FEDERAL MARITIME COMMISSION

FACT FINDING INVESTIGATION NO. 30

COVID-19 IMPACT ON CRUISE INDUSTRY

FINAL REPORT

January 14, 2022

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I. Executive Summary

In early 2020, we transitioned to a new reality in America as we faced an unprecedented disruption that has restricted our movement, taken the lives of loved ones, and dealt a blow to our economy. In keeping with its mission, the Federal Maritime Commission (Commission) determined that it should examine the impact of the COVID-19 pandemic on the cruise industry. As a result of COVID-19 outbreaks on various passenger vessels, on March 14, 2020, the Centers for Disease Control and Prevention (CDC) issued a No Sail Order and Suspension of Further Embarkation, causing passenger vessel operators (PVOs) to cease all operations. Although no single federal agency has exclusive or comprehensive authority over cruise lines, the Commission has a mandate to: (1) ensure an efficient and economic transportation system in the ocean commerce for goods and passengers under the Shipping Act; and (2) ensure that PVOs maintain adequate financial responsibility to indemnify passengers for nonperformance of transportation and meet any liability for death or injury to passengers or other individuals under 46 U.S.C. Chapter 441. Therefore, the Commission possesses a clear and compelling responsibility to actively investigate and respond to the impact of COVID-19 on the cruise industry and the U.S. ports that rely on it. Consequently, on April 30, 2020, the Commission designated Commissioner Louis E. Sola to serve as Fact Finding Officer for Fact Finding Investigation No. 30, "COVID-19 Impact on Cruise Industry" (Fact Finding 30 or FF30). The Commission charged him to work with key industry stakeholders in an attempt to identify commercial measures that might be adopted to mitigate COVID-19 related impacts to the passenger vessel sector of the maritime industry as well as explore where and how the Commission might facilitate changes that will benefit both consumers and cruise lines.

The Commissioner was granted full authority under 46 C.F.R. §§ 502.281-291 to perform his investigative duties, including the ability to issue subpoenas, take depositions, and hold hearings.

During the course of his investigation, Commissioner Sola:

- Engaged cruise industry stakeholders to identify solutions to COVID-19 related issues interfering with the operations of the industry;
- Interacted with maritime related COVID-19 task forces to gather information and data related to the impact of COVID-19 on the cruise industry; and
- Established teams of leaders from the cruise industry, as well as other stakeholders, to develop commercial solutions to the challenges created by the COVID-19 pandemic.

As the investigation progressed, Commissioner Sola produced eight interim reports: six of which were economic impact reports broken down geographically; one which focused upon statutory and regulatory financial responsibility requirements upon PVOs; and one dedicated to consumer protection.

This final report provides the Commission a summary of the accomplishments of the Fact Finding 30 to date and formally discontinues Fact Finding 30 upon the Commission's acceptance of this report.

II. Temporary Relief to Small Passenger Vessel Operators

After numerous in-person and virtual meetings and conversations with state and local government officials, senior executives of cruise lines and marine terminal operators, longshore labor leaders, and Commission collaborative panels, Commissioner Sola issued an initial report. That report identified a regulatory step to address a critical COVID-19 fiscal impact experienced by the cruise industry generally, but most significantly by small passenger vessel operators that are largely U.S.-based businesses that mostly sail U.S. flagged vessels.

The Commission regulations require that all passenger vessel operators demonstrate financial responsibility to the agency through the submission of some form of financial instrument equal to 110 percent of the greatest amount of Unearned Passenger Revenue (UPR) the carrier held over the previous two years. This required amount for financial responsibility, generally provided in surety bonds, is capped at $32 million subject to adjustment every two years based upon the consumer price index. Currently, only the smaller PVOs hold a surety bond at an amount below the cap. It is also common for most sureties to require some form of collateral from the PVOs prior to the issuance of a bond.

In the initial report, Commissioner Sola proposed a path for smaller PVOs to request reducing the required financial responsibility amount to more accurately reflect the UPR reduced by the cessation of operation and thereby reducing the premiums paid for the surety bond and the costs associated with a corresponding collateral amount. These savings would free up capital to allow for the payment of salaries and maintenance of the PVOs' fleets while simultaneously ensuring that sufficient funds were available to refund those customers who had purchased a ticket for a cruise that did not sail.

On July 23, 2020, the Commission voted unanimously to adopt the proposal. In approving the "Policy Statement on Passenger Vessel Financial Responsibility," the Commission determined it would look favorably upon requests from small PVOs for alternative forms of evidence of financial responsibility provided applicants meet key conditions. To be considered for the relief the Commission is providing, PVOs must agree to comply with two requirements. The first is that PVOs agree to provide monthly reports to the Commission that satisfactorily demonstrate the company's UPR. The second is that if a PVO fails to comply with the requirements and conditions of the alternative form of evidence of financial responsibility, they will be subject to the default financial responsibility amounts in the Commission's regulations.

It should be noted that many of the small carriers have a limited sailing season and were unable to operate for all or most of the 2020 season and over one half of the 2021 season. Consequently, the UPR of these small carriers has been substantially less than in the previous two years prior to the pandemic, which were generally robust. As a result of a strong market in 2018 and 2019, the financial responsibility amounts for the small carriers reflect a UPR substantially higher than the current commercial reality under the pandemic.

Granting relief to these PVOs was intended not only to benefit the persons employed by them, but also to directly assist the ports which the cruise vessels call home as well as the ones they visit.

III. PVO Financial Responsibility Rule (Refunds)

> Recommended that the Commission establish in 46 C.F.R. part 540 clear process for the resolution of complaints that allege the failure of a PVO to maintain financial responsibility by failing to indemnify a passenger for nonperformance as defined in 46 C.F.R. part 540 and required in 46 U.S.C. § 44102.[1]

FF30 was not initiated as a consumer protection examination, however, as the Fact Finding Officer began to look at the financial fallout resulting from the cessation of cruise operation, it became apparent that each cruise line had different refund policies; none of which were designed to address the complete suspension of service.

As the Commission began to field calls from passengers, it became apparent that much confusion existed as to what options passengers had concerning ticket refunds. The majority of passengers were satisfied with credits for future cruises although some, due to changes in their personal situations, were unable to avail themselves of credits for future cruises and were precluded from obtaining a financial refund. A significant number of passengers complained about the length of time the cruise lines were taking to resolve their claims.

As a result, as Fact Finding Officer, Commissioner Sola proposed that the Commission clarify when and how a passenger may obtain a refund if a PVO cancels a voyage, makes a significant schedule change, or significantly delays a voyage. The Commission adopted the proposal and in October 2020, issued an Advance Notice of Proposed Rulemaking seeking the public's comments. On August 24, 2021, the Commission issued a Notice of Proposed Rulemaking (NPRM) proposing to define when nonperformance of transportation has occurred and to establish

What the proposed changes would mean for passengers

1. Refunds are available if the voyage is cancelled or if the ship is delayed by three or more calendar days from the scheduled sailing date.
2. Claims must be resolved in 180 days.
3. Refunds to include all money paid directly to the cruise line.
4. Refunds cannot exceed amount of money paid.
5. Clear notice on both the cruise line's website and the Commission's website on how to claim a refund.
6. Nothing prevents passenger and cruise line from entering into an alternative agreement for cruise credits.

* The proposed changes are prospective only.

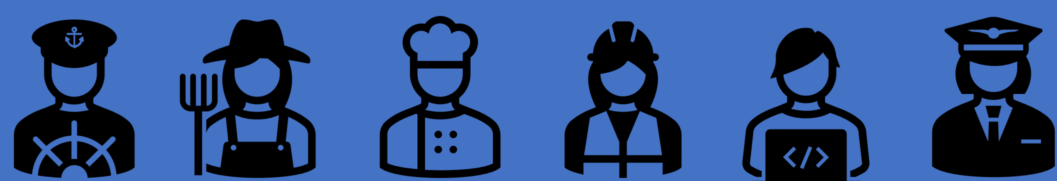
[1] Federal Maritime Commission, Fact Finding 30 Interim Report: Refund Policy (July 27, 2020), https://www2.fmc.gov/readingroom/docs/FFno30/RefundsInterimReportFinal.pdf/.

uniform procedures regarding how and when passengers may make claims for refunds under a PVO's financial responsibility instrument when nonperformance occurs. Specifically, the Commission proposes that nonperformance be defined as cancelling a voyage or delaying a voyage by three or more calendar days if a passenger elects not to embark on a delayed or substituted voyage offered by a PVO. The Commission also proposes to change its regulations to allow passengers of delayed or cancelled voyages to make direct claims against financial responsibility instruments, such as bonds, maintained by PVOs, subsequent to the passenger's unsuccessful attempt to receive a refund directly from the PVOs. Finally, the proposal provides that all fees, including ancillary fees, paid by a passenger to a PVO be eligible for a refund.

Parties with comments relevant to the proposed changes were given until October 25, 2021, to submit their comments to the Commission. As Fact Finding Officer, Commissioner Sola believes this proposed regulation will bring clarity of process and a reasonable time limit for claim resolution.

IV. Financial Impact Reports

The cruise industry accounts for around **436,000 jobs** throughout the country.[4]



Between September 2020 and August 2021, six regional reports were issued on the economic impact of COVID-19.[2] These were not focused on losses of the major cruise lines, but rather focused on the impact on the local economies. Nationwide in 2019, the cruise industry was responsible for over $25 billion in direct spending by the cruise lines, cruise passengers, and crew.[3] The cruise industry accounts for an estimated 436,000 jobs throughout the country, including direct, indirect, and induced jobs.[4] Many of these jobs are directly related to the tourism industry, such as cruise passengers taking flights and/or taxis to the ports. Others are related to the ships, such as stevedoring and pilot services. Others are farther-reaching, such as beef and beer brought in from other states that are served on cruise ships. Due to cruise operation disruptions, $39 billion in total economic loss occurred between March 2020 and March 2021; incorporated therein was an estimated 301,000 jobs and $16.5 billion in wages lost.[5]

[2] Reports can be found at https://www.fmc.gov/fact-finding-30/.
[3] Cruise Lines International Association, The Contribution of the International Cruise Industry to the U.S. Economy in 2019 (November 2020), https://cruising.org/-/media/research-updates/research/2019-usa-cruise-eis.ashx (last visited Aug. 30, 2021).
[4] *Id.*
[5] Cruise Lines International Association, United States Estimated Economic Impact of Cruise Suspensions, https://cruising.org/-/media/Infographics/Enhanced%20Public%20Health%20Measures/Suspension%20Impact%20US%20and%20Key%20States/USA (last visited Aug. 30, 2021).

In Florida alone, the cruise industry was responsible for almost 159,000 jobs and $8.1 billion in income.[6] Florida has the three busiest cruise ports in the world,[7] and has seen enormous growth in the last decade. From 2010 to 2019, Florida cruise passenger embarkations grew from about 5.8 million to about 8.3 million.[8] As of July 2021, the Florida Seaport Transportation and Economic Development Council believes that "Once the CDC's conditional sail order is fully engaged by the cruise brands either through vaccination mandated sailings or through the simulated voyage process and public confidence in travel-related convenience and safety protocols recovers it is expected that the number of cruise passengers moving through Florida's ports will rebound and resume [its] pre-pandemic growth trajectory."[9]

In 2019, Alaska had over 1.3 million cruise visitors.[10] The cruise industry supports over 23,000 jobs in the state and would bring in $1.28 billion in direct spending annually.[11] Several port towns have a population of just a few hundred to a few thousand but have hundreds of thousands to over a million cruise visitors a year. This results in millions of dollars in economic impact for small towns like Skagway and Hoonah.[12]

The Gulf Coast is also reliant on the cruise industry. In Galveston, Texas, the number of cruise passengers more than doubled from 2011 to 2019, going from 459,448 cruise passengers in 2011 to 1,091,622 cruise passengers in 2019.[13] Around 8% of cruise embarkations in the U.S. are in Galveston,[14] and cruise, ferry, and harbor cruise activity combined result in $347 million in direct business revenue and $111 million in direct, indirect, and induced personal income.[15]

A number of other ports, both home ports and ports of call, on the gulf coast, west coast, east coast, and Pacific and Caribbean states and territories, bring in hundreds of thousands to millions

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[6] Florida Seaport Transportation and Economic Development Council, Seaport Mission Plan (Jul. 27, 2021), https://flaports.org/success-story/fsted-seaport-mission-plan/ (last visited Aug. 30, 2021).
[7] *Id.*
[8] *Id.*
[9] *Id. at 55*
[10] Alaska Travel Industry Association, Alaska Visitor Volume Report Winter 2018-19 and Summer 19 (June 2020), http://www.alaskatia.org/wp-content/uploads/Alaska-Visitor-Volume-2018-19-FINAL-7_1_20.pdf (last visited Aug. 31, 2021).
[11] Cruise Lines International Association, Alaska Estimated Economic Impact of Cruise Suspensions, https://cruising.org/-/media/Infographics/Enhanced%20Public%20Health%20Measures/Suspension%20Impact%20US%20and%20Key%20States/Alaska (last visited Aug. 31, 2021).
[12] For more information see the Fact Finding 30 Report, Interim Report: Economic Impact of COVID-19 on the Cruise Industry in Alaska, Washington, and Oregon (Oct. 20, 2020), https://www2.fmc.gov/readingroom/docs/FFno30/20-20_AK_WA_OR_FF30_Final_Interim_Report.pdf/ (last visited Aug. 31, 2021).
[13] Port of Galveston, 2019 Comprehensive Annual Financial Report (Year Ending 2019), https://www.portofgalveston.com/DocumentCenter/View/2747/Final-2019-Port-of-Galvestion-CAFR (last visited Aug. 31, 2021).
[14] Cruise Lines International Association, The Contribution of the International Cruise Industry to the U.S. Economy in 2019 (November 2020), https://cruising.org/-/media/research-updates/research/2019-usa-cruise-eis.ashx (last visited Aug. 30, 2021).
[15] County of Galveston & City of Galveston, The Economic Impact of Galveston County's Maritime Industry Cluster (Feb. 22, 2017), http://gcenergyservices.com/wp-content/uploads/2017/08/The-Economic-Impact-Galveston-Countys-Maritiime-Industry-Cluster.pdf (last visited Oct. 12, 2021).

of cruise visitors each year, though none rely solely on the cruise industry for the regions' economy. A few rely heavily on the tourism industry, such as Hawaii, but the cruise industry is not the main source of its tourism revenue.

Individual Actions Taken as a Result of Impact Study

Through the course of the economic impact studies, Commissioner Sola coordinated briefings between affected parties and key members of the White House COVID-19 Task Force on the financial impact of the CDC No Sail Order. These briefings allowed task force members to hear directly from, not only cruise industry leaders, but also state and local elected officials, port managers, organized labor, and members of other industries affected by the no-sail order on the wider-reaching economic impact on their industry, state, or community.

Commissioner Sola traveled to Alaska in 2020 and met with elected officials, union members, and those working in the tourism industry. He saw first-hand the impact that the no-sail order had on small towns like Whittier and Seward, Alaska. Research and additional meetings showed those towns were not alone in Alaska – others farther south, such as Ketchikan and Skagway, were also heavily dependent on the cruise industry.

The effect of the No Sail Order on Alaska was further complicated by Canada's extension of their ban on cruise ships, previously set to expire in February 2021 but now ending in February 2022. At the time of the issuance of the no-sail order, the Passenger Vessel Services Act (PVSA) necessitated all foreign-flagged cruise ships (all medium and large cruise ships sailing to Alaska) to stop in a foreign port, such as Vancouver or Victoria, Canada. Commissioner Sola worked with the Alaska delegation on a PVSA exemption, when it became apparent that the CDC no-sail order would end but cruises sailing to Alaska would still be prevented from sailing due to the closure of Canada's ports. Commissioner Sola also wrote editorial items in support of the PVSA exemption. The bill allowing for the exemption, the Alaska Tourism Restoration Act, was passed in the House and Senate on May 20, 2021, and on May 24, 2021, it was signed by the President.[16] Ships began sailing from Seattle to Alaska on July 19, 2021.

Commissioner Sola has encouraged the governors of Florida, Texas, New York, New Jersey, and California to help vaccinate port workers and crews calling on their state's ports. He also recognized that though there are more than enough vaccine doses for all who want to be vaccinated in the U.S., that is not the case in the Caribbean and Central American countries. To support the cruise industry and promote the safety of Americans cruising to the Caribbean and Central America, Commissioner Sola recommended to President Biden that the U.S. deliver surplus vaccines to neighboring Caribbean and Central American countries for the purpose of vaccinating those that support the U.S. cruise industry.

[16] 117th Congress, H.R.1318 - Alaska Tourism Restoration Act, Bill History, https://www.congress.gov/bill/117th-congress/house-bill/1318/all-actions?overview=closed#tabs (last visited Aug. 31, 2021).

V. Conclusion

> "Americans are resourceful, enterprising, and resilient, none more so than the men and women who make their living on our waterways. In times when these people need a hand, regulators should be nimble, adaptive, and willing to provide relief where it can make a difference."
>
> Commissioner Louis E. Sola

Fact Finding 30 was established in an effort to determine the economic stability of the cruise industry. When we talk about the "cruise industry" we tend to think of the ships and vessel operators, but there is an exhaustive list of American employees and businesses who rely on the work they do for the cruise lines and the port communities that support them, not to mention the cruise consumers who wish to take cruises for vacation, leisure, or celebrating important events in their lives. The sooner cruise lines are able to resume full operations and provide certainty to the public about the lines' financial security, the sooner we can bring stability to enterprises and communities that rely on the cruise industry for their livelihoods.

The cruise industry plays a unique role in the American economy. The industry's broad national, interdependent supply chain of U.S. companies encompasses ports, travel agents, airlines, hotels, retailers, and farmers. Collectively, its direct supply chain spends billions of dollars in the United States annually. The cruise industry is also an important contributor to the financial health of seaports across the country through the payment of port fees covering berthing, security, customs and immigration, harbor pilotage, and other port logistical services such as longshore labor.

As Fact Finding Officer, Commissioner Sola worked with the various stakeholders to determine what, in addition to those issues addressed by other Commissioners, should be examined to help ensure fairness and efficiency in the cruise industry. Those reviews produced the comprehensive economic studies referenced above which in turn were utilized by various authorities to establish policies dedicated to the benefit of labor, business, and the consumer. Not only were these studies utilized by federal actors but also by state and local policy makers.

Thanks to the development of several vaccines and the implementation of shore side agreements between cruise lines, ports, and local health establishments to treat passengers and crew infected with the SARS-CoV-2 virus, cruise ships began limited sailings in the summer of 2021 with a gradual increase planned throughout the remainder of the year. Cruise lines have adapted to the COVID-19 situation, making it easy for those who are fully vaccinated to sail. Additional steps being taken vary by cruise line and generally include testing prior to boarding regardless of vaccination status, mask requirements on parts of the ship, and measures for quarantining and/or returning passengers to the U.S. if they have a positive COVID-19 test. Many of these protocols were required by the CDC as a condition to sail, and others were initiated by the lines as best practices to protect passengers and crew. These protocols and practices are now being put to the test with the emergence of the Omicron variant. Notwithstanding the transmissibility of this latest variant, the Director of the CDC has stated that the conditional sail order (CSO), which is scheduled to expire on January 15, 2022, will not be extended. The CDC has, however, issued an advisory recommending against cruise ship travel at the present time due in part to the significant case load observed on land. The CDC decision to not extend the CSO is due in no small part to the agency's recognition that the PVOs have indicated that the safety protocols implemented as the result of the pandemic will not be modified when the expiration of the CDC order occurs. Indeed, the Director of the CDC, when recently asked why the agency would issue an advisory rather than extend the CSO, responded "What I will say about the conditional sail order is that, generally, ships and companies are subscribing to the order without arguing to have the order that they are voluntarily practicing all of the things within that order and that we are doing the exact same oversight as we would do if the order was in place."[17]

I commend the decision to allow the cruise lines to operate unimpeded so long as they employ best practices that are reasonable and customary for the hospitality and transportation industry. The cruise lines continue to adapt to the circumstances presented by new variations of Covid-19 and modify their actions as needed to mitigate harm. Consequently, notwithstanding the recent altered itineraries and cancelled sailings in response to the Omicron variant, the cruise industry is on the road to resuming operations in 2022. While it is not possible nor desirable for the Fact Finding to predict the speed in which the fiscal losses wrought by the pandemic will be recovered, we can note the significant pent-up demand for the cruise product. Anecdotal evidence confirms that the ardor for cruising has not diminished and indeed, due to the inability to sail for more than a year, it may have increased. How other future economic factors may affect this desire is beyond the scope of our review. One thing is certain, however, that as a result of this unprecedented pandemic there has been an improvement in industry health and safety practices and certain regulations have been modified to the benefit of both the consumer and industry.

Although Fact Finding 30 is being brought to a close, I encourage the Commission to continue to monitor the industry's fiscal health and its response to the pandemic both in the areas of public safety and consumer affairs. Acknowledging the vagaries of this current pandemic, the Commission should keep a close watch on how the industry addresses Covid-19 in its varied iterations.

As Fact Finding Officer, I would like to take a point of personal privilege and express my sincere gratitude to all who participated as members of my consultative panels and the staff at the Commission, especially the FF30 team members, who made this investigation possible.

LOUIS E. SOLA
COMMISSIONER

[17] POLITICO, Weekly Transportation (January 10, 2022), https://www.politico.com/newsletters/weekly-transportation/2022/01/10/airports-pan-short-term-5g-deal-799763.