

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****46 CFR Part 15**

[Docket No. USCG–2015–0758]

RIN 1625–AC25

**Offshore Supply Vessels, Towing Vessel, and Barge Engine Rating Watches**

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule.

**SUMMARY:** This direct final rule amends the Coast Guard's merchant mariner manning regulations to align them with statutory changes made by the Howard Coble Coast Guard and Maritime Transportation Act of 2014. The Act allows oilers serving on certain offshore support vessels, towing vessels, and barges to be divided into at least two watches. This change increases the sea service credit affected mariners are permitted to earn for each 12-hour period of work from one day to one and a half days.

**DATES:** This direct final rule will be effective January 25, 2016 unless the Coast Guard receives adverse comment by December 28, 2015. If an adverse comment is received, the Coast Guard will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public the rule will not take effect.

**ADDRESSES:** You may submit comments identified by docket number USCG–2015–0758 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, email or call Mr. Davis Breyer, Marine Personnel Qualifications Division (CG–OES–1), Coast Guard; email [Davis.J.Breyer@uscg.mil](mailto:Davis.J.Breyer@uscg.mil), telephone (202) 372–1445.

**SUPPLEMENTARY INFORMATION:****I. Comments**

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER**

**INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

**II. Abbreviations**

CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 FR Federal Register  
 NPRM Notice of proposed rulemaking  
 OMB Office of Management and Budget  
 QMED Qualified Member of the Engine Department  
 RFA Regulatory Flexibility Act  
 The Secretary The Secretary of Homeland Security  
 Sec. 316 Section 316 of the Howard Coble Coast Guard and Maritime Transportation Act of 2014  
 U.S.C. United States Code

**III. Basis and Purpose***A. Basis*

The changes to 46 CFR 15.705 made by this rule are required by 46 U.S.C. 8104 as amended by Sec. 316 of the Howard Coble Coast Guard and Maritime Transportation Act of 2014 (Pub. L. 113–281, December 18, 2014). Under Title 46 of the United States Code, Sec. 2103, the Secretary of Homeland Security (the Secretary) has general authority over the merchant marine of the United States and merchant marine personnel. The Secretary delegated the authority for determining minimum manning standards to the Commandant of the Coast Guard in Department of Homeland Security Delegation No. 0170.1, paragraph 92.

*B. Purpose*

The purpose of this rule is to conform regulations to the amended statute and clarify that oilers on covered vessels are entitled to receive an equitable amount of sea service credit.

**IV. Discussion of the Rule**

The Howard Coble Coast Guard and Maritime Transportation Act of 2014, sec. 316, amended 46 U.S.C. 8104(g)(1) by allowing coal passers, firemen, oilers, and water tenders serving on offshore supply vessels, towing vessels, and barges engaged in seagoing voyages of

less than 600 miles to be divided into at least two watches. Previously, only officers and other deck crew members on those vessels were divided into two watches.

46 CFR 10.107 and 10.232(h)(2) provide in the definition of "Day" that "[o]n vessels authorized by 46 U.S.C. 8104 and 46 CFR 15.705 to operate a two-watch system, a 12-hour working day may be creditable as 1½ days of service." Regulations at 46 CFR 15.705(c)(1), however, still do not authorize mariners affected by sec. 316 to be divided into two watches. In order to align the regulations with the amended statute, this direct final rule revises 46 CFR 15.705(c)(1) by deleting the clause "(except the coal passers, firemen, oilers, and water tenders)".

Similarly, sec. 316 also updated 46 U.S.C. 8104(d) by deleting the words "coal passers, firemen, . . . and watertenders." The changes related to those terms simplify the statute. To update the corresponding regulations and align them with the revised statute, this rule also makes similar changes to 46 CFR 15.705(b).

This rule makes existing regulations consistent with the statute and clarifies the sea service credit of maritime personnel on affected vessels, which have for many years operated on a two-watch system, both on deck and in the engine room. Specifically, the revised regulations make clear that typical sea service credit for upgrades toward engineering licenses for oilers is 1½ days for each 12-hour period worked, as it is for personnel aboard the same vessels working toward deck licenses and upgrades. The effect of these changes is that all qualified members of the engine department on covered vessels are permitted to divide into two watches, and will be given proper credit for 12 hours of work in accordance with the amended statute.

Revision of our regulations without delay is necessary because misalignment between the amended statute and the corresponding regulations causes confusion, and delay could have a negative impact on the sea service credit and career advancement of oilers on affected vessels. Additionally, the Coast Guard must conform its regulations to the revised statute, and is exercising no discretion in doing so because this rule will only mirror amended statutory language. For these reasons, the rule is expected to be uncontroversial, and adverse comment is unlikely.

**V. Direct Final Rule**

A direct final rule is appropriate when a rule is noncontroversial and

unlikely to result in adverse public comment. The Coast Guard considered publishing a notice of proposed rulemaking, but is pursuing a direct final rule because it will better serve the regulated mariners and industry by correcting the misalignment between the regulations and statute more quickly. If no adverse comment is received by December 28, 2015, this rule will become effective as stated in the **DATES** section.<sup>1</sup> In that case, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (e.g., to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment. A comment is considered “adverse” if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

## VI. Regulatory Analyses

The Coast Guard developed this direct final rule after considering numerous statutes and executive orders related to this rulemaking. Below, the Coast Guard summarizes its analyses based on these statutes or executive orders.

### A. Regulatory Planning and Review

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563

emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This direct final rule has not been designated a “significant regulatory action”, under section 3(f) of Executive Order 12866. Accordingly, the direct final rule has not been reviewed by the Office of Management and Budget (OMB). A regulatory assessment of the direct final rule follows.

This direct final rule conforms Coast Guard regulations to sec. 316, which eliminated the exception of engine ratings originally found within 46 U.S.C. 8104(g)(1). Sec. 316 amended 46 U.S.C. 8104(g)(1) to allow coal passers, firemen, oilers, and water tenders serving on certain offshore support vessels, towing vessels, and barges to be divided into at least two watches. In order to align the regulations with the amended statute, this rule will revise 46 CFR 15.705(b) by deleting the words “coal passers, firemen, . . . and water tenders,” and 46 CFR 15.705(c)(1) by deleting the words “except the coal passers, firemen, oilers, and water tenders.”

### Affected Population

The changes in 46 CFR 15.705(c)(1) clarify that the sea service credit afforded to all qualified members of the engine department, on certain offshore support vessels, towing vessels and barges is consistent with revised 46 U.S.C. 8104(g)(1). The National Maritime Center of the Coast Guard identified approximately 18,721 such mariners holding valid licenses as of the end of 2014. This figure constitutes the total number of mariners that this rule could affect and includes valid licenses for Unlicensed Engine Ratings and QMED with a variety of job descriptions. Before the statute was amended, these unlicensed mariners could not be divided into two watches to work 12-hour shifts and, therefore, could not receive 1½-day sea service credit for 12 hours of work that licensed mariners both on deck and in the engine room are allowed. The changes in 46 CFR 15.705(b) align with revised 46 U.S.C. 8104(d) by removing the coal passer, fireman, and watertender exceptions to simplify the statute and regulations.

### Costs

This direct final rule will result in no adverse impacts or costs to the industry and affected mariners. On the contrary, the industry is urging speedy revision of our regulations because delaying this rule would have a negative impact on the sea service credit and career

advancement of affected mariners due to confusion caused by conflicting statutory and regulatory provisions. This rule will not result in a change to the Coast Guard’s budget and it will not increase federal spending.

### Benefits

The direct final rule aligns Coast Guard regulations with the amended statute and clarifies that affected mariners are entitled to benefits allowed by 46 CFR 10.107 and 10.232(h)(2). The primary benefit of this rule is to reduce confusion and clarify that affected mariners are allowed to receive 1½ days sea service credit for working 12-hour shifts on a two watch schedule that can be utilized for career advancement and renewal. Additionally, by making the accrual of sea service credit comparable to other mariners serving on the same vessels, vessel owners will have greater assurance of having a steady supply of mariners with higher ratings that are required to operate offshore supply vessels.

### Alternatives

The Coast Guard considered four alternatives for this direct final rule:

- Alternative 1: No action
- Alternative 2: Delayed Action
- Alternative 3: Develop Policy

The no-action alternative (Alternative 1) would cause confusion because it would leave regulations in place that contradict the new statute. Therefore, the Coast Guard rejected this alternative.

The Coast Guard rejected the delayed-action alternative (Alternative 2) for the same reason. The misalignment between 46 U.S.C. 8104 and the corresponding regulations is causing confusion among mariners, and there is no discernible advantage in delay.

The develop policy alternative (Alternative 3) could grant the affected engine ratings the same sea service credit as the officers and deck ratings aboard the affected vessels. The Coast Guard rejected this alternative, however, because policy properly provides either: guidance about accepted methods for meeting regulations; or short term solutions, within the limits of existing regulations, to provide relief until amended regulations can be promulgated.

In this case, the time and effort required by the Coast Guard to develop and publish relevant policy would equal or exceed that expected to amend the regulation with a direct final rule. In addition, after publishing the policy, the regulation would still require amendment to be consistent with the statute. Therefore, the Coast Guard rejected this alternative.

<sup>1</sup> 33 CFR 1.05–55 provides that a direct final rule effective date is “generally at least 90 days after the date of publication” and “[t]he public will usually be given at least 60 days” to submit comments.

### B. Small Entities

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Coast Guard prepared this Regulatory Flexibility Analysis (RFA) that examines the impacts of this direct final rule on small entities (5 U.S.C. 601 *et seq.*). Under the RFA, we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term of “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 fewer than 50,000.

The direct final rule will regulate mariners who are individually responsible for obtaining their appropriate sea service credit for career advancement. In addition, current and future mariners will not incur any costs to comply with this rule. Finally, individuals, such as the mariners regulated by this rule, are not small entities under the definition of a small entity in the RFA. Therefore, we certify that this direct final rule will not have a significant economic impact on a substantial number of small entities under section 605(b) of the Regulatory Flexibility Act.

The Coast Guard is interested in the potential impacts from this direct final rule on small businesses and we request public comment on these potential impacts. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rulemaking would have a significant economic impact on it, please submit a comment to the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how, and to what degree this rule would economically affect it.

### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that 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. Davis Breyer, Maritime Personnel Qualifications Division (CG–OES–1), Coast Guard; email [Davis.J.Breyer@uscg.mil](mailto:Davis.J.Breyer@uscg.mil), telephone (202) 372–1445. 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.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### D. Collection of Information

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

### E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The Coast Guard has analyzed this rule under that Order and has determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of covered vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel’s obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States v. Locke and Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (2000)). Since this rule involves the documentation of merchant mariners manning covered U.S. vessels, it is a matter of personnel qualifications, which is a field reserved for regulation by the Coast Guard. Because States may not promulgate rules within this category, the rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

### F. 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 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, the Coast Guard does discuss the effects of this rule elsewhere in this preamble.

### G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### H. Civil Justice Reform

This 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.

### I. Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

### K. Energy Effects

The Coast Guard has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Coast Guard has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under E.O. 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.

#### L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the OMB, 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 standards bodies.

This rule does not use technical standards. Therefore, the Coast Guard did not consider the use of voluntary consensus standards.

#### M. Environment

The Coast Guard has analyzed this rule under DHS Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and has concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2-1, paragraph (34) (a) and (c) of the Instruction. This rule involves procedural changes and the licensing of mariners under sec. 316. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 15 as follows:

## PART 15—MANNING REQUIREMENTS

■ 1. The authority citation for part 15 continues to read as follows:

**Authority:** 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906, 9102, and 8103; sec. 617, Pub. L. 111-281, 124 Stat. 2905; and Department of Homeland Security Delegation No. 0170.1.

#### § 15.705 Watches.

■ 2. Amend § 15.705 as follows:

■ a. In paragraph (b), remove the words “, coal passers, firemen, oilers, and watertenders” and add in their place the words “, and oilers”; and

■ b. In paragraph (c)(1) introductory text, remove the words “(except the coal passers, firemen, oilers, and watertenders)”.

**J.G. Lantz,**

*Director, Commercial Regulations and Standards, U.S. Coast Guard.*

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