From: "Craigmile, Jeff" <Jeff.Craigmile@disney.com>
To: <secretary@fmc.gov>
Date: Fri, May 30, 2003 1:26 PM
Subject: FMC Docket No. 02-15, Passenger Vessel Financial Responsibility

Attached please find comments submitted by Disney Cruise Line with respect to FMC Docket Number 02-15, Passenger Vessel Financial Responsibility. The attached document is saved in Word 6.0/95 format.

<<NPRM.doc>>

Jeffrey S. Craigmile
Executive Counsel
Legal Department
Walt Disney World Co.
1375 Buena Vista Drive, 4N
P.O. Box 10,000
Lake Buena Vista, FL 32830
Ph: (407) 828-4312
Fax: (407) 828-4311
E-mail: jeff.craigmile@disney.com

Disney Cruise Line

May 30, 2003

Mr. Bryant L. VanBrakle
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W., Room 1046
Washington, DC 20573-0001

Re: FMC Docket 02-15 – Passenger Vessel Financial Responsibility (67 Fed. Reg. 66352; 10/31/02)

Dear Sir:

These comments are submitted by Disney Cruise Line in response to the above-referenced Notice of Proposed Rulemaking ("Proposed Rule").

Disney Cruise Line is a passenger vessel operator with its headquarters in Celebration, Florida. Disney Cruise Line operates two (2) passenger cruise ships home-ported at Port Canaveral, Florida, the *M/V Disney Magic* and *M/V Disney Wonder,* each of approximately 83,000 gross registered tons and each accommodating approximately 2,600 passengers per voyage. Disney Cruise Line is a wholly owned subsidiary of The Walt Disney Company, which had 2002 annual revenue of more than $25 Billion and net income of more than $1.2 Billion.

I. Background

The statute (46 USC App. § 817(e)) that requires passenger vessel operators to provide evidence of financial responsibility or security for nonperformance of transportation was originally enacted in 1966, after Congress was informed of certain instances where passengers were left without recourse to recover passage money paid in advance following the cancellations of their scheduled cruises (1966 U.S.C.C.A.N. 4176). In 1993, Congress amended § 817(e) by deleting the portion of subsection (b) which had provided that the amount of a bond filed by a passenger vessel operator must be equal to the estimated total revenue for the transportation. In its current form, the statute does not mandate the amount of security to be provided by a passenger vessel operator to evidence its financial responsibility.

210 Celebration Place / Suite 400 * Celebration, Florida 34747-4600 * Telephone 407-566-3500
*Registered Office: Magical Cruise Company, Limited * 3 Queen Caroline Street * Hammersmith London W6 9PE England*

The Commission, in adopting regulations to implement the statute, originally set a ceiling on the amount of any bond to be filed by a passenger vessel operator as security at $5 Million, irrespective of the actual total Unearned Passenger Revenue ("U.P.R."). That ceiling amount was increased to $10 Million in 1980 and to $15 Million in 1990. Those increases were based on adjustments in the Consumer Price Index ("CPI"). The Commission has never required that all passenger vessel operators secure 100% of U.P.R. Instead, the Commission has maintained a ceiling on the amount of the required bond. Such regulations, although they do not provide *dollar-for-dollar* security for pre-paid passage monies, fulfill Congress' intent of ensuring that passenger vessel operators carrying U.S. passengers from U.S. ports have adequate financial capability to satisfy passengers' claims for nonperformance of transportation. Companies that can post a bond in the amount of the ceiling have been deemed to satisfy that criteria.

After raising the ceiling to $15 Million in 1990, the Commission has considered raising the ceiling again on other occasions. However, in 1992, after an extensive fact-finding investigation led by former Commissioner Ivancie, the Commission decided to maintain the ceiling at $15 Million, determining that even though "...the $15 Million ceiling would not provide passengers with dollar-for-dollar coverage...this ceiling strike[s] a balance between Public Law 89-777's objective of protecting passengers and the requirements this legislation imposes on the cruise line industry." 57 Fed. Reg. 19097. Then, in both 1994 and 1996, the Commission considered removing the $15 Million ceiling (59 Fed. Reg. 15149) and implementing a sliding scale keyed to, among other things, a passenger vessel operator's financial rating (61 Fed. Reg. 33059). No changes were ever adopted as a result of those proceedings, which were discontinued earlier this year (67 Fed. Reg. 19535). The Commission "stepped back" from those efforts, since "[t]he Commission was not aware of any instance in which passengers had lost funds as result of cruise line bankruptcies or other failures to perform, and the economy and the cruise industry were thriving. The risk of nonperformance appeared minimal." 67 Fed. Reg. 66352.

II. The Proposed Rule

By the above-referenced Notice of Proposed Rulemaking, the Commission has once again proposed amendments that address the amount of the ceiling on coverage for U.P.R. This time, however, the Commission has proposed completely eliminating the current $15 million ceiling, thereby requiring a passenger vessel operator to provide security for 110% of UPR, less charges made to credit cards within 60 days of sailing. The Commission stated in the Proposed Rule that these changes are necessary because of the "dramatic shift" observed in the previous two years, including the decline in tourism, the events of September 11, 2001, consolidation within the cruise industry and the cessation of operations by certain passenger vessel operators. The Commission's chairman also recently stated that "a ceiling would artificially limit the protections available to consumers in the event of an incident or catastrophe of a large scale." This comment implies that the Commission may believe that the nonperformance program should function as a form of insurance for an act of terrorism.

The Proposed Rule would also mandate that a passenger vessel operator submit to an Alternative Dispute Resolution ("ADR") program administered by the Federal Maritime Commission with respect to any claims for nonperformance. The Commission noted that it had experienced an increase in the number of complaints from passengers and that it now receives "several hundred complaints per year".

III. Disney Cruise Line's Comments

A. The $15 Million Ceiling

The Commission's proposal to eliminate the ceiling on coverage for U.P.R. is unwarranted. It would impose substantially increased costs on the passenger cruise industry, estimated to be as much as $200 Million per year, assuming a 10% cost of capital. Much, if not all, of those costs would be passed on to consumers with little additional benefit to them.

The Proposed Rule states that an increase in the ceiling to $25 Million, which would match the increase in the CPI, would be "wholly inadequate" because some cruise lines have large fleets with much larger amounts of U.P.R. It is exactly this point, however, that makes any increase beyond one based on the CPI unnecessary. The major cruise lines served more than 7.5 million passengers last year. Approximately ninety-eight percent (98%) of the North American passengers embarked on the ships of one of four major cruise lines: (i) Carnival Corp./P&O Princess, (ii) Royal Caribbean Cruises, Ltd., (iii) Star Shipping/ Norwegian Cruise Line, and (iv) Disney Cruise Line. For its part, Disney Cruise Line served approximately 400,000 passengers last year.

Under the Proposed Rule, each of the foregoing companies would be obligated to provide security to the Commission in excess of $100 Million, some of them in multiples thereof. Yet, each of these companies and/or their parent companies are publicly held companies traded on a major world stock exchange. Their finances are regularly disclosed and become publicly available information as part of regulatory filings. These companies all have fleets of ships worth billion(s) of dollars and net worth far exceeding the value of their U.P.R. With respect to Disney Cruise Line specifically, as mentioned above, Disney Cruise Line is a wholly owned subsidiary of The Walt Disney Company. The Walt

Disney Company is listed at number 61 on the Fortune 500 list of corporations, is headquartered in the United States and has assets of more than $50 Billion. We believe there can be no question of Disney Cruise Line's financial responsibility and its ability to cover any claims for nonperformance.

The Proposed Rule, however, takes no account of these circumstances and provides no mechanism for consideration of the financial resources of a passenger vessel operator. The Proposed Rule requires <u>all</u> passenger vessel operators to provide security for 110% of U.P.R. without regard to the operator's actual financial capability. It makes no sense to impose a new requirement on companies such as Disney Cruise Line or the other major lines, when that requirement will cost millions of dollars to the industry, much of the costs will be passed on to consumers, and there is extremely little likelihood of any default that would invoke the need for the additional coverage. That is simply a waste, a burden to industry and a cost that will be borne by consumers for no incremental benefit.

The elimination of the ceiling would force passenger vessel operators to divert resources from other endeavors to provide the mandated additional security. Those resources could be used for investment in additional ships, upgrading of existing ships and terminal facilities, or making security improvements. The lack of availability of these resources for such purposes will inhibit further growth and expansion of the industry. Alternatively, operators could be forced to borrow funds or commit existing credit facilities to satisfy the U.P.R. coverage requirement or to engage in growth activities. In either way, the industry will bear substantial increased capital costs.

The rationale stated by the Commission in the Proposed Rule do not justify eliminating the ceiling and requiring all passenger vessel operators to provide security for 110% of U.P.R. For example, the failure of American Classic Voyages does not support the Commission's contention that elimination of the ceiling is necessary. As the Proposed Rule recognizes, American Classic Voyages had evidenced its financial responsibility through the self-insurance option. The Commission, in previous rulemaking, has already eliminated self-insurance as a means of evidencing financial responsibility. If American Classic Voyages had provided a surety bond or guarantee, there is no evidence that any passengers would have been unable to recover prepaid passage monies. Further, the approved liquidation plan in American Classic Voyages' bankruptcy proceedings provide for a refund to all passengers that have not been reimbursed by their credit card company or travel agency. Therefore, there is no evidence that any passengers will remain without reimbursement as a result of the American Classic

Voyages default. The existing system provides adequate security for nonperformance.

The Proposed Rule also expresses concerns with operator stability as a result of the economic downturn and the events of September 11, 2001. The facts, however, show that the industry continues to thrive. As stated previously, the industry embarked more than 7.5 million passengers in 2002. Cruise companies have ordered new ships and deployed ships on new itineraries. The passenger cruise industry in general, and Disney Cruise Line specifically, continues to experience strong bookings and sound economics. By contrast, other modes of transportation, such as the airlines and Amtrak, have experienced bankruptcies and the need for federal assistance. Yet no transportation industry other than the passenger cruise industry has any requirement for security for U.P.R. For the Commission to eliminate the ceiling and to require security for 110% of U.P.R. would impose a disproportionate and unfair burden on the passenger cruise industry.

Finally, the Commission's comment that the ceiling could expose consumers to losses in the event of a large scale or catastrophic incident may indicate the Commission's intention to transform the nonperformance program into a form of terrorism insurance. Such a result should not be pursued absent a clear expression of Congressional intent. Nor should the passenger cruise industry be singled out to bear this burden and expense among all modes of transportation.

Disney Cruise Line asserts that Congress' intent is satisfied by maintaining a ceiling on the amount of required U.P.R. coverage. In 1993, Congress removed the portion of the statute addressing the amount of the bond. Clearly, if Congress had intended for passenger vessel operators to provide dollar-for-dollar coverage, it would have retained the language it deleted or even strengthened it. The Commission should not depart from this Congressional mandate nor from the past 36 years of consistent interpretation and application of the statute by the Commission. We believe that the ceiling satisfies the statutory intent of providing evidence of financial responsibility, without needlessly burdening passenger vessel operators with the expense of providing dollar-for-dollar coverage. Because the existing system has worked successfully since the program was implemented, an increase in the ceiling to correspond with the CPI is all that is warranted.

B. Mandatory Alternative Dispute Resolution

The Commission's proposal to require passenger vessel operators to submit to the Commission's alternative dispute resolution program is unnecessary and inappropriate. The Proposed Rule appears to be inconsistent by providing that passenger vessel operators would be required to consent to arbitration, while at the same time providing that the arbitration would be conducted pursuant to the Commission's Alternative Dispute Resolution program provided by 46 CFR § 502, Subpart U. Subpart U, however, expressly states that the means of dispute resolution authorized by the section (including arbitration) are voluntary procedures. 46 C.F.R. § 502.403(c). Obviously, requiring all passenger vessel operators to consent to arbitration is completely contrary to the requirement that the parties voluntarily agree to submit to alternative dispute resolution procedures.

The Proposed Rule also fails to limit the types of disputes that could be submitted to arbitration. Apparently, a passenger could force arbitration of its claim by characterizing it as a claim for nonperformance and a passenger vessel operator "would be obligated to participate." To the extent the Proposed Rule includes claims for matters other than failure to provide a scheduled voyage, such matters appear to be outside the Commission's jurisdiction. The Commission should not attempt to exceed its statutory mandate and insert itself into the process for resolution of commercial disputes.

The Proposed Rule also provides insufficient justification for changing the dispute resolution process. The Proposed Rule states that the Commission now receives "several hundred complaints" per year. Given the magnitude of passengers served by the passenger cruise industry (over 7.5 Million people in 2002), several hundred complaints represents an extremely small percentage. The fact is that passenger vessel operators aggressively respond to and resolve consumer complaints in order to protect their brand and business reputation. Cruise companies historically have provided compensation well beyond what may be legally required when a voyage is interrupted or impacted by adverse conditions. It is not necessary to "...encourage PVO's [passenger vessel operators] to settle claims." Disney Cruise Line has a staff dedicated to addressing guest complaints and every effort is made to amicably resolve any disputes. Nevertheless, when resolution is not possible, as is infrequently the case, adequate legal remedies already exist and an additional mandatory arbitration conducted by the Commission is unnecessary and inappropriate.

IV. Conclusion

For the reasons stated herein, Disney Cruise Line opposes the portions of the Proposed Rule pertaining to (i) elimination of the ceiling on coverage for U.P.R. and (ii) the mandatory consent to submission to the Commission's alternative disputes resolution program for claims for nonperformance.

Respectfully submitted,

DISNEY CRUISE LINE

By: James M. Heaney
Title: Vice President Finance/Revenue Management