FEDERAL MARITIME COMMISSION

Docket No. 20-15

NOTICE OF PROPOSED RULEMAKING

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COMMENTS OF CRUISE LINES INTERNATIONAL ASSOCIATION

Cruise Lines International Association ("CLIA") hereby responds to the Commission's requests for comments with respect to the Commission's Notice of Proposed Rulemaking in Docket No. 20-15 and proposed revisions to the Commission's regulations at 46 CFR §540 (the "Proposed Rules") regarding cruise vessel operators' financial responsibility to make refunds to passengers for cancelled cruise voyages, and providing new detail as to the situations in which cruise lines must pay refunds and administrative procedures regarding the timing and amount of refunds.

Cruise Lines International Association (CLIA) is the world's largest cruise industry trade association with representation in North and South America, Europe, Asia and Australasia. CLIA was formed and exists pursuant to the Agreement No. 10071, filed with the Commission pursuant to the Shipping Act of 1984 (the "CLIA Agreement"). CLIA's purposes and scope of activity covered by the CLIA Agreement include study and communication with government regulatory agencies regarding matters affecting operation of cruise vessels calling United States ports.

CLIA's 53 cruise line members and marketing affiliates include companies operating a significant portion of all cruise vessels embarking passengers at U.S. ports, encompassing vessels operating in all major cruise markets, providing both international voyages and U.S. domestic itineraries. These companies are subject to the Commission's existing regulations under 46 CFR §540, and would be governed by the Proposed Rules.

While CLIA is submitting these comments as an association, individual CLIA member cruise lines may also offer comments on various elements of the Proposed Rules.

CLIA wishes to comment on four significant elements of the Proposed Rules – (i) the definition of what passenger prepayments must be included in the definition of "Unearned Passenger Revenue" and refunded in the event of cancellation, (ii) the timing for passenger applications to the financial instrument provider or escrow agent for refunds with respect to cancellations or non-performance by a cruise line with a refund request deadline of less than 180 days, (iii) the documentation process for passenger refund requests, and (iv) the rights of passengers and cruise lines to agree voluntarily upon acceptance of future cruise credits in lieu of a financial refund.

1. Definition of "Unearned Passenger Revenue."

CLIA proposes that the FMC's proposed revised Definition of Unearned Passenger Revenue, at 46 CFR §540.2, be revised by adding at the end thereof the words: "…excluding any non-refundable amounts advanced by the PVO on behalf of the passenger to unaffiliated providers of

goods and services, such as payments for non-refundable airline tickets provided to the passenger."

As noted by the Commission in its earlier analysis of comments in response to its Advance Notice of Proposed Rulemaking ("ANPRM"), this change proposed by CLIA is designed to exclude from "ancillary fees" any non-refundable payments by the PVO, acting in good faith as the agent for passengers, of portions of payments received from passengers to unaffiliated third party services and goods providers for the passenger's benefit. In particular, with respect to non-refundable air fares, under most airlines' policies the passenger may apply a non-refundable fare for a different travel date for the passenger's benefit for up to a year after the original scheduled flight date. Thus while the PVO cannot legally recoup the fare payment for the passenger, the passenger may use the ticket.

2. Refund Request Timing.

In the FMC's proposed "process for obtaining refunds" from PVOs which provide a period for requesting refunds of less than 180 days, 46 CFR §540.9(f)(1) and (2) currently read:

> (1) The passenger must make a written request for a refund from the PVO in accordance with the respective PVO's claims procedures. If the PVO claims procedure provides less than 180 days for submission of claims after nonperformance of transportation, the passenger may seek reimbursement from the financial instrument provider after providing written notification to the PVO.
>
> (2) In the event the passenger is unable to resolve the claim within 180 days after nonperformance of transportation occurs or if the claim is denied by the PVO, the passenger may submit a claim against the financial instrument as per instructions on the Commission website. * * *

CLIA requests that the Commission change the proposed text of 46 CFR §540.9(f)(1) and (2) to read:

> (1) The passenger must make a written request for a refund from the PVO in accordance with the respective PVO's claims procedures.
>
> (2) In the event the passenger is unable to resolve the claim within 180 days, or such shorter refund notice period for which the PVO's claims procedure provides, after nonperformance of transportation occurs or if the claim is denied by the PVO, the passenger may submit a claim against the financial instrument as per instructions on the Commission website. * * *

Similarly, numbered paragraphs (1) and (2) of the Commission's proposed "Form FMC-132(A)," currently read:

(1) the passenger makes a request for refund from the Principal in accordance with the ticket contract. If, the ticket contract refund procedure provides less than 180 days, this bond shall be available after written notification to Principal.

(2) If the passenger is unable to resolve the claim within 180 days after nonperformance, as defined in 46 CFR 540.2, occurs, the passenger may submit a claim against the bond as per instructions on the Commission website. * * *

CLIA requests that the proposed text of these paragraphs (1) and (2) in "Form FMC-132(A)" be changed to read:

(1) the passenger makes a request for refund from the Principal in accordance with the ticket contract.

(2) In the event the passenger is unable to resolve the claim within 180 days, or such shorter refund notice period for which the PVO's claims procedure provides, after nonperformance of transportation occurs or if the claim is denied by the PVO, the passenger may submit a claim against the bond as per instructions on the Commission website. * * *

Similarly, numbered paragraphs (1) and (2) of the Commission's proposed "Form FMC-133(A)," currently read:

(1) the passenger makes a request for refund from the Principal in accordance with the ticket contract. If, the ticket contract refund procedure provides less than 180 days, this Guarantee shall be available after written notification to Principal.

(2) If the passenger is unable to resolve the claim within 180 days after nonperformance, as defined in 46 CFR 540.2, occurs, the passenger may submit a claim against the Guarantee as per instructions on the Commission website. * * *

CLIA requests that the proposed text of these paragraphs (1) and (2) in "Form FMC-133(A)" be changed to read:

(1) the passenger makes a request for refund from the Principal in accordance with the ticket contract.

(2) In the event the passenger is unable to resolve the claim within 180 days, or such shorter refund notice period for which the PVO's claims procedure provides, after nonperformance of transportation occurs or if the claim is denied by the PVO, the passenger may submit a claim against the Guarantee as per instructions on the Commission website. * * *

Similarly, numbered paragraphs 11(1) and (2) of the proposed "Appendix A Form of Escrow Agreement" currently read:

(1) the passenger makes a request for refund from the Principal in accordance with the ticket contract. If, the ticket contract refund procedure provides less than 180 days, this Escrow Account shall be available after written notification to Principal.

(2) If the passenger is unable to resolve the claim within 180 days after nonperformance, as defined in 46 CFR 540.2, occurs, the passenger may submit a claim against the Escrow Account as per instructions on the Commission website. * * *

CLIA requests that the proposed text of numbered paragraphs 11(1) and (2) of the proposed "Appendix A Form of Escrow Agreement" be changed to read:

(1) the passenger makes a request for refund from the Principal in accordance with the ticket contract.

(2) In the event the passenger is unable to resolve the claim within 180 days, or such shorter refund notice period for which the PVO's claims procedure provides, after nonperformance of transportation occurs or if the claim is denied by the PVO, the passenger may submit a claim against the Escrow Account as per instructions on the Commission website. * * *

These changes are necessary to clarify that passengers must wait until after the PVO's refund period has ended to make a claim against the financial instrument provider or Escrow Account if the PVO has not yet settled and paid the claim. As currently written, the Proposed Rules appear to require that a passenger booked with a PVO that has a refund request deadline shorter than 180 days could make a claim against the financial instrument provider or Escrow Account immediately after giving notice of a refund claim to the PVO immediately following the cruise cancellation, without waiting for the PVO to process the refund claim or deny the claim, whereas a passenger making a similar claim against a PVO with a 180-day refund notice period must wait until the PVO denies the claim or the 180-day period runs out before making a claim against the financial instrument provider or Escrow Account. The process should be the same whether the PVO's refund policy has a 180 day deadline or a shorter period, and should not allow a premature claim on the financial instrument provider or Escrow Account immediately after the cruise cancellation if the PVO has a shorter refund claim window for the benefit of passengers.

3. Form of Passenger Declaration with Refund Application.

In the Proposed Rule at 46 CFR §540.9(f)(2), and in each of Forms FMC-132A and 133A, at numbered paragraph (2) and the Form of Escrow Agreement at numbered paragraph 11(2), the Commission proposes to require that the passenger's claim against the financial instrument provider or Escrow Account: "... must include a copy of the boarding pass, proof and amount of payment, the cancellation or delay notice, and dated proof of properly filed claim against the PVO or written notification as required in paragraph (1) above."

As a means of preventing passengers from achieving undue or double recoveries through the FMC claim process, CLIA proposes that the Commission add to this list of documents the passenger is

required to submit to the financial instrument provider or Escrow Agent in each of Section 540.9(f)(2) of the Proposed Rule and each of Forms FMC-132A and 133A and the Form of Escrow Agreement in the Proposed Rule the following:

> "… a declaration by the passenger, under penalty of perjury, that the passenger, to the best of his/her/their knowledge, is due the refund sought and has not recovered and will not recover any portion of the refund sought from the cruise line or any other source, such as cancellation insurance or a credit card refund, and the passenger has not accepted an alternative form of compensation from the PVO, such as a future cruise credit, in full satisfaction of the refund…."

CLIA submits this addition is necessary and useful to alert the passenger not to make a duplicative refund claim, and to prevent and disincentivize such claims. If the passenger has already recovered the amount claimed from the financial instrument provider or Escrow Account in whole or part, or from cancellation insurance or from a credit card issuer pursuant to the Fair Credit Billing Act (which provides for refunds from the card issuer for non-performance if timely made by the cardholder), or still may be able to recover such amount subsequently from an insurer or credit card issuer, the passenger should not be permitted to achieve a duplicative recovery through the Commission's regulatory process.

4. Passengers' and Cruise Lines' Mutually-Agreed Settlements.

CLIA requests that the Commission add a new paragraph 540.9(f)(3) reading as follows: "(3) 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."

The Commission had included this provision conceptually in its original proposed formulation of the initially-proposed rule last year. This reaffirmation of the passengers' and PVOs' common law rights of freedom of contract was not carried forward into the final Proposed Rule. As the Commission is aware, many PVOs offer passengers on cruises cancelled due to *force majeure* events the option of accepting a refund or obtaining equal of greater value through a credit on a future cruise booking. Including this provision will make it clear that the Commission will respect any arm's length settlements accepted by passengers, if such would be lawfully enforceable under the applicable state law of contract.

Conclusion

CLIA and its members commend the Commission for its thorough and thoughtful examination of the issues presented in Docket No. 20-15, and look forward to the implementation of improved rules on this topic.

Respectfully submitted,

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