

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground modified	Communities affected
Ottauquechee River	Approximately 0.94 mile upstream of Taftsville Dam	+657	Town of Bridgewater, Town of Pomfret.
Second Branch White River	Approximately 1,840 feet upstream of confluence of Curtis Hollow Brook. Approximately 1.24 miles upstream of State Route 14	+815 +525	Town of Bethel, Town of Royalton.
White River	Approximately 0.86 mile downstream of Stove Hill Road	+527	Town of Bethel, Town of Stockbridge.
	Approximately 0.79 mile downstream of State Routes 12 and 107/River Street.	+531	
	Approximately 3.56 miles downstream of Liberty Hill Road	+754	

Depth in feet above ground.

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

ADDRESSES

Town of Bethel

Maps available for inspection at the Bethel Town Office, 134 South Main Street, Bethel, Vermont.

Town of Bridgewater

Maps available for inspection at the Bridgewater Town Office, 7335 U.S. Route 4, Bridgewater, Vermont.

Town of Cavendish

Maps available for inspection at the Cavendish Town Office, 37 High Street, Cavendish, Vermont.

Town of Hartland

Maps available for inspection at the Town of Hartland Clerk's Office, Damon Hall, 1 Quechee Road, Hartland, Vermont.

Town of Plymouth

Maps available for inspection at the Plymouth Town Office, 68 Town Office Road, Plymouth, Vermont.

Town of Pomfret

Maps available for inspection at the Pomfret Town Office, 5188 Pomfret Road, North Pomfret, Vermont.

Town of Reading

Maps available for inspection at the Reading Town Office, Robinson Hall, 799 Vermont Route 106, Reading, Vermont.

Town of Royalton

Maps available for inspection at the Royalton Town Office, 23 Alexander Place, Suite 1, South Royalton, Vermont.

Town of Springfield

Maps available for inspection at the Springfield Town Office, 96 Main Street, Springfield, Vermont.

Town of Stockbridge

Maps available for inspection at the Town of Stockbridge Clerk's Office, 1722 Vermont Route 100, Stockbridge, Vermont.

Town of Weathersfield

Maps available for inspection at the Town of Weathersfield, Martin Memorial Hall, 5259 Route 5, Ascutney, Vermont.

Town of Windsor

Maps available for inspection at the Windsor Town Office, 29 Union Street, Windsor, Vermont.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: April 10, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 07-1978 Filed 4-23-07; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 12 and 15

[USCG-2007-27761]

RIN 1625-AB16

Large Passenger Vessel Crew Requirements

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is amending its regulations on merchant mariner documentation to implement section 3509 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Warner Act), which allows for the issuance of merchant mariner documents (MMDs) to certain non-resident aliens for service in the stewards departments of U.S.-flag large passenger vessels endorsed for coastwise trade. Coast Guard regulations currently prohibit the Coast Guard from issuing MMDs, which are required for service on large passenger vessels, to non-immigrant aliens. This interim rule

amends Coast Guard regulations to allow the Coast Guard to issue MMDs to qualified non-resident aliens who are authorized to be employed in the United States. This rule also sets the requirements that these aliens must meet in order to qualify for MMDs, and the requirements for the large passenger vessels that may choose to hire these aliens. This interim rule only applies to large passenger vessels, as defined under the Warner Act.

DATES: This interim rule is effective April 24, 2007. 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-2007-27761 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site:* <http://dms.dot.gov>.

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

(3) *Fax:* 202-493-2251.

(4) *Delivery:* 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. The telephone number is 202-366-9329.

(5) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call LCDR Derek D'Orazio, Coast Guard, telephone 202-372-1405. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-493-0402.

SUPPLEMENTARY INFORMATION:

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The **SUPPLEMENTARY INFORMATION** section of this interim final rule sets forth the basis, purpose and particulars of this rulemaking action and is organized as follows:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by 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.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG-2007-27761), indicate the specific section of this document to which each comment applies, and give the reason 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 your comments and material by only one means. 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 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 rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://dms.dot.gov> at any time, click on "Simple Search," enter the last five digits of the docket number for this rulemaking, and click on "Search." 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.

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>.

Public Meeting: We do not currently plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Background and Purpose

Title 46 U.S.C. 8103 generally requires that unlicensed seamen on documented vessels must be of the following status: (a) Citizens of the United States; (b) lawful permanent residents; or (c) foreign nationals enrolled in the United States Merchant Marine Academy. No more than 25 percent of such unlicensed seamen may be lawful permanent residents.

On October 17, 2006, Congress enacted the John Warner National Defense Authorization Act for Fiscal Year 2007 (Warner Act), Public Law 109-364, sec. 3509, 120 Stat. 2518. Section 3509 of the Warner Act (46 U.S.C. 8103(k)) amends 46 U.S.C. 8103 to permit large passenger vessels to also employ non-resident aliens who are authorized to work in the United States. The statute maintains a cap so that no more than twenty-five percent of the unlicensed seamen on any large passenger vessel are aliens, whether admitted to the United States as lawful permanent residents or otherwise allowed to be employed in the United States as nonresident aliens. "Large passenger vessel" is defined under the Warner Act to mean "a vessel of more than 70,000 gross tons, as measured under section 14302 of this title, with capacity for at least 2,000 passengers and documented with a coastwise endorsement under chapter 121 of this title."

The Warner Act also contains the following qualifications and restrictions on non-resident aliens serving as unlicensed seamen on large passenger vessels:

1. Non-resident aliens may not perform watchstanding, engine room duty watch, or vessel navigation functions;

2. Non-resident aliens must be aliens employable in the United States under the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1101 *et seq.*) (INA), including an alien crewman described in § 101(a)(15)(D)(i) of the INA (8 U.S.C. 1101(a)(15)(D)(i));

3. Non-resident aliens must have been employed, for a period of at least one

year, on a passenger vessel, including a foreign flag passenger vessel, under the same common ownership or control as the U.S.-flag vessel they will be working on, as certified by the owner or managing operator of such vessel;

4. Non-resident aliens must have no record of material disciplinary actions during such employment as verified in writing by the owner or managing operator of such vessel;

5. Non-resident aliens must have successfully completed a United States Government security check of the relevant domestic and international databases, as appropriate, or any other national security-related information or database (which is required for a MMD or Transportation Worker Identification Credential (TWIC));

6. Non-resident aliens must have successfully undergone an employer background check for which the owner or managing operator provides a signed report that describes the background checks undertaken. The background check must consist of a search of all information that is reasonably and legally available to the owner or managing operator in the seaman's country of citizenship and any other country in which the seaman receives employment referrals, or resides. The report must be kept on the vessel and available for inspection, and the information derived from the background check must be made available upon request;

7. Non-resident aliens may not be citizens or temporary or permanent residents of a country designated by the United States as a sponsor of terrorism or any other country that the Secretary of Homeland Security, in consultation with the Secretary of State and the heads of other appropriate United States agencies, determines to be a security threat to the United States; and

8. Non-resident aliens may only serve for an aggregate period of 36 months of actual service on all authorized U.S.-flag large passenger vessels combined. Once this 36-month limitation has been reached, the merchant mariner's document becomes invalid and the individual's employer must return it to the Coast Guard, and the individual is no longer authorized service in a position requiring a merchant mariner's document on any U.S.-flag large passenger vessel.

Under current law, all individuals serving in the steward's department on passenger vessels of 100 gross register tons (GRT) or more must hold a merchant mariner's document (MMD). 46 U.S.C. 8701. The only exception is for entertainment personnel employed for a period of 30 days or less per year,

who are exempt from the MMD requirement.

Coast Guard regulations governing the issuance of MMDs currently prohibit the issuance of MMDs to non-resident aliens. See 46 CFR part 12. The Coast Guard, through this interim rule, is amending its regulations to authorize the issuance of MMDs to non-resident aliens authorized to work in the United States who meet the criteria of the Warner Act and the requirements set forth in this rule.

III. Discussion of Interim Rule

To implement 46 U.S.C. 8103(k), the Coast Guard is revising its regulations within 46 CFR subchapter B. This interim rule will add a new 46 CFR subpart 12.40. Companies that wish to hire non-resident aliens must meet the requirements specified in new § 12.40-7, subject to the civil penalty provisions specified in 46 U.S.C. 8103(f) for any violation of the section.

The new subpart adds definitions for "large passenger vessel," "non-resident alien," and "steward's department." It also contains citizenship and identity requirements for non-resident aliens employed as unlicensed seamen by large passenger vessels, in lieu of the requirements of 46 CFR 12.02-10, 12.02-12, and 12.02-14. In addition to those citizenship and identity requirements, this rule establishes the requirement that non-resident alien applicants satisfy the requirements of the Warner Act (discussed above), and stipulates how mariners, and the companies that employ them, must satisfy those requirements. The company must submit the additional required merchant mariner application information to the Coast Guard on the employee's behalf.

Title 46 U.S.C. 8103(k)(3)(A) states that non-resident aliens may not be citizens or temporary or permanent residents of a country designated by the United States as a sponsor of terrorism. The Coast Guard interprets this to mean that non-resident aliens may not be citizens or residents of a country designated by the United States as a sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371). Under new section 12.40-11(c), the Coast Guard will not issue MMDs to non-resident aliens that are citizens or residents (temporary or permanent) of countries listed on the Department of State's "State Sponsors of Terrorism" list. The list, as of the date of publication of this rule, may be found at <http://www.state.gov/s/ct/c14151.htm>.

The Warner Act also allows the Secretary of Homeland Security, upon consultation with the Secretary of State and the heads of other appropriate United States agencies, to determine that other countries present a security threat to the United States for purpose of determining eligibility for employment of non-resident aliens. DHS has initiated this consultation and may add more countries or lists of countries in the future as a result of these consultations.

The interim rule also adds 46 CFR 15.530, which provides company responsibilities associated with employment of non-resident aliens on their vessels relative to the International Labor Organization's Merchant Shipping (Minimum Standards) Convention of 1976. Title 46 CFR 15.530 also requires that no more than 25 percent of the unlicensed seamen on a large passenger vessel be aliens, whether admitted to the United States for permanent residence or otherwise employable in the United States as non-resident aliens. This limitation is also mandated by 46 U.S.C. 8103(k)(2).

Only three U.S.-flag vessels currently fall within the definition of "large passenger vessel" under 46 U.S.C. 8103(k), each of which are owned by the same cruise line.¹ Because the statute limits the non-resident aliens who are eligible for employment on large passenger vessels to aliens who have otherwise been employed by that cruise line for one year, and such aliens cannot compose more than 25% of the number of unlicensed seamen on such vessels, the Coast Guard believes that approximately 600 to 800 non-resident aliens could be transferred to employment on one of the three large passenger vessels within the first year of the rule taking effect.

The Coast Guard notes that, although the Warner Act refers to section 101(a)(15)(d) of the INA (which defines aliens authorized for crew visas), it does not waive any provision or requirement of the INA pertaining to visas or employment eligibility for non-resident aliens. In addition, we note that all affected aliens must comply with any required identification, tracking and reporting programs, including DHS's United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT) and the National Security Entry-Exit Registration System (NSEERS). The Coast Guard is promulgating this interim rule under its

¹ The Coast Guard notes, however, that on April 11, 2007, the cruise line announced that it would be reflagging one of these three vessels to a foreign flag in the near future; ultimately reducing the number of eligible vessels to two.

authority to issue MMDs, and only to that extent.

IV. Regulatory Requirements

A. Administrative Procedure Act

The Coast Guard has determined that good cause exists to implement this rule as an interim rule under the Administrative Procedure Act, 5 U.S.C. 553(b). The Coast Guard, under this interim rule, is implementing a Congressional directive that does not provide Coast Guard with discretion in the issuance of MMDs to non-resident aliens as a class. Further, as discussed above, this rule will only directly regulate one party at this time—the owner of the three vessels that fall within the statutory definition of “large passenger vessels.” The Coast Guard has consulted with that carrier during the development of this interim rule. In addition, under the current statutory restrictions, only aliens already employed by this company can be transferred to employment on one of the three eligible passenger vessels. Given the limited regulatory impact of this rule, we do not believe there will be significant public interest in this interim rule.

Accordingly, the Coast Guard has determined that delaying implementation of this rule to allow public comment prior to implementation would be impracticable and unnecessary. 5 U.S.C. 553(b). For reasons stated above, the Coast Guard also finds that good cause exists under 5 U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**.

The Coast Guard, however, values public input to the regulatory process, and for this reason we are inviting post-effective-date comments on this interim rule. We may change this rule as a result of the comments we receive.

B. Regulatory Evaluation

Executive Order 12866 requires agencies to assess the costs and benefits of significant regulatory actions as defined in Section 3(f). At this time, we expect this interim rule will not be an economically significant action under Section 3(f)(1) of the Order (i.e., an annual effect of \$100 million or more on the economy).

The Coast Guard is promulgating this rulemaking as mandated by Congress through the Warner Act, see “Background and Purpose” section for more information about this legislation.

The rule creates an exemption to allow qualified non-resident aliens to obtain MMDs for employment as unlicensed seamen in the steward’s

departments of large passenger vessels, as entertainment and service personnel, including wait staff, hotel housekeeping staff, and food handlers. Currently, only U.S. citizens, lawful permanent residents, and foreign nationals enrolled at the U.S. Merchant Mariner Academy can obtain MMDs as unlicensed seamen (and no more than 25 percent of these unlicensed seamen may be lawful permanent residents). This rule will permit non-resident aliens to also obtain MMDs for employment as unlicensed seamen on large passenger vessels, except no more than 25 percent of the unlicensed seamen on a large passenger vessel can be aliens (whether non-resident aliens or lawful permanent residents). The rule further requires that the non-resident aliens may only be employed in the steward’s department of the large passenger vessel.

Although the Warner Act, and this interim rule, allow large passenger vessels to hire non-immigrant aliens, neither the Act nor this rule mandate that they do so. Accordingly, there are no mandatory costs to large passenger vessels resulting from this interim rule. Rather, a company will only choose to avail itself of the exemption if the benefits to the company from the hiring of non-resident aliens are greater than the costs.

The following is an assessment of the affected population, an industry profile, and an evaluation of the direct and indirect impacts of the rule. The only company affected by this rulemaking, discussed below, provided us with aggregated business data to protect proprietary and confidential business information and details of their business operations. The industry estimates discussed herein are preliminary and may not reflect the actual impacts after industry implements the alternative compliance method.

i. Affected Population

Vessel Owners

The rule will affect owners of large passenger vessels more than 70,000 gross tons, with a capacity of at least 2,000 passengers, and documented with a coastwise endorsement (e.g. U.S.-flag vessel). Vessel owners will be able to hire non-resident aliens to comprise up to 25 percent of the unlicensed seamen onboard their vessels, but only in the steward’s department. The rule allows vessel owners to hire only those non-resident aliens that have been employed, for a period of not less than one year, on a passenger vessel, including a foreign flag passenger vessel, under the same common ownership, control or managing

ownership as the U.S.-flag vessel on which they will be working, see the “Discussion of Interim Rule” section for more detail on the conditions and restrictions for hiring non-resident aliens.

Based on Coast Guard data, we determined there are three large passenger vessels currently in service that meet the qualifications of this rule. Norwegian Cruise Line America (NCLA) operates these vessels in coastwise service in the Hawaiian Islands. NCLA is a brand of the Miami-based Norwegian Cruise Line Corporation (NCL), which itself is a subsidiary of Star Cruises Limited of Hong Kong. NCLA announced on April 11, 2007, that it would be removing one of the three vessels from U.S. flag service and re-flagging for foreign service.

At this time, we have no information to suggest that additional companies will enter into coastwise service with large passenger vessels, and we do not expect NCLA to expand its coastwise fleet of large passenger vessels because of this rule. This is due to the costs associated with flagging and operating vessels of this nature in the United States.

Unlicensed Mariners

The rule affects unlicensed mariners working on or applying for work on these vessels. This rule allows vessel owners to employ non-resident aliens on their vessels, capped at 25 percent of the overall total of unlicensed seamen per vessel. This rule also indirectly affects unions that maintain the collective bargaining agreements for these mariners in terms of changes in membership. Based on information from NCLA, the Coast Guard anticipates that we will issue MMDs to approximately 600 to 800 non-resident aliens within the first year of the rule. By the end of the second year of the rule, the Coast Guard estimates that we will issue an additional 900 to 1,200 MMDs to support non-resident alien crew shift change and reserve. After this two-year implementation period, NCLA intends to maintain an average annual full compliment of 1,500 to 2,000 onboard, shift, and reserve non-resident alien crewmembers under this rule.

Government Resources

The rule will also affect Coast Guard and potentially other government resources used to process, review, and issue documentation to unlicensed mariners and non-resident aliens affected by this rule. We estimate that certain Coast Guard Regional Examination Centers (RECs) in the Hawaiian Islands and West Coast may

incur increased processing burden to accommodate industry participation in this rulemaking, especially in the first two years as mentioned below. We anticipate that the requirements of this rule and the ultimate issuance of MMDs to non-resident aliens will involve additional processing exceeding the current processing for U.S. residents to ensure that background checks and applications meet security requirements. The additional Coast Guard burden at the RECs will be proportional to the number of applications submitted by vessel owners on behalf of non-resident aliens.

At this time, however, we anticipate that this rule will not substantially change the annual total number of MMD applications received or the total number of MMDs issued by the Coast Guard. Based on correspondence between NCLA and the Coast Guard, NCLA stated that this rule would stabilize the crew situation onboard the three vessels and reduce turnover rates. NCLA claims that the potential workforce stability that results from this rule will eventually reduce the number of MMD applications that the Coast Guard processes for NCLA crews.

ii. Industry Profile

Based on industry information, the number of overall Hawaii cruise ship passengers grew from 240,800 in 2004 to about 398,000 in 2005. In 2006, approximately 408,500 cruise passengers visited Hawaii onboard 56 cruise ships, including NCLA's three U.S.-flag vessels. Capacity has also increased over the past several years and passenger costs have decreased. Competition from cruises with foreign crews have pushed prices down, in particular those offering 15-day cruises from the West Coast.

Based on industry information, in general the cruise industry has historically consisted of foreign flag vessels, as opposed to U.S.-flag vessels, employing mariners from a variety of foreign countries in lower wage scales and for longer hours than U.S. mariners. NCLA must operate their U.S.-flag fleet with mostly U.S. citizens and residents, driving labor costs higher for NCLA than for cruise lines operating foreign flag vessels with foreign mariners.

Based on industry information, the cost structure for operating the affected U.S.-flag vessels will be higher than operating foreign flag vessels due to the high labor costs associated with hiring and maintaining U.S. crews. NCLA claims that high crew costs and increased industry capacity directly contribute to the decrease in the profitability of their U.S.-flag fleet.

According to NCLA, the annual turnover rate for U.S. unlicensed mariners working as hospitality staff on these vessels has been as high as 200 percent suggesting the undesirability by U.S. unlicensed mariners to work in hospitality positions and under the five months on and one month off crew shift conditions on the domestic vessels. NCLA has recently reported that the current turnover rate for the U.S. unlicensed mariners has fallen to 110 percent. NCLA has stated that the high turnover rate and the associated costs of maintaining an all U.S. crew is the only reason why they are participating in the alternative compliance method. As turnover occurs for the U.S. crew, we expect NCLA to employ the full contingent of non-resident aliens allowed by this rule.

iii. Direct Impacts

We expect most of the direct costs of the rule will be borne by NCLA. The rule will require companies to perform an employer-conducted background check and submit additional required merchant mariner application information to the Coast Guard on the employee's behalf. However, NCLA participation in this alternative compliance method is voluntary and NCLA will only participate if the net benefits of doing so are positive. We estimate the benefit to NCLA from participating in this rule to be the cost savings made through reduced turnover and decreased startup training since the non-resident alien hired under this program will have experience aboard foreign flag vessels.

We have not estimated the overall effectiveness of this rule in reducing turnover rates or labor costs for NCLA. NCLA provided preliminary information that suggests they could reduce turnover rates by about 25 to 35 percent annually resulting in a potential reduction in labor costs by approximately \$5 to \$10 million annually; however, these are preliminary estimates and NCLA cannot estimate the actual reduction in turnover rates and labor costs until they implement the alternative compliance program. Being that NCLA is the only company directly regulated by this rulemaking and these estimates are based on proprietary and confidential business information, the Coast Guard and DHS cannot substantiate these estimates. This reduction in labor cost is the estimated cost savings or net benefit for NCLA to participate in the alternative MMD citizenship compliance method of this rule.

Indirect Impacts

We reviewed potential indirect impacts of this rule on labor conditions and prevailing wages for U.S. unlicensed mariners and non-resident aliens employed under the rule.

We do not have information to suggest that NCLA will replace U.S. mariners currently employed in the steward's department on these vessels with non-resident aliens. In addition, NCLA must still employ U.S. residents for at least 75 percent of the total unlicensed seamen onboard their U.S.-flag vessels. Given the high turnover rate among the U.S. crew, we expect NCLA will still face challenges recruiting and maintaining their required U.S. resident hospitality staff onboard these vessels.

The Act does not mandate nor does the rule require that owners and operators bear responsibilities associated with conditions of employment and shipboard living arrangements for non-resident aliens on their vessels. The United States is signatory to the International Labor Organization's Merchant Shipping (Minimum Standards) Convention of 1976 (ILO 147), which establishes shipboard conditions of employment and shipboard living arrangements. Since the United States is signatory to this Convention, participating owners and operators must comply with the requirements of the convention in their employment of all mariners onboard.

The Act does not mandate that participating owners and operators pay the non-resident aliens the same prevailing wages as the U.S. crew. However, United States' responsibilities under the International Labor Organization's Merchant Shipping (Minimum Standards) Convention of 1976 (including the Conventions in the Annex), require that seamen can negotiate compensation and that seamen have the right to enter into collective bargaining agreements. Based on industry information, the sole affected owner (NCLA) has entered into a collective bargaining agreement with the current U.S. crew and intends on employing non-resident aliens under the same agreement. This rule does not require participating owners to extend current labor agreements to non-resident aliens employed under this program. The collective bargaining agreement between the affected owner and the union will determine non-resident alien employment compensation and pay.

We are interested in the potential impacts from this rule on industry and mariners, and we request public comment on these potential impacts. If you think that this rulemaking would

have a significant economic impact, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why, how, and to what degree you think this rule would have an economic impact on you.

C. Small Entities

The Regulatory Flexibility Act (“RFA”; 5 U.S.C. 601–612, as amended) requires agencies to consider whether regulatory actions would have a significant economic impact on a substantial number of small entities. RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). The Coast Guard determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(b)(B). Therefore, an RFA analysis is not required for this rule. The Coast Guard, nonetheless, expects that this interim rule will not have a significant economic impact on a substantial number of small entities.

This interim rule will affect owners and operators of, and unlicensed seamen working on or applying for work on, large passenger vessels of more than 70,000 gross tons, with a capacity of at least 2,000 passengers, and documented with a coastwise endorsement. This rulemaking will also indirectly affect unions for unlicensed mariners.

We have determined that individual mariners and the unions affected by this rule are not small entities under the definition of a small entity in the RFA. We also determined that the unions are not directly regulated by the rule.

Owners and operators affected by this rule will most likely be classified under one of the following North American Industry Classification System (NAICS) 6-digit codes for water transportation: 483114—Coastal and Great Lakes Passenger Transportation or 483112—Deep Sea Passenger Transportation. According to the Small Business Administration’s size standards, a U.S. company classified under these NAICS codes and employing less than 500 employees is considered a small entity.

Based on Coast Guard data, we have determined that there is only one company affected by this rule. We researched company size and revenue data using proprietary and public business databases and found that this company employs more than 500 employees and is not considered a small entity by the Small Business Administration’s size standards. In addition, we found that this company was a subsidiary of a large foreign-owned corporation. See the “Regulatory Evaluation” section for more

information about the effected vessel owner.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will 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 will have a significant economic impact on it, please submit a comment to the Docket Management Facility at 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.

D. 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 interim 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 contact LCDR Derek D’Orazio at 202–372–1405. 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.

E. Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501–3520), the Office of Management and Budget (OMB) reviews agency collection of information requirements. As part of its review, OMB evaluates the practical utility of the information in light of the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements. This interim rule will require employers to submit employee information to the Coast Guard before the Coast Guard will issue an MMD for their employees. However, we expect only one company will be affected by this requirement each year, as there is only one company in a position to take advantage of these regulations. As such, this rule contains no new collection of information under the Paperwork Reduction Act.

F. 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.

States may not regulate in categories reserved for regulation by the Coast Guard. 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 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 *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89 (March 6, 2000). This interim rule deals with personnel qualifications and the manning requirements on large passenger vessels. Because the States may not regulate within these categories, preemption under Executive Order 13132 is not an issue.

G. 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 rule will not result in such an expenditure, we discuss the effects of this rule elsewhere in this preamble.

H. Taking of Private Property

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

I. 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.

J. Protection of Children

We have 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.

K. 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.

L. Energy Effects

We have analyzed this 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 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.

M. 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 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 standards bodies.

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

N. Environment

We have analyzed this rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide 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 there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(c), of the Instruction, from further environmental documentation. This paragraph excludes regulatory actions concerning the training, qualifying, licensing, and disciplining of maritime personnel from

further environmental documentation, and this interim rule concerns the licensing of maritime personnel. An “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects

46 CFR Part 12

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

- Accordingly, 46 CFR Chapter I is amended as follows:

PART 12—CERTIFICATION OF SEAMEN

- 1. Add new Subpart 12.40 to read as follows:

Subpart 12.40—Non-resident Alien Unlicensed Members of the Steward's Department on U.S.-Flag Large Passenger Vessels

Sec.

- 12.40–1 Purpose of rules.
- 12.40–3 Definitions.
- 12.40–5 General application requirements.
- 12.40–7 Employer requirements.
- 12.40–9 Basis for denial.
- 12.40–11 Citizenship and identity.
- 12.40–13 Restrictions.
- 12.40–15 Alternative means of compliance.

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701 and 8103; Department of Homeland Security Delegation No. 0170.1.

§ 12.40–1 Purpose of rules.

The rules in this subpart implement 46 U.S.C. 8103(k) by establishing requirements for the issuance of merchant mariner's documents, valid only for service in the steward's department of U.S.-flag large passenger vessels, to non-resident aliens.

§ 12.40–3 Definitions.

As used in this subpart:

Large passenger vessel means a vessel of more than 70,000 gross tons, as measured under 46 U.S.C. 14302 and documented under the laws of the United States, with capacity for at least 2,000 passengers and a coastwise endorsement under 46 U.S.C. chapter 121.

Non-resident alien means an individual who is not a citizen or alien lawfully admitted to the United States for permanent residence, but who is employable in the United States under the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*), including an alien crewman described in section 101(a)(15)(D)(i) of that Act who meets the requirements of 46 U.S.C. 8103(k)(3)(A).

Steward's department means the department that includes entertainment personnel and all service personnel, including wait staff, housekeeping staff, and galley workers, as defined in the vessel security plan approved by the Secretary under 46 U.S.C. 70103(c). These personnel may also be referred to as members of the hotel department on a large passenger vessel.

§ 12.40–5 General application requirements.

(a) Unless otherwise expressly specified in this subpart, non-resident alien applicants for Coast Guard-issued merchant mariner's documents are subject to all applicable requirements contained in this subchapter.

(b) No application from a non-resident alien for a merchant mariner's document issued pursuant to this subpart will be accepted unless the applicant's employer satisfies all of the requirements of § 12.40–7.

§ 12.40–7 Employer requirements.

(a) The employer must submit the following to the Coast Guard, as a part of the applicant's merchant mariner's document application, on behalf of the applicant:

(1) A signed report that contains all material disciplinary actions related to the applicant, such as, but not limited to, violence or assault, theft, drug and alcohol policy violations, and sexual harassment, along with an explanation of the criteria used by the employer to determine the materiality of those actions;

(2) A signed report regarding an employer-conducted background check. The report must contain:

(i) A statement that the applicant has successfully undergone an employer-conducted background check;

(ii) A description of the employer-conducted background check, including all databases and records searched. The background check must, at a minimum, show that the employer has reviewed all information reasonably and legally available to the owner or managing operator, including the review of available court and police records in the applicant's country of citizenship, and any other country in which the

applicant has received employment referrals, or resided, for the past 20 years prior to the date of application; and,

(iii) All information derived from the employer-conducted background check.

(3) The employer-conducted background check must be conducted to the satisfaction of the Coast Guard for a merchant mariner's document to be issued to the applicant.

(b) If a merchant mariner's document is issued to the applicant, the report and information required in paragraph (a)(2) of this section must be securely kept by the employer on the U.S.-flag large passenger vessel, or U.S.-flag large passenger vessels, on which the applicant is employed. The report and information must remain on the last U.S.-flag large passenger vessel on which the applicant was employed until such time as the merchant mariner's document is returned to the Coast Guard in accordance with paragraph (d) of this section.

(c) If a merchant mariner's document or a transportation worker identification credential (TWIC) is issued to the applicant, each merchant mariner's document and TWIC must be securely kept by the employer on the U.S.-flag large passenger vessel on which the applicant is employed. The employer must maintain a detailed record of the seaman's total service on all authorized U.S.-flag large passenger vessels, and must make that information available to the Coast Guard upon request, to demonstrate that the limitations of § 12.40-13(c) have not been exceeded.

(d) In the event that the seaman's merchant mariner's document and/or TWIC expires, the seaman's visa status terminates, the seaman serves onboard the U.S.-flag large passenger vessel(s) for 36 months in the aggregate as a nonimmigrant crewman, the employer terminates employment of the seaman or if the seaman otherwise ceases working with the employer, the employer must return the merchant mariner's document to the Coast Guard and/or the TWIC to the Transportation Security Administration within 10 days of the event.

(e) In addition to the initial material disciplinary actions report and the initial employer-conducted background check specified in paragraph (a) of this section, the employer must:

(1) Submit an annual material disciplinary actions report to update whether there have been any material disciplinary actions related to the applicant since the last material disciplinary actions report was submitted to the Coast Guard.

(i) The annual material disciplinary actions report must be submitted to the satisfaction of the Coast Guard in accordance with the same criteria set forth in paragraph (a)(1) of this section, except that the period of time examined for the material disciplinary actions report need only extend back to the date of the last material disciplinary actions report; and

(ii) The annual material disciplinary actions report must be submitted to the Coast Guard on or before the anniversary of the issuance date of the merchant mariner's document.

(2) Conduct a background check each year that the merchant mariner's document is valid to search for any changes that might have occurred since the last employer-conducted background check was performed:

(i) The annual background check must be conducted to the satisfaction of the Coast Guard in accordance with the same criteria set forth in paragraph (a)(2) of this section, except that the period of time examined during the annual background check need only extend back to the date of the last background check; and

(ii) All information derived from the annual background check must be submitted to the Coast Guard on or before the anniversary of the issuance date of the merchant mariner's document.

(f) The employer is subject to the civil penalty provisions specified in 46 U.S.C. 8103(f) for any violation of this section.

§ 12.40-9 Basis for denial.

In addition to the requirements for a merchant mariner's document established elsewhere in this subchapter, and the basis for denial established in § 12.02-4 of this part, an applicant for a merchant mariner's document issued pursuant to this subpart must:

(a) Have been employed, for a period of at least one year, on a foreign-flag passenger vessel, or foreign flag passenger vessels, that are under the same common ownership or control as the U.S.-flag large passenger vessel, or U.S.-flag large passenger vessels, on which the applicant will be employed upon issuance of a merchant mariner's document under this subpart.

(b) Have no record of material disciplinary actions during the employment required under paragraph (a) of this section, as verified in writing by the owner or managing operator of the U.S.-flag large passenger vessel, or U.S.-flag large passenger vessels, on which the applicant will be employed.

(c) Have successfully completed an employer-conducted background check, to the satisfaction of both the employer and the Coast Guard.

(d) Meet the citizenship and identity requirements of § 12.40-11.

§ 12.40-11 Citizenship and identity.

(a) In lieu of the requirements of §§ 12.02-10, 12.02-12 and 12.02-14 of this part, a non-resident alien may apply for a Coast Guard-issued merchant mariner's document, endorsed and valid only for service in the steward's department of a U.S.-flag large passenger vessel as defined in this subpart, if he or she is employable in the United States under the Immigration and Nationality Act (8 U.S.C. 1101, *et seq.*), including an alien crewman described in section 101 (a)(15)(D)(i) of that Act.

(b) To meet the citizenship and identity requirements of this subpart, an applicant must present an unexpired passport issued by the government of the country of which the applicant is a citizen or subject; and either a valid U.S. C-1/D Crewman Visa or other valid U.S. visa or authority deemed acceptable by the Coast Guard.

(c) Any non-resident alien applying for a merchant mariner's document under this subpart may not be a citizen of, or a temporary or permanent resident of, a country designated by the Department of State as a "State Sponsor of Terrorism" pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

§ 12.40-13 Restrictions.

(a) A merchant mariner's document issued to a non-resident alien under this subpart authorizes service only in the steward's department of the U.S.-flag large passenger vessel(s), that is/are under the same common ownership and control as the foreign-flag passenger vessel(s), on which the non-resident alien served to meet the requirements of § 12.40-9(a):

(1) The merchant mariner's document will be endorsed for service in the steward's department in accordance with § 12.25-10 of this part;

(2) The merchant mariner's document may also be endorsed for service as a food handler if the applicant meets the requirements of § 12.25-20 of this part; and

(3) No other rating or endorsement is authorized, except lifeboatman, in which case all applicable requirements of this subchapter and the STCW Convention and STCW Code must be met.

(b) The following restrictions must be printed on the merchant mariner's document, or listed in an accompanying Coast Guard letter, or both:

(1) The name and official number of all U.S.-flag vessels on which the non-resident alien may serve. Service is not authorized on any other U.S.-flag vessel;

(2) Upon issuance, the merchant mariner's document must remain in the custody of the employer at all times;

(3) Upon termination of employment, the merchant mariner's document must be returned to the Coast Guard within 10-days in accordance with § 12.40-7;

(4) A non-resident alien issued a merchant mariner's document under this subpart may not perform watchstanding, engine room duty watch, or vessel navigation functions; and,

(5) A non-resident alien issued a merchant mariner's document under this subpart may perform emergency-related duties provided:

(i) The emergency-related duties do not require any other rating or endorsement, except lifeboatman as specified in paragraph (a)(3) of this section;

(ii) The non-resident alien has completed familiarization and basic safety training, as required in § 15.1105 of this subchapter;

(iii) That if the non-resident alien serves as a lifeboatman, he or she must have the necessary lifeboatman's endorsement; and

(iv) The non-resident alien has completed the training for crewmembers on passenger ships performing duties involving safety or care for passengers, as required in subpart 12.35 of this part.

(c) A non-resident alien may only serve for an aggregate period of 36 months actual service on all authorized U.S.-flag large passenger vessels combined under the provisions of this subpart:

(1) Once this 36-month limitation is reached, the merchant mariner's document becomes invalid and must be returned to the Coast Guard under § 12.40-7(d), and the non-resident alien is no longer authorized serve in a position requiring a merchant mariner's document on any U.S.-flag large passenger vessel; and

(2) An individual who successfully adjusts his or her immigration status to become either a alien lawfully admitted for permanent residence to the United States or citizen of the United States may apply for a merchant mariner's document, subject to the requirements of §§ 12.02-10, 12.02-12 and 12.02-14 of this part, without any restrictions or limitations imposed by this subpart.

§ 12.40-15 Alternative means of compliance.

(a) The owner or managing operator of a U.S.-flag large passenger vessel, or U.S.-flag large passenger vessels, seeking to employ non-resident aliens issued merchant mariner's documents under this subpart may submit a plan to the Coast Guard, which, if approved, will serve as an alternative means of complying with the requirements of this subpart.

(b) The plan must address all of the elements contained in this subpart, as well as the related elements contained in § 15.530 of this subchapter, to the satisfaction of the Coast Guard.

PART 15—MANNING REQUIREMENTS

■ 3. The authority citation for part 15 is revised 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; and Department of Homeland Security Delegation No. 0170.1.

■ 4. Add new § 15.530 to subpart D to read as follows:

§ 15.530 Large passenger vessels.

(a) The definition of terms used in this section is the same as § 12.40-3 of this subchapter.

(b) The owner or operator of a U.S.-flag large passenger vessel must ensure that any non-resident alien holding a Coast Guard-issued merchant mariner's document described in subpart 12.40 of this subchapter is provided the rights, protections, and benefits of the International Labor Organization's Merchant Shipping (Minimum Standards) Convention of 1976.

(c) On U.S.-flag large passenger vessels, non-resident aliens holding a Coast-Guard issued merchant mariner's document described in subpart 12.40 of this subchapter:

(1) May only be employed in the steward's department on the vessel(s) specified on the merchant mariner's document or accompanying Coast Guard letter under § 12.40-13(b)(1) of this subchapter;

(2) May only be employed for an aggregate period of 36 months actual service on all authorized U.S.-flag large passenger vessels combined, under § 12.40-13(c) of this subchapter;

(3) May not perform watchstanding, engine room duty watch, or vessel navigation functions, under § 12.40-13(b)(4) of this subchapter; and

(4) May perform emergency-related duties only if, under § 12.40-13(b)(5) of this subchapter:

(i) The emergency-related duties do not require any other rating or endorsement, except lifeboatman as specified in § 12.40-13(a)(3) of this subchapter;

(ii) The non-resident alien has completed familiarization and basic safety training, as required in § 15.1105 of this part;

(iii) That if the non-resident alien serves as a lifeboatman, he or she must have the necessary lifeboatman's endorsement; and

(iv) The non-resident alien has completed the training for crewmembers on passenger ships performing duties involving safety or care for passengers, as required in subpart 12.35 of this subchapter.

(d) No more than 25 percent of the total number of unlicensed seamen on a U.S.-flag large passenger vessel may be aliens, whether admitted to the United States for permanent residence or otherwise allowed to be employed in the United States as non-resident aliens.

(e) The owner or operator of a U.S.-flag large passenger vessel employing non-resident aliens holding Coast Guard-issued merchant mariner's documents described in subpart 12.40 of this subchapter must:

(1) Retain custody of all non-resident alien merchant mariner's documents for the duration of employment, under § 12.40-13(b)(2) of this subchapter; and

(2) Return all non-resident alien merchant mariner's documents to the Coast Guard upon termination of employment, under § 12.40-13(b)(3) of this subchapter.

(f) The owner or operator of a U.S.-flag large passenger vessel employing non-resident aliens holding Coast Guard-issued merchant mariner's documents described in subpart 12.40 of this subchapter is subject to the civil penalty provisions specified in 46 U.S.C. 8103(f), for any violation of this section.

Dated: April 18, 2007.

Thad W. Allen,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. E7-7696 Filed 4-23-07; 8:45 am]

BILLING CODE 4910-15-P