accordance with section 408(e) of FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket number, [PP 5E4472/P667].

A record has been established for this rulemaking under docket number [PP 5E4472/P667] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

The Office of Management and Budget has exempted this proposed rule from the requirements of section 3 of Executive Order 12866.

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1955 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement explaining the factual basis for this determination was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 12, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001 the table in paragraph (d) is amended by adding alphabetically the inert ingredient Copper 8-quinolinolate (CAS Reg. No. 10380–28–6), to read as follows:

§ 180.1001 Exemptions from the requirements of a tolerance.

* * * * *

(d) * * *

Inert Ingredients	Limits	Uses
* *	* * *	* *
Copper 8-quinolinolate (CAS Reg. No. 10380–28–6) ...	Not to exceed 4% by weight of pesticide formulation.	Preservative in pesticidally treated paper.
* *	* * *	* *

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[FR Doc. 96–16334 Filed 6–25–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 94–06]

Financial Responsibility Requirements for Nonperformance of Transportation

AGENCY: Federal Maritime Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to remove its current $15 million coverage ceiling for nonperformance of transportation by passenger vessel operators. The Commission would replace the ceiling with sliding-scale coverage requirements keyed to passenger vessel operators' financial rating, length of operation in United States trades and satisfactory explanation of claims for nonperformance of transportation. For self-insuring passenger vessel operators, the Commission proposes to reestablish a working capital requirement and to require third-party coverage for 25 percent of unearned passenger revenue. In order to clarify that the escrow agreement is for the exclusive benefit of passengers' deposits and prepaid fares, the Commission proposes revising the form escrow agreement it publishes as a guideline for the industry. The Commission also proposes to require applications for Certificates (Performance) to be filed at least 90 days in advance of the arranging, offering, advertising or providing of water transportation or tickets in connection therewith, unless good cause is shown. Finally, the Commission again solicits suggestions for other alternatives to consider under its Public Law 89–777 program, as well as suggestions for scheduling the phasing-in of the proposed rule's revised coverage requirements. These changes are deemed necessary to enhance the travelling public's protection against nonperformance of transportation.

DATES: Comments due on or before August 26, 1996.

ADDRESSES: Send comments (original and 15 copies) to:[1] Joseph C. Polking,

[1] The Commission also requests, but does not require, that commenters submit an electronic copy

Continued

Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Maritime Commission (''Commission'' or ''FMC'') administers section 3, Public Law 89–777, 46 U.S.C. app. 817e (''section 3''). Section 3 requires certain passenger vessel operators (''PVOs'')[2] to establish financial responsibility for nonperformance of transportation.[3] The Commission's regulations implementing section 3 (46 CFR 540, Subpart A) generally provide that a PVO may evidence financial responsibility by one or more of the following methods: A guaranty, escrow arrangement, surety bond, insurance or self-insurance. The Commission requires coverage of at least 110 percent of a PVO's highest unearned passenger revenue (''UPR'')[4] over a two-year period. However, the maximum coverage amount currently required is $15 million. Also, non-self-insuring PVOs that can evidence a minimum of five years operation in U.S. trades with a satisfactory explanation of any claims for nonperformance of transportation are entitled to reduced coverage requirements under the following sliding scale:[5]

Unearned passenger revenue (''UPR'')	Required coverage
$0–$5,000,000	100% of UPR up to $5,000,000.
$5,000,001 to $15,000,000	$5,000,000 plus 50% of excess UPR over $5,000,000 subject to an overall maximum of $5,000,000 per vessel.
$15,000,001 to $35,000,000	$10,000,000 plus 25% of excess of UPR over $15,000,000 subject to an overall maximum of $5,000,000 per vessel and a $15,000,000 overall maximum.
Over $35,000,000	$15,000,000 overall maximum.

Under the Commission's present rules, self-insuring PVOs are required to demonstrate, among other things, net worth equal to at least 110 percent of their UPR. At an earlier stage of this proceeding, as discussed below, the Commission had proposed to phase out self-insurance except for PVOs which are state and Federal entities.

The Commission monitors activity of PVOs who are subject to Public Law 89–777 and by rule requires semiannual UPR reports.[6] Additionally, the Commission periodically surveys PVOs' future U.S. cruise schedules and fare structures.

II. Background

A. Docket No. 94–6

These proceedings were instituted with a March 1994 Notice of Proposed Rulemaking (''1994 NPR'' or ''1994 Proposed Rule'').[7] The 1994 NPR addressed the Commission's concerns about the adequacy of its coverage requirements in the light of several recent developments, including $700 million in uncovered UPR, the voluntary bankruptcy of one PVO and the dislocation of a self-insured carrier's operations as a result of the 1993 floods in the Mississippi River system. The 1994 NPR therefore proposed:

(1) removing the current $15 million UPR coverage ceiling;

(2) revising the current UPR sliding scale to require coverage of 110 percent of UPR up to $25 million per operator, with coverage of 90 percent of UPR for amounts exceeding $25 million (the NPR also put forth an alternative proposal which would require coverage of 110 percent of UPR up to $25 million per operator; 75 percent of UPR between $25 million and $50 million per operator; and 50 percent coverage for UPR over $50 million per operator); and

(3) removing self-insurance as an option for section 3 coverage (except for state or federal entities). Existing self-insured commercial operators would be provided one year following the effective date of any final rule in this matter to obtain other evidence of financial responsibility.

The 1994 NPR drew twelve comments. There was virtually unanimous support for the Commission's existing coverage requirements, and widespread questioning of the need for the 1994 Proposed Rule. Many commenters drew attention to the Commission's earlier series of proceedings in this area,[8] and

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of their comments in ASCII, WordPerfect or Microsoft Word format.

[2] For the purposes of section 3, a PVO is any person in the United States that arranges, offers, advertises or provides passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports.

[3] Section 3 provides, in pertinent part:

(a) No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

[4] UPR is defined under 46 CFR 540.2(i) as:

* * * passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed.

[5] The Commission, in Docket No. 92–19, *Revision of Financial Responsibility Requirements for Non-Performance of Transportation,* amended 46 CFR Part 540, Subpart A, to (1) institute this sliding scale formula for determining the amount of financial responsibility coverage required for operators meeting certain requirements; (2) exclude, under certain conditions, revenue from ''whole-ship'' arrangements from being considered UPR; and (3) publish a suggested form escrow arrangement as a guideline for the industry (57 FR 51887 (September 14, 1992)).

[6] 46 CFR 540.9(h) provides, in pertinent part:

Every person who has been issued a Certificate (Performance) must submit to the Commission a semiannual statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. Such statements must cover every 6-month period of the fiscal year immediately subsequent to the date of the issuance of the Certificate (Performance), and include a statement of the highest unearned passenger revenue accrued for each month in the 6-month reporting period. In addition, the statement will be due within 30 days after the close of every such 6-month period.

[7] 59 FR 15149 (March 31, 1994).

[8] Docket No. 90–1, *Security for the Protection of the Public, Maximum Required Performance Amount;* Proposed Rule, 55 FR 1850 (January 19, 1990); Final Rule, 55 FR 34564 (August 23, 1990); Correction, 55 FR 35983 (September 4, 1990).

Fact Finding Investigation No. 19, *Passenger Vessel Financial Responsibility Requirements,* Order of Investigation, 55 FR 34610 (August 23, 1990).

asserted that there have been no industry changes warranting this proposal. Positions ranged from strong Congressional and U.S.-flag PVO opposition to any further changes to current coverage requirements, to conditional support of a modified version of the 1994 Proposed Rule by foreign-flag interests. There was no support for the 1994 Proposed Rule outright; however, a foreign-flag PVO supported the 1994 Proposed Rule's coverage requirements for those PVOs unable to meet that PVO's self-insurance proposal.

B. Docket No. 94–21

Given the concerns expressed in the industry comments to the 1994 NPR, the Commission determined to hold it in abeyance pending a formal Inquiry under Docket No. 94–21, *Inquiry into Alternative Forms of Financial Responsibility for Nonperformance of Transportation* (''1994 *Inquiry*'').[9] The 1994 *Inquiry*'s purpose was to determine whether an acceptable alternative could be fashioned to both address the industry's concerns with the 1994 NPR and ensure appropriate protection for passengers. The 1994 *Inquiry* therefore solicited comment on covering UPR liability through:

(1) voluntary association(s) (such association(s) would be in addition to the current individual methods of evidencing financial responsibility for non-performance);[10] and

(2) retained but strengthened self-insurance requirements.

In general terms, the association(s) envisioned by the 1994 *Inquiry* would accept liability for all or a part of a PVO's section 3 liability, using a Commission-approved surety bond or guaranty in an amount equal to the combined UPR of the two members having the highest amount of UPR during the past two years. Because these associations would necessarily involve concerted carrier activity, comments were also invited on whether this approach could present issues under the antitrust laws, to the extent such activity is not immunized under Shipping Act agreements.[11]

The reinforced self-insurance approach envisioned by the 1994 *Inquiry* would have worked in a manner whereby the Commission would restore its former standard,[12] but require prospective self-insurers to provide alternative coverage for a percentage (*e.g.*, 50% or 25%) of their uncovered UPR, through either a traditional guaranty, surety, escrow agreement or lien or other security instrument, or through participation in a coverage association along the above-described lines. This approach would, however, still require qualifying assets to be located in the United States.

The 1994 *Inquiry* was subsequently revised to clarify that the Commission was also seeking comment on accepting liens, mortgages or other security instruments as evidence of financial responsibility.[13]

Five comments on the 1994 *Inquiry* were submitted by three trade associations (one representing surety interests,[14] one representing foreign-flag vessel operators[15] and one representing U.S.-flag vessel operators)[16], a foreign-flag vessel operator[17] and a U.S.-flag vessel operator.[18]

All of the 1994 *Inquiry*'s commenters had also commented on the NPR, and indicate that their comments on the 1994 *Inquiry* supplement or incorporate by reference those earlier comments, which generally opposed the 1994 Proposed Rule and urged retaining current regulations. Many commenters express appreciation for the Commission's efforts to arrive at creative solutions to the financial responsibility issue. At the same time, they reiterate their NPR comments that current requirements are working well, and that no passengers have lost any money.

The commenters' general opposition to the NPR carried over to the alternatives proffered under the 1994 *Inquiry*: virtually all foresee problems of one sort or another with the voluntary association approach, ranging from skepticism about the availability of the large bonds necessary, to a number of difficult risk management and competitive factors. No commenter offers outright support for the vessel lien concept, for a number of reasons generally based on opposition to a requirement that qualifying assets be located in the U.S. Commenters urge the Commission not to change its current self-insurance standards, or to discontinue the requirement that qualifying assets be based in the U.S.

1. Voluntary Associations

The comments opposing the 1994 *Inquiry*'s voluntary association proposal suggest that, although this general approach seems to be viable for NVOCCs, it may not be feasible for PVOs. In particular, these comments address the operational and fiscal

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Docket No. 91–32, *Passenger Vessel Financial Responsibility Requirements for Indemnification of Passengers for Nonperformance of Transportation—Advance Notice of Proposed Rulemaking and Notice of Inquiry,* 56 FR 40586 (August 15, 1991).

Docket No. 92–19, *Revision of Financial Responsibility Requirements for Nonperformance of Transportation;* Proposed Rule, 57 FR 19097 (May 4, 1992); Final Rule, 57 FR 41887 (September 14, 1992).

Docket No. 92–50, *Financial Responsibility Requirements for Nonperformance of Transportation—Revision of Self-Insurance Qualification Standards;* Proposed Rule, 57 FR 47830 (October 20, 1992); Final Rule, 57 FR 62479 (December 31, 1992).

[9] 59 FR 52133 (October 26, 1994).

[10] In this connection, the Commission noted its approach in Docket No. 92–37, *Financial Responsibility for Non-Vessel-Operating Common Carriers,* Final Rule, 58 FR 5618 (January 22, 1993), which permits groups or associations of non-vessel-operating common carriers (''NVOCCs'') to collectively issue bonds to meet financial responsibility coverage requirements imposed upon NVOCCs by the Shipping Act of 1984. Because this approach had proven successful with respect to NVOCCs, a purpose of the 1994 *Inquiry* was to consider its applicability and adaptability to PVO requirements under Pub. L. 89–777.

[11] The Shipping Act of 1984, 46 U.S.C. app. 1701, (''1984 Act'') governs concerted ocean common carrier activity in the U. S. foreign waterborne trades. The Shipping Act, 1916, 46 U.S.C. app. 801, (''1916 Act'') governs concerted activity of common carriers by water in interstate commerce in the transportation by water of passengers on the high seas or the Great Lakes on regular routes from port to port between one U.S. State, Territory, District or possession and any other U.S. State, Territory, District or possession or between places in the same Territory, District or possession. Effective September 30, 1996, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, repeals among other things the 1916 Act provisions applicable to agreements.

[12] The Commission previously required the maintenance of working capital and net worth, each equal to 110 percent of the operator's UPR. This standard provided that the Commission could, for good cause shown, waive the requirement as to the amount of working capital.

[13] 59 FR 54878 (November 2, 1994).

[14] The Surety Association of America (''Surety Association'') is a trade association that represents 650 surety companies that provide 95% of the surety bonds written in the United States.

[15] The International Council of Cruise Lines (''ICCL'') states that its members have the vast majority of the cruise industry berth capacity. Its letterhead lists Carnival Cruise Lines; Celebrity Cruise Lines; Commodore Cruise Line; Costa Cruise Lines NV; Crown Cruise Line; Crystal Cruises; Cunard Line Ltd.; Dolphin Cruise Line; Epirotiki Lines; Fantasy Cruise Lines; Holland America Line; Majesty Cruise Line; Norwegian Cruise Line; Premier Cruise Lines, Ltd.; Princess Cruises; Regency Cruises, Inc. (''Regency''); Royal Caribbean Cruises, Ltd.; Royal Cruise Line; Royal Viking Line; Seabourn Cruise Line; Sun Line Cruises, Inc.; and Windstar Cruises.

[16] The Transportation Institute stated in its NPR comments that it represents 140 U.S.-flag shipping companies engaged in foreign and domestic trades, including American Classic Voyages Co. The U.S.-flag PVOs under the Commission's section 3 program presently consist of American Classic Voyages, Alaska Sightseeing/Cruise West, Clipper Cruise Line, Special Expeditions, Alaska Marine Highway, and American Canadian Caribbean Line.

[17] Carnival Corporation (''Carnival''). Carnival's comments are filed on behalf of Carnival Cruise Lines, Holland America Lines and Windstar Cruises. Carnival is an ICCL member.

[18] American Classic Voyages Co. (''AMCV''). AMCV is the corporate parent of The Delta Queen Steamboat Co. (''Delta Queen'') and Great Hawaiian Cruise Line, Inc. (''American Hawaii''). AMCV is a section 3 self-insurer.

[11] The Shipping Act of 1984, 46 U.S.C. app. 1701,

distinctions between the NVOCC and the PVO industries and make a credible argument as to why in this particular case a mechanism which works for one industry might not for another.[19]

In short, the comments contend that an association approach would not work at the coverage levels contemplated under the NPR (either the original proposal or the alternative), due to the concentrated capital structures, operational diversity and competitive considerations inherent in the contemporary cruise industry.[20] Also, ICCL comments that the nature of the cruise business does not lend itself to the mutuality inherent in the association approach, which seems to be borne out by AMCV's explanation of the drawbacks it sees in the association approach.[21] It therefore appears unlikely that the market could support the magnitude of risk exposure inherent in the sort of voluntary association envisioned by the 1994 *Inquiry*.

Another material difference between these two industries is prepayment: NVOCCs do not require their customers to fully prepay for their services anywhere from two to six weeks (or, in some cases, eight or more weeks) before they are performed, as is the practice with PVOs. It is this practice which accounts for the approximately $700 million shortfall in uncovered UPR that prompted these proceedings. The shortfall's size more than anything else would appear ultimately to render the voluntary association approach unworkable.

With regard to possible antitrust issues under this approach, AMCV notes that an association attempting to limit membership to financially sound PVOs could be subject to antitrust claims by excluded PVOs, and that there is an inherent potential for detrimental disclosure of confidential information.[22]

In view of the foregoing considerations, the Commission has determined not to pursue a voluntary association approach for the purposes of its Pub. L. 89–777 program.

2. Self-Insurance

The self-insurance requirements currently in place were established by the Commission's Final Rule in Docket No. 92–50, which became effective February 1, 1993. Previously, self-insurers needed to demonstrate net worth and working capital each equal to 110% of the PVO's UPR—the standard the 1994 *Inquiry* suggested that the Commission might restore.

Current self-insurance standards provide that PVOs demonstrating a minimum of five years' operation in U.S. trades, with a satisfactory explanation of any claims for nonperformance of transportation, need only demonstrate net worth equal to 110% of their UPR to qualify for self-insurance. Self-insurers are not, however, entitled to the sliding scale UPR coverage requirements that had been adopted in the Final Rule in Docket No. 92–19,[23] and qualifying assets still must be located in the U.S.

The comments on the 1994 *Inquiry* urge the Commission not to repeal self-insurance for private operators. AMCV has offered a rationale why the Commission should neither terminate self-insurance for commercial PVOs, as proposed in the NPR, nor implement the 1994 *Inquiry*'s suggested restoration of the Commission's former and more rigorous standard.

Foreign-flag operators take a different tack, urging repeal of the U.S.-based asset requirement. Carnival proposes a standard that would not only repeal the U.S.-based asset requirement but also provide for self-insurance qualification for PVOs which either (1) have earned investment grade ratings by the bonding rating agencies; or (2) meet both (a) a three times tangible net worth test and (b) a liquidity test (cash, short term investments and undrawn lines of credit equal to at least 100% UPR).

The foreign-flag operators, and Carnival in particular, seek a system that appears to be well suited for assessing a company's investment risk. However, Carnival's ''investment risk'' test may not be appropriate for a statute that contemplates indemnification of passengers in the event a carrier does not fulfill its obligations.

In this regard, we note that Carnival's proposed test is conditioned upon the Commission removing the U.S.-based asset requirement. We believe this requirement is critical to the self insurance standard. Unless passengers have the ability to attach a defaulting carrier's assets, self insurance under any standard is problematic.[24] As the Commission remarked in its Final Rule in Docket 92–50:

> Although AHC and ICCL have requested the Commission to relax the requirement that the assets used to qualify as a self-insurer be physically located in the United States, the final rule herein continues existing requirements for the location of those assets. The Commission remains concerned that passengers may not have the ability or resources to pursue foreign-domiciled assets, and that such efforts would not be cost-effective in the majority of instances.* Moreover, as noted in the NPR, ''self-insurance presents a greater risk of loss to the travelling public than do other forms of coverage that are backed by independent interests holding sums of money for the protection of the public.''

On the other hand, AMCV's comments appear to provide a basis to ameliorate some of the concerns that originally prompted the Commission to propose withdrawing self-insurance as

[19] In this regard, the comments point out that P&I Clubs, which are mutual insurance associations, were developed initially to provide mutual insurance for casualty and other losses. Thus, they are structured on the assumption that a member will survive a casualty, and the P&I mechanism is designed to eventually recover casualty losses from the member suffering that loss. (P&I Clubs issue performance guaranties only as an accommodation to the membership, and then only on a fully-collateralized basis.) The NVOCC industry uses commercial instruments and does not have mutual associations similar to P&I Clubs.

[20] The Surety Association advises that, depending on the actual make-up and financial strength of the passenger vessel associations, some associations may find it extremely difficult to qualify for a group surety bond and some may not be able to qualify at all.

[21] AMCV described the undesirability of PVOs becoming exposed to liability for other PVOs' nonperformance; fiduciary risks to PVO management for assuming liability for events within the sole control of its competitors; the difficulties of allocating the levels of risk involved and the narrowness of the base upon which that risk would be shared; and the inherent susceptibility of weaker members to termination—either for competitive reasons or because of normal operational risks inherent in a seasonal industry that is ultimately dependent upon discretionary income for all of its revenues.

[22] Those PVOs subject to the 1984 Act could avail themselves of agreement immunity to protect themselves from whatever exposure such concerted activity would cause under antitrust laws. Thus, the Shipping Act's antitrust exemption could result in uneven antitrust exposure as between those PVOs entitled to the wide scope of 1984 Act agreement antitrust exemption (transportation between U.S. and foreign locations), which would obtain either with the filing or regulatory exemption of the Association agreement(s); and those purely domestic PVOs (transportation solely within the U.S.), which may not be entitled to any Shipping Act antitrust exemption at all. (The immunity afforded by the 1916 Act is repealed September 30, 1996, by virtue of the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803.)

[23] Please refer to footnote 5, *infra*.

[24] Although Carnival has proposed that self-insuring PVOs assent to U.S. jurisdiction in disputes with passengers over UPR and that PVOs designate agents for service of process, we do not believe that these measures would be sufficient for a passenger to attach a carrier's foreign-based assets. Moreover, this would not add anything new because section 3 UPR is already protected by U.S. Law (Pub. L. 89–777) and all section 3 applicants are required to appoint agents for service of process before they are certificated. Also, the Commission's concern is not limited to disputes between viable PVOs and passengers over UPR; rather, the Commission is concerned with a failing PVO's ability to indemnify passengers for nonperformance, which goes well beyond U.S. jurisdiction over simple disputes.

* Docket No. 92–19, Notice of Proposed Rulemaking, p. 9.

Docket No. 92–50, *Financial Responsibility Requirements for Nonperformance of Transportation—Revision of Self-Insurance Qualification Standards*, 57 FR 47830 (October 20, 1992), Final Rule, 57 FR 62480 (December 31, 1992).

an available option for commercial PVOs.[25] AMCV explains that traditional maritime liens and preferred mortgages, which have priority over passenger claims, are first deducted prior to calculating net worth under the existing rule; therefore, the resultant net worth used to qualify for section 3 self-insurance has already accounted for those liabilities.[26]

After further consideration, the Commission has determined to withdraw its proposal to discontinue self-insurance for commercial operators. Instead, the Commission proposes to continue self-insurance, but with revised criteria. To this end, the proposed rule herein would revise Part 540 to permit PVOs other than state or Federal instrumentalities to qualify for a Performance Certificate using U.S.-based net worth and working capital each equal to or greater than their outstanding UPR, plus an additional cushion of 25% of UPR backed by a traditional guaranty, surety bond, insurance or escrow account. Such an approach would permit commercial operators, like AMCV, to continue to use the self-insurance option currently set forth in the Commission's rules, provided they also can evidence working capital equal to their outstanding UPR and can acquire a guaranty, surety bond, insurance or escrow account for 25% of their outstanding UPR.

3. Liens, Mortgages and Other Security Instruments

This aspect of the 1994 *Inquiry* drew no support in the comments. In fact, commenters provided sound reasons why it should not be pursued further. Accordingly, the Commission intends to take no further action with respect to this option.

III. Discussion

Notwithstanding the industry's general position that changes are not necessary, the Commission's concern about the adequacy of its financial responsibility standards has, if anything, increased. Subsequent to the close of the comment period in the 1994 *Inquiry*, three additional passenger vessel operators have sought protection under the Bankruptcy Code:

—In late December 1994, Gold Star Cruises ceased operations and filed for Chapter 7 bankruptcy.
—As of October 29, 1995, Regency Cruises ceased operations. It subsequently filed for Chapter 11 protection on November 7, 1995.
—On October 30, 1995, Palm Beach Cruises filed for Chapter 11 protection to reorganize.

In each of these cases, there appear to be sufficient funds set aside to indemnify passengers scheduled to embark at U.S. ports. At the same time, it should be noted that there was some concern regarding Regency because its unearned passenger revenue had from time to time exceeded the current ceiling; however, Regency ceased operations at a time when its unearned passenger revenue was below the ceiling.

Accordingly, in light of the foregoing the Commission believes that it must now proceed to revise its coverage requirements to narrow the gap between coverage and UPR as a means of enhancing protection for the public.

A. Revised Coverage Requirements

1. Coverage Levels

As aforementioned, the Commission remains concerned about the increased exposure to risk of the travelling public's deposits and prepaid fares in the event that a PVO holding UPR levels above the current ceiling defaults, possibly leaving passengers unprotected and subject to financial losses. The Commission therefore proposes to remove the $15 million ceiling in 46 CFR 540.9(j). Adjustments will also be proposed to the sliding scale and eligibility requirements currently set forth in 540.5(e). The Commission also proposes to introduce a new sliding scale coverage table that would apply to all operators.

a. *Reduced Coverage Scale.* The revised sliding scale in 46 CFR 540.5(e) would continue to be available to passenger vessel operators that can provide evidence of at least five years' operation in United States trades, with a satisfactory explanation of any claims for nonperformance of transportation. Operators opting to use this reduced coverage sliding scale would, in addition, have to demonstrate that their debt is rated ''Aa'' or better by Moody's Investors Service. For those who qualify, this reduced coverage sliding scale would require 100 percent coverage for UPR up to $15 million and, when fully phased in, 60 percent coverage for UPR between $15 and $50 million; 20 percent coverage for amounts between $50 and $100 million; and 10 percent for amounts over $100 million. The reduced coverage sliding scale would be phased in over a 3-year period to minimize the impact of the new coverage requirements.[27]

The Commission believes that this approach would give more weight to third-party, marketplace assessments of a PVO's financial strength in determining its section 3 risk. Moreover, this approach relies, albeit indirectly, upon foreign-based assets as urged by foreign-flag PVOs in connection with the self-insurance standards.

b. *Standard Coverage Scale.* The new standard coverage sliding scale would be available to all PVOs, regardless of the extent of their operational experience, their financial standing or their explanations for instances of nonperformance. When fully phased in, the standard coverage sliding scale would ultimately require 100 percent coverage for UPR up to $50 million; 75 percent coverage for amounts between $50 and $100 million; and 25 percent coverage for amounts over $100 million. The standard coverage sliding scale would be phased in over a 3-year period to minimize the impact of the new coverage requirements.[28]

[25] AMCV also suggested that the widespread use of credit cards and the protection offered by the Truth-in-Lending Laws and private travel insurance programs, act to buttress any shortfalls in the Commission's self-insurance options. While this may or may not be true, the Commission nevertheless has an independent obligation to make certain that PVOs have established their financial responsibility to indemnify passengers for nonperformance of transportation. Accordingly, we do not believe that the statutes or programs referred to by AMCV obviate the need for the Commission to fulfill its statutory responsibilities.

[26] Although AMCV may have addressed some of the Commission's concerns with respect to self-insurance, it did not address other potential payables that may have priority over passengers claims, *e.g.*, employee salaries, benefits, legal fees. However, the proposed restoration of the former working capital standard, together with the additional requirement suggested below, should suffice to establish the requisite level of financial responsibility.

[27] The proposed reduced coverage sliding scale would require 100 percent coverage for a PVO's first $15 million in UPR and phase in this revised coverage requirement in three increments:

First, effective March 1, 1997, it would require 60 percent coverage for UPR between $15 and $25 million; 20 percent coverage for amounts between $25 and $50 million and 10 percent coverage for amounts over $50 million.

Second, effective March 1, 1998, it would require 60 percent coverage for UPR between $15 and $35 million; 20 percent coverage for amounts between $35 and $75 million and 10 percent coverage for amounts over $75 million.

Finally, effective March 1, 1999, it would require 60 percent coverage for UPR between $15 and $50 million; 20 percent coverage for amounts between $50 and $100 million; and 10 percent coverage for amounts over $100 million.

[28] The proposed rule would phase in this revised coverage requirement in three increments:

First, effective March 1, 1997, it would require 100 percent coverage for UPR up to $25 million; 75 percent coverage for amounts between $25 and $35 million; and 25 percent coverage for amounts over $35 million.

Second, effective March 1, 1998, it would require 100 percent coverage for UPR up to $35 million; 75 percent coverage for amounts between $35 and $50

Continued

2. Self-Insurance

The Commission has determined to propose the restoration of self-insurance for private PVOs that can demonstrate both U.S.-based net worth *and* working capital each equal to their outstanding UPR,[29] with an additional cushion of 25% of UPR backed by a traditional guaranty, surety bond, insurance or escrow account.

3. Effective Date

While the Commission wishes to revise section 3, Public Law 89–777, requirements at the earliest practicable date, it does not wish to do so in a manner that unnecessarily disrupts the passenger vessel industry. In this connection, the Commission acknowledges the widespread practice of P&I Clubs to require members to fully countersecure their section 3, Public Law 89–777, guaranties as well as the P&I Club practice of renewing coverages during February of each year. Therefore, the proposed rule herein would phase in the revised coverage requirements over a 3-year period beginning March 1, 1997, and ending March 1, 1999.

B. Revision of Part 540's Escrow Agreement Guideline

In a recent bankruptcy involving a PVO that had used an escrow agreement to meet its section 3, Public Law 89–777 financial responsibility requirements, the question arose as to whether the escrow's assets should be considered debtor's property. The escrow agreement at issue contained language that the Commission has changed in other escrow agreements it has since approved so as to address this issue. Therefore, we are proposing a change to paragraph 12 to require language that makes clear that escrow funds are not debtor's property and should be made available to passengers.

C. Filing Deadline

Section 540.4(b) requires that an application for a Certificate (Performance) shall be filed at least 60 days in advance of the arranging, offering, advertising, or providing of any water transportation or tickets in connection therewith. Late filing of the application is permitted only for good cause shown. With the growth of the passenger vessel industry over the years since this requirement was first promulgated, together with the industry's increasing reliance on complex financial responsibility proposals requiring case-by-case assessment by the Commission, a 60-day period can be insufficient. Accordingly, this is being changed to a 90-day period, absent good cause shown.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental organizations. The passenger vessel operators impacted by the rule are generally not small businesses.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3507 of the Paperwork Reduction Act of 1995. The annual public reporting and recordkeeping burden for this collection of information is estimated to average 14.91 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments concerning the information collection requirements of this rule within 60 days of this notice to Bruce A. Dombrowski, Deputy Managing Director, Federal Maritime Commission, Washington, D.C. 20573 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, Washington, D.C. 20503.

List of Subjects in 46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; section 3, Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e); section 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); and section 17 of the Shipping Act of 1984 (46 U.S.C. app. 1716), the Federal Maritime Commission proposes to amend Part 540 of Title 46 of the Code of Federal Regulations as follows:

PART 540—[AMENDED]

1. The authority citation to Part 540 continues to read:

Authority: 5 U.S.C. 552, 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e, 817d); sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); sec 17 of the Shipping Act of 1984 (46 U.S.C. app. 1716).

§ 540.4 [Amended]

2. In section 540.4(b), the reference to ''60 days'' in the first sentence is amended to read ''90 days.''

3. Section 540.5 is amended by revising the introductory text, the introductory text of paragraph (d), paragraph (d)(6), and (e) to read as follows:

§ 540.5 Insurance, guaranties, escrow accounts, and self-insurance.

Except with regard to escrow accounts and self-insurers, the amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 100 percent of the unearned passenger revenue of the applicant on the date within the 2 fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue, subject to the following schedule:

million; and 25 percent coverage for amounts over $50 million.

Finally, effective March 1, 1999, it would require 100 percent coverage for UPR up to $50 million; 75 percent coverage for amounts between $50 and $100 million; and 25 percent coverage for amounts over $100 million.

[29] The Commission also proposes restoring the procedure to waive, for good cause shown, the requirement as to the amount of working capital appearing in the former § 540.5(d).

Unearned passenger revenue (“UPR”)	Required coverage
Effective March 1, 1997:	
$0–$25,000,000	100% of UPR.
$25,000,001–$35,000,000	$25,000,000 plus 75% of excess UPR over $25,000,000.
Over $35,000,000	$32,500,000 plus 25% of excess UPR over $35,000,000.
Effective March 1, 1998:	
$0-$35,000,000	100% of UPR.
$35,000,001–$50,000,000	$35,000,000 plus 75% of excess UPR over $35,000,000.
Over $50,000,000	$46,250,000 plus 25% of excess UPR over $50,000,000.
Effective March 1, 1999:	
$0-$50,000,000	100% of UPR.
$50,000,001–$100,000,000	$50,000,000 plus 75% of excess UPR over $50,000,000.
Over $100,000,000	$87,500,000 plus 25% of excess UPR over $100,000,000.

The Commission, for good cause shown, may consider a time period other than the previous 2-fiscal-year period requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required. Evidence of adequate financial responsibility for the purposes of this subpart may be established by one or a combination (including § 540.6 Surety Bonds) of the following methods:

* * * * *

(d) Filing with the Commission for qualification as a self-insurer such evidence acceptable to the Commission as will demonstrate continued and stable passenger operations over an extended period of time in the foreign or domestic trade of the United States. In addition, applicants other than state or Federal entities must demonstrate financial responsibility by maintenance of working capital and net worth, each in an amount no less than 100 percent of the unearned passenger revenue of the applicant on the date within the 2 fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue. The Commission will take into consideration all current contractual requirements with respect to the maintenance of such working capital and/or net worth to which the applicant is bound. Evidence must be submitted that the working capital and net worth required above are physically located in the United States. This evidence of financial responsibility shall be supplemented by evidence demonstrating that twenty-five percent of applicant’s unearned passenger revenue is covered by one or a combination of the following: evidence of insurance pursuant to § 540.5(a); evidence of an escrow account pursuant to § 540.5(b); a guaranty pursuant to § 540.5(c); or a surety bond pursuant to § 540.6. This evidence of financial responsibility shall be supported by and be subject to the following which are to be submitted on a continuing basis for each year or portion thereof while the Certificate (Performance) is in effect;

* * * * *

(6) A list filed semiannually of all contractual requirements or other encumbrances (and to whom the applicant is bound in this regard) relating to the maintenance of working capital and net worth;

* * * * *

(e) (1) The following schedule may be applied to determine the minimum coverage required for indemnification of passengers in the event of nonperformance of water transportation for those operators who have not elected to qualify by an escrow account or self-insurance; and can provide evidence (in the form of an affidavit by the operator’s Chief Executive Officer or other responsible corporate officer) that applicant’s debt is rated by Moody’s Investors Service at Aa or higher; and of a minimum of five years of operation in United States trades with a satisfactory explanation of any claims for nonperformance of transportation.

Unearned passenger revenue (“UPR”)	Required coverage
$0–$15,000,000	100% of UPR.
Effective March 1, 1997:	
$15,000,001–$25,000,000	$15,000,000 plus 60% of excess UPR over $15,000,000.
$25,000,001–$50,000,000	$21,000,000 plus 20% of excess UPR over $25,000,000.
Over $50,000,000	$26,000,000 plus 10% of excess UPR over $50,000,000.
Effective March 1, 1998:	
$15,000,001–$35,000,000	$15,000,000 plus 60% of excess UPR over $15,000,000.
$35,000,001–$75,000,000	$27,000,000 plus 20% of excess UPR over $35,000,000.
Over $75,000,000	$35,000,000 plus 10% of excess UPR over $75,000,000.
Effective March 1, 1999:	
$15,000,001–$50,000,000	$15,000,000 plus 60% of excess UPR over $15,000,000.
$50,000,001–$100,000,000	$36,000,000 plus 20% of excess UPR over $50,000,000.
Over $100,000,000	$46,000,000 plus 10% of excess UPR over $100,000,000.

(2) The qualifications of applicants seeking consideration under the coverage requirements of this paragraph shall be supported by and subject to the following which are to be submitted on a continuing basis for each year or portion thereof while the Certificate (Performance) is in effect:

(i) A report filed semiannually evidencing that Moody’s Investors Service rates applicant’s debt at Aa or higher; and

(ii) Such additional evidence of financial responsibility as the Commission may deem necessary in appropriate cases.

§ 540.9 [Amended]

5. In section 540.9, paragraph (j) is removed, and paragraph (k) is redesignated as paragraph (j).

Appendix A to Subpart A—[Amended]

6. The following sentence is added at the end of Paragraph 12 of Appendix A to subpart A—Example of Escrow Agreement for Use Under 46 CFR 540.5(b):

The Operator and/or Ticket Issuer are not entitled to, nor have any interest in, any funds payable from this account to the extent such funds represent unearned passenger revenue, as that term is defined in subpart A of part 540 of title 46, Code of Federal Regulations.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–16210 Filed 6–25–96; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[General Docket No 96–113; FCC 96–216]

Identifying and Eliminating Market Entry Barriers for Small Businesses

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: The attached Notice of Inquiry (NOI) commences a proceeding to examine barriers to small business entry into the telecommunications marketplace. Section 101 of the Telecommunications Act of 1996 (1996 Telecommunications Act) adds new Section 257 to the Communications Act, which requires the Commission, within 15 months after enactment, to complete a proceeding to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services. Through this NOI, the Commission initiates an omnibus Section 257 proceeding and will undertake specific initiatives that further the objective of reducing market entry barriers for small businesses. The record developed in connection with these intiatives also will, assist us in achieving our mandate under Section 309(j) of the Communications Act of 1934 to disseminate licenses for auctionable spectrum-based services to small businesses, rural telephone companies, and businesses owned by women and minorities, as well as in fulfilling our general obligation to serve the public interest.

DATES: Comments must be submitted on or before July 24, 1996 and reply comments are due on or before August 23, 1996.

ADDRESSES: Comments and reply comments may be mailed to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Linda L. Haller, Office of General Counsel, at (202) 418–1720 or S. Jenell Trigg, Office of Communications Business Opportunities, at (202) 418–0990.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry* which was adopted on May 10, 1996, and released on May 21, 1996. The complete text of this NOI is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, N.W., Washington, D.C., on-line at the Office of Communications Business Opportunities' web site via the FCC's Internet Home Page at www.fcc.gov., and may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

I. Introduction

1. Section 101 of the Telecommunications Act of 1996 (1996 Telecommunications Act),[1] adds new Section 257 to the Communications Act of 1934.[2] Section 257 requires the Commission, within 15 months after enactment, to complete a proceeding ''for the purpose of identifying and eliminating, by regulations pursuant to its authority under this Act * * * market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.'' [3] In implementing Section 257, the Commission must ''promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity.'' [4] Every three years following the completion of the market entry barriers proceeding, the Commission must report to Congress on regulations that have been issued to eliminate barriers and any statutory barriers that the Commission recommends be eliminated.[5]

2. This *Notice of Inquiry* (NOI) commences the Commission's omnibus Section 257 proceeding. We also will undertake specific initiatives that further the objective of Section 257 to reduce market entry barriers for small businesses. The record developed in connection with these initiatives also will assist us in achieving our mandate under Section 309(j) of the Act [6] to disseminate licenses for auctionable spectrum-based services to small businesses, rural telephone companies, and businesses owned by women and minorities, as well as in fulfilling our general obligation to serve the public interest.[7]

3. We also inquire whether small businesses owned by minorities or women face unique entry barriers. We explore this area because the legislative history of Section 257 suggests that Congress was concerned about the underrepresentation of minority or women-owned small businesses in the telecommunications market and sought to increase competition by diversifying ownership.[8] In addition, Section 309(j) specifically requires that we further opportunities for businesses owned by women and minorities in the provision of spectrum-based services, because a portion of small telecommunications businesses under Section 257 are owned by women and minorities, and because

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[1] Telecommunications Act of 1996, Public Law No. 104–104, 110 Stat. 56 (1996).

[2] 47 U.S.C. 151 *et seq.*

[3] 47 U.S.C. 257(a).

[4] 47 U.S.C. 257(b).

[5] 47 U.S.C. 257(c).

[6] 47 U.S.C. 309(j).

[7] *See, e.g.,* 47 U.S.C. § 214 (Commission must certify that public convenience or necessity requires construction or extension of lines); 47 CFR § 303 (Commission must regulate radio as public interest, convenience or necessity requires); 47 U.S.C. 307(a) (Commission must grant radio licenses that serve the public convenience, interest, or necessity).

[8] The Congressional Record provides:

[W]hile we should all look forward to the opportunities presented by new, emerging technologies, we cannot disregard the lessons of the past and the hurdles we still face in making certain that everyone in America benefits equally from our country's maiden voyage into cyberspace. I refer to the well-documented fact that minority and women-owned small businesses continue to be extremely under represented in the telecommunications field. * * * Underlying this amendment [Section 257] is the obvious fact that diversity of ownership remains a key to the competitiveness of the U.S. telecommunications marketplace.

142 Cong. Rec. H1141 at H1176–77 (daily ed. Feb. 1, 1996) (statement of Rep. Collins).