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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Part 26

[USCG-1999-5040]

RIN 2115-AF69

#### Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (PVSA)

**AGENCY:** Coast Guard, DOT.

**ACTION:** Interim rule.

**SUMMARY:** The Coast Guard establishes this interim rule to provide for the issuance of special permits to uninspected vessels under the Passenger Vessel Safety Act of 1993 (PVSA). That Act authorizes the Coast Guard to amend operating and equipment guidelines for uninspected passenger vessels over 100 gross tons, carrying 12 or less passengers for hire. In addition, it authorizes the Coast Guard to issue special permits for vessels participating in a Marine Event of National Significance, such as OPSAIL 2000 and Tall Ships 2000.

**DATES:** This interim rule is effective May 12, 2000.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-1999-5040 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions on this rule, call Lieutenant Commander Michael A. Jendrossek, Office of Operating and Environmental Standards (G-MSO-2), Coast Guard, telephone 202-267-0836. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

On September 30, 1994, we published Navigation and Vessel Inspection Circular (NVIC) No. 7-94 to provide compliance and enforcement guidance

to Coast Guard members on implementing the provisions of the PVSA while detailed regulations were being developed. The NVIC addressed the statutory changes in detail, including one of the more significant changes requiring all chartered vessels carrying more than 12 passengers to be inspected by the Coast Guard. The PVSA allowed these vessels to apply for inspection with a phase-in period for compliance. The period for application for inspection expired on June 21, 1994, and the period for compliance expired on December 21, 1996. With widespread public notification, several hundred charter vessels applied for and met the conditions for certification with the requirements of the PVSA and policy guidance of the NVIC.

The NVIC also provided extensive guidance to Coast Guard Marine Safety field units on implementing the provisions of the new law. For those interested in viewing a copy of NVIC 7-94, it is available in this rulemaking docket as indicated under **ADDRESSES** and also on the Internet at [www.uscg.mil/hq/g-m/nvic/index90.htm](http://www.uscg.mil/hq/g-m/nvic/index90.htm).

On April 1, 1999, the Coast Guard published an advanced notice of proposed rulemaking (ANPRM) in the **Federal Register** (64 FR 15709), notifying the public of the intent of this rulemaking and requesting comments in several areas. We received nine letters in response to the ANPRM.

On March 2, 2000, we published a notice of proposed rulemaking (NPRM) entitled "Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (PVSA)" in the **Federal Register** (65 FR 11410). Almost all of the changes proposed there are still open for public comment. Proposed section 26.03-8, however, was issued with a 30-day comment period to enable the Coast Guard to have regulations in place for this year's millennium celebrations involving sailing vessels from around the world, beginning May 25, 2000. The Coast Guard was not sure that certain vessels would need an exemption in order to participate in this celebration, thus we did not propose these regulations earlier. We received six comments on this proposed section. No public hearing was requested, and none was held.

##### Effective Date

The Coast Guard finds having these regulations in place before this year's Marine Event of National Significance begins constitutes good cause under the Administrative Procedure Act (5 U.S.C. § 553(d)(3)) for an effective date of less

than 30 days. These regulations will take effect on May 12, 2000.

##### Background and Purpose

The PVSA authorizes the Coast Guard to develop regulations to issue special permits to uninspected vessels. This broadens the Coast Guard's authority from the excursion permit for inspected vessels to carry passengers for unique events. Under this authority, we proposed issuing special permits to the owner or operator of a vessel that is a registered participant in an event that the Commandant, U.S. Coast Guard, declares as a Marine Event of National Significance.

##### Discussion of Comments and Changes

The following is a summary of the comments we received concerning the proposed section 26.03-8 in the Notice of Proposed Rulemaking. We received six comments concerning the Coast Guard's implementation of special permits for Marine Events of National Significance.

One comment from The American Sail Training Association requests that Tall Ships 2000, scheduled to take place from 12 June to 16 July 2000, be granted designation as a Marine Event of National Significance. The Commandant has determined that Tall Ships 2000 meets the criteria necessary to be designated as such an event. Therefore, Tall Ships 2000 has been officially designated as a Marine Event of National Significance. In the NPRM for this rule, we noted that the Commandant had designated OPSAIL 2000 as a Marine Event of National Significance (65 FR 11410).

We received four comments that specifically address foreign flagged vessels carrying passengers in coastwise trade.

One comment states that the Coast Guard cannot permit foreign flagged vessels to transport passengers in the U.S. coastwise trades. The Coast Guard concurs with this comment. The Passenger Vessel Services Act (46 U.S.C. App. 283) prohibits the transportation of merchandise and passengers between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States. However, the United States Customs Service has defined a passenger as "any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business" (19 CFR § 4.50 [b]). Based on this definition, the Customs Service has held that a person

being trained or receiving instruction in the handling or navigation of a vessel, and whose presence on board the vessel is necessarily required in order to receive such training or instruction, is not a passenger within the meaning of the coastwise laws (Customs Letter Rulings 111168, dated March 20, 1991). This includes a person who pays to be a trainee aboard a vessel. (You may access the Custom Service's written ruling on the Internet at [http://192.239.92.158/cgi-bin/om\\_isapi.dll](http://192.239.92.158/cgi-bin/om_isapi.dll). From this site, search the "Headquarters Customs Rulings" infobase for "HQ 111168.") Conversely, the Coast Guard, in accordance with maritime safety laws, defines an individual that pays to be a trainee to be a "passenger for hire." However, there is an exception for U.S. inspected sailing school vessels. While the difference between the Coast Guard's and Customs Service's "passenger" definition appears to be in conflict, they serve vastly different purposes. The Coast Guard's issuing of special permits for Marine Events of National Significance is not intended to provide an exemption to the Passenger Vessel Services Act for foreign flagged vessels. Foreign flagged vessels participating in these events must ensure that they are in compliance with all appropriate U.S. laws, including the Passenger Vessel Services Act.

To alleviate the confusion that may arise due to the differing definitions of "passenger," we have added paragraph (e) to Section 26.03-8. Paragraph (e) states that vessels carrying passengers for hire under a special permit must still meet the regulations set forth under the Passenger Vessel Services Act.

One comment states that section 26.03-8 Marine Event of National Significance Special Permits does not do a good job establishing the criteria a foreign vessel should meet and provide to the Office in Charge Marine Inspection (OCMI) before a special permit to carry passengers may be issued. The section does not address if the vessel(s) must comply with SOLAS, how the Jones Act is to be taken into consideration, if the vessel(s) must undergo a Port State Control Exam, if the vessel must be "classed," or what criteria is used to decide if a waiver of any of the above (if applicable) is acceptable.

The Coast Guard is developing inspection guidance in the form of a Navigation and Inspection Circular (NVIC), which will be distributed to Coast Guard Marine Safety Units responsible for issuing special permits and to registered participants of Marine Events of National Significance. It will also be available in the docket for this

rulemaking at the locations indicated under **ADDRESSES**. This NVIC, 1-00, details the criteria that a vessel should meet to qualify for a special operating permit. The criteria is based on the requirements the vessels would otherwise have to meet as an inspected vessel while taking into consideration the intended operations of the vessel, and the condition of the vessel and its equipment. Other criteria maybe considered as appropriate for individual vessels to ensure the vessel provides a satisfactory level of safety for the intended operation. The guidance will cover U.S. (certificated, uninspected, and recreational) vessels, foreign flagged vessels with International Maritime Organization Certificates, public vessels, and other vessels not included above. The NVIC, also will include guidance on foreign flag sail training vessels, coastwise trade restrictions and enforcement, Port State Control inspections, and the handling of moored attraction vessels. The NVIC will be available within days of the publication of this interim rule.

One comment expresses concern that the term "Marine Event of National Significance" may be somewhat misleading and urged that the term not be construed too strictly. The Coast Guard will give all applications for Marine Events of National Significance fair and equal consideration.

The interim rule also includes small grammatical changes to create a more readable regulation.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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 is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

This rule establishes regulations that implement safety measures for uninspected passenger vessels under the Passenger Vessel Safety Act of 1993 (PVSA). These regulations provide for the issuance of special permits for vessels registered as participants in Marine Events of National Significance.

This rule affects uninspected vessels participating in Marine Events of National Significance. The Coast Guard will inspect vessels not possessing the appropriate certification and may issue special permits allowing these vessels to

carry passengers during the event. Vessel owners will have an information request burden, as they must apply for permits. For the estimate of costs, we assume that about 175 vessels will apply for special permits for each Marine Event of National Significance. We also assume that the amount of time taken to file the application with the Coast Guard and post the permit will take 15 minutes (0.25 hrs.), and that the person performing this activity earns a wage rate of \$48 per hour. Lastly, we assume that vessels will take part in such events once every 10 years. Therefore, the 10-year present value cost of this information collection request is \$2,064. As participation in these events is not a requirement of the rule, these costs are considered to be non-mandatory. There will be additional cost to the government due to inspections and travel. The 10-year present value of the additional cost to the government is estimated to be \$75,111. The intent of this requirement is to provide a safer environment at Marine Events of National Significance. While there have been no notable past problems at such events, the Coast Guard is acting proactively to reduce the risk of marine casualties.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this 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.

The only type of small entity that will be affected by this interim rule is small businesses. The size standards for the relevant Standard Industrial Classification (SIC) codes<sup>1</sup> consider enterprises with 500 or less employees to be small businesses. We assume that all of the 175 uninspected vessels that will require the special permits are owned by small entities. The burden of applying for participation in a Marine Event of National Significance is estimated at \$12 per vessel. We do not expect that owners of vessels will consider this additional cost to be significant.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this interim rule will not have a significant

<sup>1</sup> The relevant industries are Deep Sea Transportation of Passengers (4481) and Water Transportation of Passengers, N.E.C. (4489).

economic impact on a substantial number of small entities.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in this rulemaking. If this rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Commander Michael A. Jendrossek, Office of Operating and Environmental Standards (G-MSO-2), telephone 202-267-1055.

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 annually evaluates these actions and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, dial 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

This rule calls for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). This collection of information will be included under the current approved Office of Management and Budget (OMB) control number 2115-0133, entitled "Vessel Inspection Related Forms and Posting Requirements Under Title 46 U.S. Code." We asked for public comment on the collection of information, and we received no comments.

*Title:* Vessel Inspection Related Forms and Posting Requirements Under Title 46 U.S. Code.

*Summary of the Collection of Information:* The owner, operator, or agent of an uninspected vessel participating in a Marine Event of National Significance must submit an application for a special permit.

*Need for Information:* The information is needed to identify, and inspect, all uninspected vessels that participate in Marine Events of National Significance to attest to the safety of each vessel.

*Proposed Use of the Information:* Applications will be used to initiate the inspection process to determine whether these vessels are properly

equipped to be granted the special permit.

*Description of Respondents:* The respondents are owners or operators of uninspected vessels participating in a Marine Event of National Significance.

*Number of Respondents:* The Coast Guard estimates that owners of approximately 175 vessels will require and apply for permits at Marine Events of National Significance in 2000.

*Frequency of Response:* The permits are only valid for the duration of the event or as otherwise prescribed by the issuing authority. We estimate that the vessels that require these permits will only attend one Marine Event of National Significance in 2000. We further estimate that vessels will participate in these events approximately once every 10 years.

*Burden of Response:* The time burden of this response request in 2000 is 43 hours for industry and 1080 hours for the government. The total cost of these burdens is \$2,064 for industry and \$75,111 for the government.

*Estimate of Total Annual Burden:* Since we estimate that vessels will participate in Marine Events of National Significance approximately every 10 years, the total annual burden is the total burden reported above divided by 10. The annual time burden for industry is 4 hours and the annual time burden for government is 108 hours. The annual cost of these respective burdens is \$206 for industry and \$7,511 for the government.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. The section number is 46 CFR 2.01-45, and the corresponding approval number from OMB is OMB Control Number 2115-0133.

OMB has not yet acted upon our request for an increase. We will publish an additional notice when they do. Until then, you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### Federalism Summary Impact Statement

We analyzed this rule under Executive Order 13132, Federalism.

It is well settled that States are precluded from regulating in categories that are reserved for regulation by the Coast Guard. It has also been settled that all of the categories covered in 46 U.S.C. 3306 and 3703(a), 7101, and 8101 (e.g., design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of

vessels) are within the field foreclosed from State regulation. See *United States v. Locke*,—U.S.—No. 98-1701 (March 6, 2000). *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978). This rule falls into the above mentioned categories, thereby precluding State regulation. Because states may not promulgate regulations within these categories, preemption is not an issue under E.O. 13132.

#### 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 regulatory actions not specifically required by law. 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

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

#### Civil Justice Reform

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

#### Protection of Children

We analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### Environment

We considered the environmental impact of this rule and concluded that, under figure 2-1, paragraph (34)(c), (d), and (e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule will not result in any significant cumulative impact on the human environment; any substantial controversy or substantial change to existing environmental conditions; any impact, which is more than minimal, on properties protected under 4(f) of the DOT Act, as superseded by Public Law 97-449 and Section 106 of the National Historic Preservation Act; or any inconsistencies with any Federal, State,

or local laws or administrative determinations relating to the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES.

#### List of Subjects in 46 CFR Part 26

Marine safety, Penalties, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 26 as follows:

#### PART 26—OPERATIONS

1. The authority citation for part 26 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 4104, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Add § 26.03–8 to read as follows:

##### **§ 26.03–8 Marine Event of National Significance special permits.**

(a) For a Marine Event of National Significance, as determined by the

Commandant, U.S. Coast Guard, a vessel may be permitted to engage in excursions while carrying passengers-for-hire for the duration of the event. Event sponsors seeking this determination must make written request to the Commandant (G–M) at least one year prior to the event.

(b) The owner, operator, or agent of a vessel that is registered as a participant in a Marine Event of National Significance, may apply for a special permit to carry passengers-for-hire for the duration of the event. The master, owner, or agent of the vessel must apply to the Coast Guard OCMI who has jurisdiction over the vessel's first United States port of call. The OCMI may issue a Form CG–949 "Permit to Carry Excursion Party" if in the opinion of the OCMI the operation can be undertaken safely. The OCMI may require an inspection prior to issuance of a special permit to insure that the vessel can safely operate under the conditions for which the permit is issued.

(c) The permit will state the conditions under which it is issued. These conditions must include the number of passengers-for-hire the vessel may carry, the crew required, the number and type of lifesaving and safety equipment required, the route and operating details for which the permit is issued, and the dates for which the permit will be valid.

(d) The permit must be displayed in a location visible to passengers.

(e) The carrying of passengers-for-hire during a Marine Event of National Significance must comply with the regulations governing coastwise transportation of passengers under 19 CFR 4.50 (b) and 19 CFR 4.80 (a).

Dated: April 21, 2000.

**R.C. North,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.*

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