

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 2, 8, and 189

[USCG–2004–19823]

RIN 1625–AA92

Alternate Compliance Program: Vessel Inspection Alternatives

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the vessel inspection regulations to expand the Alternate Compliance Program (ACP). These amendments would update the list of certificates the Coast Guard issues, incorporate Coast Guard policy regarding eligibility requirements for classification societies participating in the ACP, recognize classification societies other than the American Bureau of Shipping, and expand the ACP to include oceanographic research vessels.

DATES: Comments and related material must reach the Docket Management Facility on or before July 23, 2007.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2004–19823 to the Docket Management Facility at the U.S. Department of Transportation. Two different locations are listed under the mail and delivery options below because the Document Management Facility is moving May 30, 2007. Please note dates when certain submission options will not be available. To avoid duplication, please use only one of the following methods:

(1) *Web Site:* <http://dms.dot.gov>. Note, however, that because the computers housing this electronic docket are being moved to a new location, this submittal option will not be available from Wednesday, June 13, 2007, through Sunday, June 17, 2007.

(2) *Mail:*

- Address mail to be delivered by May 24, 2007, as follows: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

- Address mail to be delivered on or after May 25, 2007, as follows: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

(3) *Fax:* 202–493–2251.

(4) *Delivery:*

- Before 5 p.m., Thursday, May 24, 2007, deliver comments to: Room PL–

401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

- From Friday, May 25, through Tuesday, May 29, 2007, this delivery option will not be available.

- On or after Wednesday, May 30, 2007, deliver comments to: Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590.

At either location, deliveries may be made between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

Submissions you make through this Federal eRulemaking portal from June 13 through 17, will not be received in the electronic docket until June 18.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, contact Mr. William Peters, U.S. Coast Guard Office of Design and Engineering Standards, telephone 202–372–1371, or e-mail address William.S.Peters@uscg.mil. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by reviewing the proposed rules and submitting comments and related materials. All comments received will be posted, without change, to <http://dms.dot.gov> and will include any personal information you have provided. We

have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

A. Submitting Comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2004–19823), indicate the specific section of this document to which each comment applies, and give the reason or justification for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit each set of comments and material only once (e.g., mail, electronic, or fax). If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Document Management Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

B. Viewing Comments and Documents: To view comments or documents mentioned in this preamble as being available in the docket, go to <http://dms.dot.gov/> at any time and conduct a simple search using the last five digits of the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://dms.dot.gov/>.

II. Public Meeting

We do not plan to hold a public meeting. You may submit a request for one to the Docket Management Facility at Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001 explaining why it would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place

announced by a later notice in the **Federal Register**.

III. Acronyms

ACP Alternative Compliance Program
 CFR Code of Federal Regulations
 DHS Department of Homeland Security
 DMS Docket Management System
 DOT Department of Transportation
 FR Federal Register
 IMO International Maritime Organization
 NEPA National Environmental Policy Act of 1969
 NPRM Notice of Proposed Rulemaking
 NTTAA National Technology Transfer and Advancement Act
 PSSC Passenger Ship Safety Certificate
 HSC High-speed Craft
 RIN Regulation Identifier Number
 SOLAS International Convention for the Safety of Life at Sea
 US United States
 USC United States Code
 USCG United States Coast Guard

IV. Background and Purpose

This rulemaking would revise and update the regulations for the Alternate Compliance Program (ACP).

The ACP was launched as a pilot program in 1995. A notice was published in the **Federal Register** on February 3, 1995 and can be found at 60 FR 6687. It was an element of a larger initiative to harmonize domestic and international marine safety and environmental protection standards. Other goals of the initiative were to reduce the regulatory burden on industry and improve the efficiency of the vessel plan review and inspection process.

Under the ACP, owners and operators of eligible vessels were allowed to request inspection by an authorized classification society, as defined in 46 CFR 8.100, using an equivalence to the requirements in the Code of Federal Regulations (CFR) comprising classification society rules, provisions of International Maritime Organization (IMO) treaties, and a supplementary list of requirements from the CFR that were not in IMO provisions or classification society rules. A classification society gained eligibility to participate in the ACP by meeting the standards described in the regulations and, as a result, was delegated authority to conduct plan review and inspections and issue, on the Coast Guard's behalf, certain IMO certificates documenting compliance with IMO treaty provisions. An interim final rule establishing new 46 CFR part 8, "Vessel Inspection Alternatives" was published in the **Federal Register** on Friday, December 27, 1996. This interim

final rule can be found at 61 FR 68510. The pilot program was concluded in 1997 and the ACP was fully implemented via the final rule published on Wednesday, December 24, 1997. This final rule may be found at 62 FR 67526.

The ACP has proven to be extremely successful for both the Coast Guard and ship owners and operators. As expected, the program has evolved since 1997 and the lessons learned have typically been documented and implemented through Coast Guard policy decisions. This Notice of Proposed Rulemaking (NPRM) describes the Coast Guard's proposals to incorporate into the CFR those policy decisions as well as other revisions that expand the ACP.

When the ACP was initiated, the Coast Guard chose to retain issuing authority for the SOLAS Passenger Ship Safety Certificate (PSSC). This decision was intentionally conservative, given the newness of the ACP, and was based on our experience with the complexities of the passenger vessel plan review, inspection, and certification process. Subsequent experience has shown that retaining this issuing authority creates confusion over the roles of the Coast Guard versus the authorized classification society under the ACP. Experience with the ACP has also allowed us to gain confidence with the ACP process and its undeniably successful results. Therefore, we feel granting authorized classification societies issuing authority for the PSSC is now appropriate.

For similar reasons, we are also proposing to allow authorized classification societies to be delegated the authority to issue the High-Speed Craft (HSC) Safety Certificate. In May 2000, we determined that the HSC Code is equivalent to the 46 CFR Subchapter H requirements for large passenger vessels. As the Coast Guard and several classification societies have now gained significant experience with the HSC Code, we feel it is logical that the ACP include this document.

Our experience with the success of the ACP has also given us the flexibility to explore applying the program to other types of vessels that were originally excluded under our measured implementation approach. Positive feedback and recommendations from the U.S. maritime industry demonstrate broad support for this idea. As a result, we propose the ACP be expanded to encompass Oceanographic Research Vessels that engage on international voyages.

Soon after the current rule went into effect, we recognized that a classification society needs

authorization to issue five basic IMO certificates before it can comprehensively fulfill its role in the ACP, namely:

- The Cargo Ship Safety Construction Certificate from the International Convention for Safety of Life at Sea, 1974;
- The Cargo Ship Safety Equipment Certificate from the International Convention for Safety of Life at Sea, 1974;
- The International Load Line Certificate from the International Convention on Load Lines;
- The International Tonnage Certificate from the International Convention on Tonnage Measurement; and
- The International Oil Pollution Prevention Certificate from the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973.

While we have implemented this concept as part of our operating policies, it has not been incorporated into 46 CFR part 8. Therefore, this proposed rule would also accomplish this change.

The initial version of the ACP only applied to the American Bureau of Shipping with whom the Coast Guard had collaborated to develop the first U.S. Supplement (the list of differences between the CFR and the combination of IMO treaty provisions and classification society rules). As the program has expanded, we have engaged in similar partnerships with other classification societies resulting in their approval to participate in the ACP. Consequently, our specific references to the American Bureau of Shipping in 46 CFR part 2 are outdated. Therefore, we proposed to replace specific references to the American Bureau of Shipping with a more general reference to authorized classification societies. The term "authorized classification society" is already defined in 46 CFR 8.100.

V. Discussion of Proposed Rule

This NPRM proposes to amend 46 CFR 2.01–25(a) to:

- List all IMO certificates required to be maintained aboard ships; and
- Update the lists of IMO certificates issued only by the USCG and those that may be issued by an authorized classification society on the Coast Guard's behalf.

In § 2.01–25, we would change the phrase "American Bureau of Shipping" to "authorized classification society."

In § 8.320(b), this NPRM would add the following IMO certificates to the list of those that can be issued by an authorized classification society:

- Passenger Ship Safety Certificate (PSSC)
- High-Speed Craft (HSC) Safety Certificate

This NPRM would also, in § 8.420(c), add to the list of conditions for eligibility to participate in the ACP, a requirement that a classification society must have been delegated issuing authority for the Cargo Ship Safety Construction Certificate, Cargo Ship Safety Equipment Certificate, International Load Line Certificate, International Tonnage Certificate, and International Oil Pollution Prevention Certificate.

Finally, in new § 189.15–5, we would expand the ACP to include Subchapter U “Oceanographic Research Vessels.”

VI. Regulatory Evaluation

This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It will not impose any mandatory costs on the public because it enables a voluntary alternative to the traditionally prescribed method of inspection. However, we anticipate that vessel owners and operators may realize an economic benefit in the form of cost savings as a result of this proposed rule as outlined in the final rule published December 24, 1997. See 62 FR 67525 and 67530. We request comments from the public on how much they believe the proposed rule would save them.

A. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule does not change any requirements in the regulations. It simply updates and expands an existing voluntary program for alternate compliance with Coast Guard regulations. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental

jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

B. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. William Peters, U.S. Coast Guard Office of Design and Engineering Standards, telephone 202–372–1731. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise

have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

G. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

H. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

I. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

J. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

K. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in lieu of government-unique standards in their regulatory activities unless the agency determines use of these standards would be inconsistent with law or are otherwise impractical. Agencies not using voluntary consensus standards in lieu of government-unique standards

must provide Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standard bodies.

This proposed rule does not use voluntary consensus standards as there are none that meet the objectives of this rulemaking, and, therefore, we did not consider the use of voluntary consensus standards.

L. Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary “Environmental Analysis Check List” supporting this determination is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. We seek any comments or information that may lead to discovery of a significant environmental impact from this proposed rule.

List of Subjects

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 8

Administrative practice and procedure, Incorporation by reference, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Vessels.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

Amendatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 2, 8, and 189 as follows:

PART 2—VESSEL INSPECTIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2110, 3103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1. Subpart 2.45 also issued under the Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. Note prec. 1).

§ 2.01–25 [Amended]

2. In § 2.01–25—

a. Add a new paragraph (a)(1)(ix) to read as set forth below:

b. In paragraph (a)(3), remove the words “the American Bureau of Shipping may issue the Cargo Ship Safety Construction Certificate to cargo and tankships which it classes.” and add, in their place, the words “an authorized classification society may issue international convention certificates as permitted under part 8, subpart C, of this title.” and;

c. In paragraph (b)(1), after the word “Cargoes),” remove the word “and”, and after the words “Passenger Vessels)”, add the words “and Subchapter U (Oceanographic Research Vessels).”.

§ 2.01–25 International Convention for the Safety of Life at Sea, 1974.

(a) * * *

(1) * * *

(ix) High Speed Craft Safety Certificate

* * * * *

PART 8—VESSEL INSPECTION ALTERNATIVES

3. The authority citation for part 8 continues to read as follows:

Authority: 46 U.S.C. 3103, 3306, 3316, 3703; Department of Homeland Security Delegation No. 0170.1.

§ 8.320 [Amended]

4. In § 8.320, amend paragraph (b)—

a. In paragraph (b)(8), remove the word “and”;

b. In paragraph (b)(9), remove the period and add, in its place, a semicolon; and

c. Add new paragraphs (b)(10) and (11) to read as follows:

§ 8.320 Classification society authorization to issue international certificates.

* * * * *

(b) * * *

(10) SOLAS Passenger Ship Safety Certificate; and

(11) High-Speed Craft Safety Certificate.

* * * * *

§ 8.420 [Amended]

5. In § 8.420, revise paragraph (c) to read as follows:

§ 8.420 Classification society authorization to participate in the Alternate Compliance Program.

* * * * *

(c) A recognized classification society:

(1) Will be eligible to receive authorization to participate in the ACP only after the Coast Guard has delegated to it the authority to issue the following certificates:

(i) International Load Line Certificate;

(ii) International Tonnage Certificate;

(iii) Cargo Ship Safety Construction Certificate;

(iv) Cargo Ship Safety Equipment Certificate; and

(v) International Oil Pollution Prevention Certificate; and

(2) Must have performed a delegated function related to general vessel safety assessment, as defined in § 8.100 of this part, for a two-year period.

* * * * *

SUBCHAPTER U—OCEANOGRAPHIC RESEARCH VESSELS

PART 189—INSPECTION AND CERTIFICATION

6. The authority citation for Part 189 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ 189.15–5 [Added]

7. Add new § 189.15–5 to read as follows:

§ 189.15–5 Alternate compliance.

(a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection may comply with the Alternate Compliance Program provisions of 46 CFR Part 8.

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (CG–3PSE), 2100 Second St., SW., Washington, DC 20593–0001; telephone (202) 372–1371; or fax (202) 372–1925. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

Dated: May 11, 2007.

Craig E. Bone,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention.

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