

EPA specifically solicits additional comment on this proposed rule from tribal officials.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it proposes to approve a State rule implementing a Federal standard.

### *H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 15, 2012.

**Jared Blumenfeld,**

Regional Administrator, Region IX.

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**BILLING CODE 6560-50-P**

**FEDERAL MARITIME COMMISSION**

## 46 CFR Parts 501 and 540

[Docket No. 11-16]

RIN 3072-AC45

## Passenger Vessel Operator Financial Responsibility Requirements for Non-Performance of Transportation

**AGENCY:** Federal Maritime Commission.

**ACTION:** Proposed rule: Request for additional comments and information.

**SUMMARY:** The Federal Maritime Commission requests additional comments and information in order to assist the Commission’s determination whether passenger vessel operators may be deemed “small entities” under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act).

**DATES:** Submit comments on or before March 30, 2012.

**ADDRESSES:** Address all comments concerning this proposed rule to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573-0001, Phone: (202) 523-5725, Email: [secretary@fmc.gov](mailto:secretary@fmc.gov).

**FOR FURTHER INFORMATION CONTACT:**

Vern W. Hill, Director, Bureau of  
Certification and Licensing, 800 North  
Capitol Street NW., Washington, DC  
20573-0001, Phone: (202) 523-5787,  
Email: [bcl@fmc.gov](mailto:bcl@fmc.gov).

**SUPPLEMENTARY INFORMATION:**

### Submit Comments

**Non-confidential Comments and Information.** For non-confidential comments submit an original and five (5) paper copies, and if possible, send a PDF of the document by email to [secretary@fmc.gov](mailto:secretary@fmc.gov). Include in the subject line: Docket No. 11–16 and [Company/Individual Name].

*Confidential Comments and Information.* Confidential filings must be submitted in the traditional manner on paper, rather than by email. Comments and information that are submitted for confidential treatment must be submitted in hard copy by U.S. mail or courier. Confidential filings must be accompanied by a transmittal letter that identifies the filing as “confidential” and describes the nature and extent of the confidential treatment requested. Responses to this Request that contain confidential information must consist of (1) the complete filing and (2) be marked by the filer as “Confidential-Restricted,” with the confidential material clearly marked on each page. When a confidential filing is submitted, an original and one additional copy of the public version of the filing must be submitted. The public version of the filing should exclude confidential materials, and be clearly marked on each affected page, “confidential materials excluded.” The Commission will provide confidential treatment to the extent allowed by law for those submissions, or parts of submissions, for which the parties request confidentiality.

Questions regarding filing or treatment of confidential responses to this NPRM should be directed to the Commission's Secretary, Karen V. Gregory, at the telephone number or email provided above.

## Discussion

On September 13, 2011, the Commission issued its Notice of Proposed Rulemaking (NPRM) to update its financial responsibility requirements for nonperformance of passenger vessel service by passenger vessel operators that are subject to section 3 of Public Law 89-777, 46 U.S.C. 44101-44106. The NPRM was published in the **Federal Register** on September 20, 2011. 76 FR 58227-58236.

In the NPRM, the Commission relied upon the rebuttable presumption established in 2003<sup>1</sup> that PVOs are generally large companies with more than 500 employees and noted that there are no PVO small entities that would be affected by the proposed rule. NPRM, p. 12. In addition, the Commission also provided the factual basis under the Regulatory Flexibility Act (RFA),<sup>2</sup> as amended by the Small

<sup>1</sup> See, *FCM Policy and Procedures Regarding Proper Consideration of Small Entities in Rulemakings* (February 7, 2003). (Commission SBREFA Policy). See, [http://www.fcmc.gov/assets/1/1/Pages/SBREFA\\_Guidelines\\_2003.pdf](http://www.fcmc.gov/assets/1/1/Pages/SBREFA_Guidelines_2003.pdf).

<sup>2</sup>Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (codified at 5 U.S.C. 601 *et seq.*).

Business Regulatory Enforcement Fairness Act (SBREFA),<sup>3</sup> for the Chairman's certification that the rule will not have a significant economic impact on a substantial number of small entities. It was noted that the proposed rule could result in significant reductions in the cost of financial responsibility coverage because of the use of alternative coverage options. However, the public was requested to comment on the certification and its underlying assumptions.<sup>4</sup>

American Cruise Lines, Inc. (ACL) requests in its comments that the Commission treat it as a small entity under the RFA and SBREFA. ACL informed the Commission that it has less than 500 employees, which is the maximum number a PVO can employ and be considered a small entity under SBA's current size standards.<sup>5</sup> ACL Comments, pp. 2–3. The Passenger Vessel Association (PVA) similarly asserts that four of its members would qualify as small entities under RFA and SBREFA and that a “good faith analysis” under those statutes should be made. PVA Comments, p. 3. In view of these comments, the Commission seeks additional information relevant to the Commission's analysis whether there will be significant economic impacts on a substantial number of small entities.

In its SBREFA Policy, the Commission adopted the small business size standards established by the Small Business Administration that are matched to industry classifications in the North American Industry Classification System (NAICS).<sup>6</sup> The Commission specifically identified industry code and title: 483112—Deep Sea Passenger Transportation. However, two additional code classifications in the NAICS may apply to passenger vessel operators: 483114—Coastal and Great Lakes Passenger Transportation; and, 483212 Inland Water Passenger Transportation. For each of these three code classifications, the same size standard applies. In other words, a PVO may have no more than 500 employees in order to be considered a small entity.

In order to determine the number and extent to which small entity PVOs may be affected by the proposed rule, the Commission invites response from all

PVOs as to the number of employees employed by their companies.<sup>7</sup> The employee data sought includes full time and temporary employees, and the number of employees of each PVO's foreign and domestic affiliates.

In addition, the Commission's threshold analysis under RFA and SBREFA also involves estimating:

- The economic impacts upon those entities,
- Whether those impacts are significant (including whether such entities would be placed at a competitive disadvantage relative to larger entities), and
- Whether such effects will fall upon a substantial number of small entities.

In pursuing this analysis, the Commission needs information from large and small PVOs. The questions set forth below seek information related to: each PVO's estimated cost of compliance with the proposed rule; the company's total revenues, expenses and earnings; the average revenue per passenger; the number of passengers embarked at U.S. and foreign ports; and identification of direct competitors in the United States cruise markets in which the PVO is currently operating.

In view of the foregoing, the Commission requests written comments and responses to the following questions by interested parties, including those that previously filed comments in response to the proposed rulemaking.<sup>8</sup>

#### Questions

1. Please detail your estimated cost of compliance with the proposed rule's requirements pertaining to financial responsibility for nonperformance of passenger vessel transportation (i.e., premiums and fees by sureties; collateral required by credit card issuers; other costs):

(a) Based on current operations and costs for the past year (2011).

(b) Your estimated cost of compliance if alternative forms of protections as contained in the proposed rule are available.

2. Will the nonperformance requirements in the proposed rule

change your type of coverage? If so, explain how.

3. How will the proposed changes to the requirements affect your continuing operations?

4. Estimated number of your company's staff hours required to comply with proposed changes to the application form (Form 131).

5. Estimated number of your company's staff hours required to comply with proposed changes to Unearned Passenger Revenue (UPR) reports.

6. What was your total revenue in 2011? These figures should reflect revenues obtained from all sources (not just from cruises under the Commission's program).

7. What were your total expenses in 2011? These figures should reflect expenditures incurred by all activities (not just by cruises under the Commission's program).

8. What were your earnings after taxes in 2011? These figures should reflect earnings after taxes from all operations (not just operations conducted under the Commission's program).

9. Please provide the following information regarding the number of employees your company employed in the most recent 12 calendar months (include any domestic and/or foreign affiliates in calculating number of employees):

(a) Full-time, permanent employees (head-count).

(b) Part-time, permanent employees (head-count and full-time equivalents).

(c) Full-time, seasonal or temporary employees (head-count).

(d) Part-time, seasonal or temporary employees (head-count and full-time equivalents).

(e) Staff obtained from temporary employment agencies (head-count and full-time equivalents). Do not include these totals in (a) through (d) above.

(f) Staff obtained from professional employee organizations (head-count and full-time equivalents). Do not include these totals in (a) through (d) above.

10. Which passenger vessel operators (brand(s)) do you consider your closest competitor(s) in U.S.-based markets?

11. What was the average revenue generated by each passenger who embarked on your U.S.-based cruises in 2011?

12. How many passengers did you embark in 2011 at:

(a) U.S. ports.

(b) Non-U.S. ports.

13. Please provide any other comments or information that you believe would assist the Commission in analyzing the economic or competitive impact of the proposed rule in this proceeding.

<sup>3</sup> Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, 110 Stat. 857.

<sup>4</sup> The Commission SBREFA Policy also encourages small PVOs to “submit a request for such treatment \* \* \*, along with payroll \* \* \* evidence \* \* \*, to substantiate its claim and rebut the presumption.” SBREFA Policy, p. 4.

<sup>5</sup> See [http://www.sba.gov/sites/default/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf).

<sup>6</sup> SBREFA Policy, at p. 3.

<sup>7</sup> SBA regulations establish principles relative to the calculation of a business' total number of employees. For example “the average number of employees of the concern is used \* \* \* based upon the numbers of employees for each of the pay periods for the preceding completed 12 calendar months.” 13 CFR 121.106(b).

<sup>8</sup> Comments were received from Congressman Andy Harris, M.D. (Maryland), The Surety & Fidelity Association of America, Lindblad Expeditions, Inc., Royal Caribbean Cruises Ltd., National Association of Surety Bond Producers, Cruise Lines International Association, Inc., American Cruise Lines, Inc., Passenger Vessel Association, Carnival Corporation & plc.

By the Commission.

**Karen V. Gregory,**  
Secretary.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket Nos. 12-38 and 03-123; DA 12-208]

#### Consumer and Governmental Affairs Bureau Seeks To Refresh the Record Regarding Misuse of Internet Protocol Relay Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission, via the Consumer and Governmental Affairs Bureau (Bureau) seeks comment to refresh the record regarding misuse of Internet Protocol relay service. Further comments are requested to bring the record up to date on proposed additional rules that would have the intended effect of reducing or eliminating misuse of Internet Protocol Relay.

**DATES:** Submit comments on or before March 20, 2012.

**ADDRESSES:** You may submit comments, identified by CG Docket Nos. 12-38 and 03-123, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket Nos. 12-38 and 03-123.

- **Paper filers:** Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the

Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington, DC 20554.

In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY-B402, Washington, DC 20554, or via email to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418-2235 (voice), (202) 418-2922 (TTY), or email at [Eliot.Greenwald@fcc.gov](mailto:Eliot.Greenwald@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Public Notice, document DA 12-208, released February 13, 2012. The full text of document DA 12-208 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. Document DA 12-208 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site [www.bcpiweb.com](http://www.bcpiweb.com), or by calling 1-800-378-3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). Document DA 12-208 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro/trs.html>. Pursuant to 47 CFR 1.415 and 1.419,

interested parties may file comments on or before the date indicated in the **DATES** section of this document. Comments must include a short and concise summary of the substantive discussion and questions raised in the document DA 12-208. The Commission further directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments. Comments must otherwise comply with 47 CFR 1.48 and all other applicable sections of the Commission's rules.

- Pursuant to 47 CFR 1.1200 *et. seq.*, this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

**People with Disabilities:** To request materials in accessible formats for people with disabilities (Braille, large