit refund claims to the PVO, and the PVO in turn authorizes payment from the financial responsibility instrument (similar to the current procedure for escrow agreements)?
- Information passengers will need to provide to obtain a refund.
- Should the Commission specify the information necessary for passengers to submit to obtain refunds from a PVO financial responsibility instrument, or

<sup>17</sup> Fact Finding 30 Interim Report at 11–12.

should those decisions be left to the individual PVOs and their financial responsibility providers?

- If the Commission should specify the necessary information from passengers, what information should be required beyond evidence of payment to the PVO, ticket contract, and evidence of cancellation or delayed boarding?
- Necessary changes to the Commission's regulations, including the financial responsibility instrument forms, to implement the revised process for obtaining refunds.

The Commission is also requesting comments on the effects of the recommended changes described in this section (section III.B) (individually and as a whole), including:

- Whether these changes will increase or decrease claims for refunds against PVO financial responsibility instruments, and if so, the magnitude of the increase or decrease (including number of claims and total dollar amounts paid to passengers).
- Whether these changes will increase or decrease the cost to PVOs of obtaining compliant financial responsibility instruments (*e.g.*, higher or lower premiums or collateral requirements), and if so, the source and magnitude of the increase or decrease (*i.e.*, dollar amount).
- Other effects of these changes the Commission should consider.

## 2. Deadline for Submitting Refund Requests

Commission regulations do not currently prescribe how long passengers have after a scheduled voyage to seek a refund from a PVO financial responsibility instrument. The Fact Finding 30 Interim Report recommended that the Commission specify that a PVO may set a reasonable deadline for passenger refund requests but the deadline may not be less than six months after the scheduled voyage.<sup>18</sup> The Commission has developed the following draft provision to reflect this recommendation:

A passenger must submit a request for refund no later than 180 days<sup>19</sup> after nonperformance occurs, unless the ticket contract or other passenger vessel operator policy allows a longer period of time for such requests.

The Commission could include this provision in part 540 and require that the financial responsibility instrument specify the time period for passengers to file refund requests. The Commission

<sup>18</sup> Fact Finding 30 Interim Report at 12.

<sup>19</sup> For clarity and ease of calculation, the Commission contemplates using a deadline of 180 days rather than six months.

requests comment on prescribing a minimum timeframe for refund requests, the amount of time recommended in the Fact Finding 30 Interim Report (six months) and the draft language provided above. As discussed above in section III.B.1, the Commission also requests comment on the effects of this change.

## 3. Deadline for Refund Payment

Commission regulations do not currently specify a time period within which passengers must receive a refund under a PVO financial responsibility instrument. The Fact Finding 30 Interim Report recommended that the Commission specify two different timeframes for payment depending on whether nonperformance was due to "a governmental order or declaration": (1) When nonperformance is due to a governmental order or declaration, full refund payments must be made within 180 days after the passenger requests a refund; and (2) in all other cases, full refund payments must be made within 60 days after the passenger requests a refund.<sup>20</sup> The Interim Report also recommended that a refund payment be deemed timely notwithstanding that the passenger may not immediately have access to the funds due to the rules and processes of any third party services provider.<sup>21</sup>

The Commission requests comment on prescribing a deadline for payment of refunds from financial responsibility instruments as a general matter, establishing two different timeframes for payment depending on whether nonperformance is due to a governmental order or declaration, and the deadlines recommended in the Interim Report (180 days when there is a governmental order or declaration; 60 days in all other cases). The Commission also requests comment on the following:

- The types of governmental orders or declarations that would trigger the longer 180-day period for providing refunds.
- Should these include only U.S. federal, state, and local orders or declarations, or should foreign government orders and declarations also trigger the longer refund payment period?
- What types of governmental orders and declarations should qualify, *i.e.*, should this be limited to governmental orders and declarations that expressly prohibit embarking passengers and suspend passenger operations like the CDC No Sail Order? If not, what other

<sup>20</sup> Fact Finding Interim Report at 11.

<sup>21</sup> *Id.* at 12.

types of governmental orders and declarations should trigger the longer refund payment period?

- The effects of this change as discussed above in section III.B.1.

#### 4. Form and Amount of Refund Payment

Commission regulations provide that the PVO financial responsibility instruments must provide coverage for “unearned passenger revenue,” which is defined as passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed; this includes port fees and taxes paid, but excludes such items as airfare, hotel accommodations, and tour excursions.<sup>22</sup> The regulations do not specify in what form refund payments must be made under PVO financial responsibility instruments.

The Fact Finding 30 Interim Report recommended the Commission specify: (1) That refund payments must include all fees, including ancillary fees, paid to the PVO by the passenger; and (2) refund payments must be made in the same manner as the passenger’s original payment, *e.g.*, check, electronic funds transfer, or credit card chargeback.<sup>23</sup>

Regarding the first recommendation, the Commission is requesting comment on whether to expand the definition of unearned passenger revenue and the scope of the ancillary fees to be included in any revised definition. The Fact Finding 30 Interim Report discusses the following types of ancillary charges paid by passengers to PVOs prior to sailing: Gratuities, shore excursions, pre-cruise onboard purchases, port fees, and taxes. Of these, the current definition of unearned passenger revenue expressly includes port fees and taxes and excludes excursions. The Interim Report does not discuss refunds for airfare or hotel accommodation.

To facilitate comment, the Commission has developed the following draft definition:

*Unearned passenger revenue* means that passenger revenue received for water transportation and all other related accommodations, services, and facilities relating thereto not yet performed; this includes port fees, taxes, and all ancillary fees remitted to the passenger vessel operator by the passenger.

The Commission requests comment on expanding the definition of unearned passenger revenue, including:

- What types of ancillary fees should be included as unearned passenger

revenue subject to refund, and what types of fees should be excluded.

- For example, should the Commission include the types of fees mentioned in the Fact Finding 30 Interim Report (*e.g.*, shore excursions, dining packages, other onboard packages, and gratuities)?

- Are there any types of fees that should be included?
- Should the definition continue to exclude airfare and hotel accommodations?

- The effects of this change as discussed above in section III.B.1.

The Commission is also requesting comment on the recommendation to specify that refund payments must be made in the same manner as the passenger’s original payment. Specifically, the Commission requests comment on the following:

- Whether it is feasible for payment from a PVO financial responsibility instrument to be made in the same manner as the passenger’s original payment.

- Necessary changes to the Commission’s regulations, including the financial responsibility instrument forms, to implement this recommendation.

- The effects of this change as discussed above in section III.B.1.

#### 5. Publishing Information on How To Obtain Refunds

The Fact Finding 30 Interim Report recommended the Commission mandate that: (1) PVOs provide on their websites clear instructions on how passengers may obtain refunds; and (2) PVOs submit current website addresses for their refund instructions to the Commission for publication on the Commission’s website.<sup>24</sup> The Commission envisions that this recommendation could be implemented by: (1) Revising the Form FMC–131, Application for Certificate of Financial Responsibility, to require PVOs to provide the uniform resource locator (URL) for their refund instructions; and (2) amending § 540.4 to require PVOs to amend their application if the URL changes. The Commission requests comment on this potential change, including:

- Whether the Commission should prescribe any specific content or format requirements for published PVO refund instructions.

- The nature of any additional regulatory burden associated with publishing refund policies on a PVO’s website or providing the URL for those

instructions to the Commission, as well as the estimated cost to PVOs.

#### C. Passenger Cancellations

In addition to recommendations related to passenger refunds in the event of nonperformance of transportation, the Fact Finding 30 Interim Report also proposed that the Commission amend its regulations to ensure PVO financial responsibility in the event passengers cancel their booking with a PVO prior to or following certain governmental orders or declarations. Specifically, the Fact Finding 30 Interim Report recommended that: (1) A passenger be entitled to a refund if they cancel their booking no more than 60 days prior to a governmental order or declaration that results in the PVO canceling the voyage or delaying boarding of passengers by more than 24 hours; and (2) a passenger be entitled to a future cruise credit if they cancel their booking following the declaration of a public health emergency and the voyage occurs as scheduled.

The Commission requests comment on the recommendation regarding passenger refunds when the passenger cancels their booking and the voyage is subsequently canceled as a result of a governmental order or declarations, including comment on the following:

- The types of governmental orders or declarations that would make a passenger eligible for a refund when they cancel their booking.

- Should these include only U.S. federal, state, and local orders or declarations, or should foreign government orders and declarations also trigger the longer refund payment period?

- What types of governmental orders and declarations qualify, *i.e.*, should this be limited to governmental orders and declarations that expressly prohibit embarking passengers and suspend passenger operations like the CDC No Sail Order? If not, what other types of governmental orders and declarations should qualify?

- Information passengers will need to provide to obtain a refund.

- Should the Commission specify the information necessary for passengers to submit to obtain refunds from a PVO financial responsibility instrument, or should those decisions be left to the individual PVOs and their financial responsibility providers?

- If the Commission should specify the necessary information from passengers, what information should be required? Such required information could include evidence of payment to the PVO, ticket contract, evidence showing cancellation of the booking,

<sup>22</sup> 46 CFR 540.2(i).

<sup>23</sup> Fact Finding 30 Interim Report at 11–12.

<sup>24</sup> *Id.* at 12.

evidence of a governmental order or declaration, and evidence of cancellation or delayed boarding of the voyage.

The Commission also requests comment on the recommendation regarding the provision of future cruise credit when the passenger cancels their booking following declaration of a public health emergency but the voyage occurs as scheduled, including comment on the following:

- Whether it is feasible for a passenger to obtain future cruise credit under a PVO financial responsibility instrument.
- The type of public health emergency declaration that would make a passenger eligible for a future cruise credit when they cancel their booking.
- Whether requests for future cruise credit should be subject to the same requirements as those recommended for refunds with respect to the deadline for requesting credit, the deadline for providing credit, and the amount of the credit.

The Commission also requests comment on the following related to both recommendations:

- Necessary changes to the Commission's regulations, including the financial responsibility instrument forms, to implement these changes.
- Whether these changes will increase or decrease claims for refunds against PVO financial responsibility instruments, and if so, the magnitude of the increase or decrease (including number of claims and total dollar amounts paid to passengers).
- Whether these changes will increase or decrease the cost to PVOs of obtaining compliant financial responsibility instruments (*e.g.*, higher or lower premiums or collateral requirements), and if so, the magnitude of the increase or decrease (*i.e.*, dollar amount).
- Other effects of these changes the Commission should consider.

#### IV. Public Participation

*How do I prepare and submit comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

You may submit your comments via email to the email address listed above under **ADDRESSES**. Please include the docket number associated with this notice and the subject matter in the

subject line of the email. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document.

*How do I submit confidential business information?*

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by email to the address listed above under

#### **ADDRESSES:**

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked "Confidential-Restricted," and the confidential material clearly marked on each page.
- A public version of your comments with the confidential information excluded. The public version must state "Public Version—confidential materials excluded" on the cover page and on each affected page, and must clearly indicate any information withheld.

*Will the Commission consider late comments?*

The Commission will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date.

*How can I read comments submitted by other people?*

You may read the comments received by the Commission at the Commission's Electronic Reading Room at the address listed above under **ADDRESSES**.

#### V. Rulemaking Analyses and Notices

##### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612), no analysis is required for an ANPRM. However, PVOs are encouraged to comment on any aspects of the potential rulemaking that may apply to them and the potential impact.

##### *National Environmental Policy Act*

The Commission's regulations categorically exclude certain

rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. The ANPRM discusses potential amendments to Commission's program for certifying the financial responsibility of PVOs. This rulemaking thus falls within the categorical exclusion for certification of financial responsibility of passenger vessels under Part 540. § 504.4(2). Therefore, no environmental assessment or environmental impact statement is required.

##### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. Any information collection requirements and associated burdens will be discussed in detail if a proposed rule is issued.

##### *Executive Order 12988 (Civil Justice Reform)*

The Commission will ensure that any proposed or final rule issued in this proceeding meets the applicable standards in E.O. 12988 titled, "Civil Justice Reform," to minimize litigation, eliminate ambiguity, and reduce burden.

##### *Regulation Identifier Number*

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at <http://www.reginfo.gov/public/do/eAgendaMain>.

By the Commission.

**Rachel Dickon,**  
Secretary.

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