



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 8

[Docket No. USCG-2012-0861]

RIN 1625-AB90

Adding International Energy Efficiency (IEE) Certificate to List of Certificates a Recognized Classification Society May Issue

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its Vessel Inspection Alternatives regulations to add the International Energy Efficiency (IEE) Certificate to the list of certificates that a recognized classification society may issue on behalf of the Coast Guard. We make this proposal because Annex VI of the International Convention for the Prevention of Pollution by Ships, 1973, as modified by the Protocol of 1978, has been amended to address energy efficiency for ships, and these amendments call for the issuance of IEE Certificates starting January 1, 2013. This proposed rule would enable recognized classification societies to apply to the Coast Guard to

issue IEE Certificates to vessel owners and help to ensure that the demand for IEE Certificates is met.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number ***USCG-2012-0861*** using any one of the following methods:

(1) Federal eRulemaking Portal:

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

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue S.E., Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Wayne Lundy, Systems Engineering Division, Coast Guard; telephone 202-372-1379, e-mail Wayne.M.Lundy@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments

received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0861), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, and insert "USCG-2012-0861" in the "Search" box. Click on "Submit a Comment" in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments 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 and may change this proposed rule based on your comments.

B. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, insert "USCG-2012-0861" in the "Search" box and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue S.E., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

D. Public meeting

We do not plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under ADDRESSES. In your request, please explain why you believe a public meeting 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. Abbreviations

APPS	Act to Prevent Pollution from Ships
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
IEE	International Energy Efficiency
IMO	International Maritime Organization
MARPOL Protocol	International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978
MEPC	Maritime Environment Protection Committee
NPRM	Notice of Proposed Rulemaking
OMB	Office of Management and Budget
§	Section
U.S.C.	United States Code

III. Background

The Act to Prevent Pollution from Ships (APPS), 33 U.S.C. et seq., implements the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL Protocol), which includes MARPOL Annex VI: Regulations for the Prevention of Air Pollution from Ships. See 33 U.S.C. 1901 (a)(4) and

(5). APPS directs the Secretary of Homeland Security to prescribe any necessary or desired regulations to carry out the provisions of the MARPOL Protocol and it directs the Secretary to designate those persons authorized to issue MARPOL Protocol certificates on behalf of the United States. See 33 U.S.C. 1903 (c) and 1904. This authority was delegated to the Coast Guard. See Department of Homeland Security Delegation No. 0170.1. As required by APPS, the Coast Guard has consulted with the U.S. Environmental Protection Agency regarding this proposed rule.

On July 15, 2011, in resolution MEPC.203(62), the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC) adopted amendments to MARPOL Annex VI. Those amendments, which were accepted July 1, 2012, and come into force January 1, 2013, contain energy efficiency provisions for new and existing ships. These amended regulations call for the issuance of an International Energy Efficiency (IEE) Certificate to document compliance with Annex VI's new Chapter 4, Regulations on Energy Efficiency for Ships. See amended Annex VI Regulations 5.4 and 6.4. Since the mid-1990s, under authority of 46 U.S.C. 3103, 3306, 3316, and 3703, and regulations in 46 CFR part 8-Vessel Inspection

Alternatives, the Coast Guard has authorized recognized classification societies to issue international certificates to vessels. The Coast Guard regularly adds to the list, in 33 CFR 8.320(b), of international certificates that classification societies may apply to issue to vessels on the Coast Guard's behalf -- including recent additions of the MARPOL 73/78 International Air Pollution Prevention Certificate and the International Anti-Fouling System Certificate. See, respectively, 74 FR 21554, May 8, 2009; and 76 FR 76896, Dec. 9, 2011. The United States currently recognizes seven classification societies for purposes of issuing international certificates: the American Bureau of Shipping (ABS, United States); Det Norske Veritas (DNV, Norway); Lloyd's Register (LR, Great Britain); Germanischer Lloyd (GL, Germany); Bureau Veritas (BV, France); RINA S.p.A. (RINA, Italy), and ClassNK (NKK, Japan).

Recognized classification societies assist the Coast Guard and help to ensure that U.S.-flagged ships that qualify for an international certificate are able to obtain it promptly. As we stated in 1996, to avoid duplication of effort between the Coast Guard and classification societies that results in extra costs to U.S. vessel owners, it is best to take full advantage of inspections done by classification societies:

insurance companies require that, before a vessel is insured, it be classed. This means that a classification society must survey a vessel for compliance with its class rules. Class rules are rules developed by the particular classification society to cover design, construction and safety of vessels. To ensure compliance with these class rules and with international standards, classification societies perform surveys on vessels using qualified marine surveyors. Many of the items examined by the classification society surveyors are the same as those examined by Coast Guard marine inspectors in their inspections for certification.

61 FR 68510-11, December 27, 1996.

Starting January 2013, U.S.-flagged ships that are 400 gross tonnage or more as measured under 46 U.S.C. 14302, Convention Measurement System, (hereafter 400 GT ITC or more) may be subject to detention or delay in foreign ports if they do not have an IEE certificate to document compliance with Annex VI. See amended Annex VI Regulation 19.

Section 8.320 of 46 CFR allows the Coast Guard to delegate issuance of an international convention certificate to a recognized classification society only if the certificate is listed in § 8.320(b). The IEE Certificate is not currently listed in § 8.320(b).

IV. Discussion of Proposed Rule

Our proposed amendment to 46 CFR § 8.320(b) would add the International Energy Efficiency (IEE) Certificate to the list of certificates that may be issued by a recognized

classification society on behalf of the Coast Guard. This proposed change would initiate the process that would allow recognized classification societies to issue IEE Certificates on behalf of the Coast Guard. Any recognized classification society that wishes to issue IEE Certificates on the Coast Guard's behalf would be required to request a delegation of authority from the Coast Guard pursuant to the procedures in 46 CFR part 8. See 46 CFR 8.230 for criteria that must be met to become a recognized classification society. In response, the Coast Guard would evaluate the application, and review the applicant's relevant class rules and classification society procedures, before deciding whether to issue a delegation of authority to a recognized classification society. As noted above, we propose this amendment to § 8.320(b) to allow the Coast Guard to enlist the assistance of recognized classification societies to ensure that U.S.-flagged ships that are 400 GT ITC or more that engage in one or more voyages to ports or offshore terminals under the jurisdiction of other contracting parties to the MARPOL Protocol will be able to promptly obtain an IEE certificate.

Also, the Presidential Memorandum of May 20, 2009 titled "Preemption," states that "preemption of State law by executive departments and agencies should be undertaken

only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption." The memorandum also required agencies to include preemption provisions in the codified regulations when regulatory preambles discussed its intention to preempt State law through the regulation. Furthermore, it directed that these preemption provisions must be justified under the legal principles governing preemption, including those outlined in Executive Order (EO) 13132 on Federalism. Consistent with this May 2009 Presidential Memorandum, EO 13132, and our Federalism discussion below, we have proposed inserting a specific statement regarding preemption in the purpose section, § 8.300, of Part 8's subpart C, International Convention Certificate Issuance, and renaming that section heading "Purpose and Preemption."

V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of 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 proposed rule has not been designated a ``significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget. A draft regulatory assessment follows:

Under the authority of 33 U.S.C. 1903, 1904, and 46 U.S.C. 3103, 3306, 3316, and 3703, the Coast Guard proposes to amend 46 CFR 8.320, to enable the Coast Guard to delegate the activity of issuing IEE Certificates to a recognized classification society which would act on behalf of the Coast Guard. The intent of this proposed rule is only to allow for the delegation of IEE Certification to recognized class societies and thus create options for industry in obtaining these certificates; it does not impose mandatory actions on the U.S. maritime industry.

Although requesting the delegation of authority to conduct IEE surveys, inspections, and certifications is

voluntary, classification societies may incur minor costs associated with this process. The Coast Guard may incur costs associated with the evaluation of these requests and the issuance of delegations of authority to recognized classification societies.

The Coast Guard estimates that this proposed rule would potentially affect seven classification societies which may request a delegation of authority to issue IEE Certificates. The Coast Guard used an Office of Management and Budget (OMB)-approved collection of information (1625-0041) to estimate the costs and burden.

The Coast Guard estimates that it will take classification society employees about 5.25 hours to review the rulemaking requirements and prepare the delegation request, at an average one-time cost of \$428.75 per classification society (3.5 hours at \$112 per hour¹ for a director and 1.75 hours at \$21 per hour for an administrative assistant). The total one-time cost for all seven classification societies is estimated to be \$3,000 (rounded).

In addition, the Coast Guard estimates that it will incur a one-time cost to review and approve the requests

¹All hourly wages shown are "fully loaded" wages. Fully loaded wages include the costs of employer paid benefits such as health insurance.

for delegation. Based on the OMB-approved collections of information discussed above, the Coast Guard estimates that it will take about 5 hours to review, approve, and issue an order to delegate authority, at an average cost of \$360 per event (3.5 hours for reviewing/approving and 1.5 hours for issuing at \$72 per hour for a lieutenant (O-3)). The Coast Guard estimates a total one-time Government cost of \$2,500 (rounded) based on OMB-approved collection of information estimates.

The Coast Guard estimates the total one-time cost of this proposed rule to be approximately \$5,500 (non-discounted) for classification societies and the Government combined.

This proposed rule may result in several benefits to the U.S. maritime industry. First, it may result in a reduction of potential wait time for IEE Certificates. In the absence of delegation of authority to classification societies, vessel owners and operators may experience delays while the Coast Guard processes and issues IEE Certificates. Combined with the Coast Guard's other activities and responsibilities, such a process may result in an unnecessary and burdensome wait for vessels. The Coast Guard also might have to redirect resources that could be used for other missions, resulting in a less

efficient use of Government resources. Finally, this proposed rule may mitigate potential consequences to U.S.-flagged vessels due to non-compliance with the Convention, including costly vessel detentions in foreign ports.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule will, if promulgated, 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.

Affected classification societies are classified under one of the following North American Industry Classification System codes for water transportation: 488330—Navigational Services to Shipping, 488390— Other Support Activities for Water Transportation, or 541611— Administrative Management and General Management Consulting Services.

The only predominate U.S. classification society is the American Bureau of Shipping (ABS). ABS is a privately owned non-profit organization that is dominant in its field (Source: 2011 Hoovers, <http://www.hoovers.com/company/American Bureau of Shipping>

Inc/rfsksji-1.html). Based on publicly available information, ABS has more than 3,000 employees and annual revenues of more than \$800 million². We do not consider ABS to be a small entity using the Small Business Act definitions of a small entity.

The Coast Guard expects that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. As described in section V.A. of this preamble, "Regulatory Planning and Review," the anticipated cost of this proposed rule, per class society, would be less than \$500. This proposed rule is not mandatory, and classification societies, regardless of size, would choose to participate only if the benefits are greater than the costs.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, 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 proposed rule would have a significant economic impact on it, please submit a comment

² Source: 2011 Bloomberg, <http://investing.businessweek.com/research/stocks/private/person.asp?personId=28915205&privcapId=4217113&previousCapId=764755&previousTitle=ABS%20Group%20of%20Companies,%20Inc>

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 proposed rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Wayne Lundy, Systems Engineering Division, Coast Guard, telephone 202-372-1379 or e-mail Wayne.M.Lundy@uscg.mil. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) because the Coast Guard expects that the number of applications would be fewer than 10 in any given year.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

As noted above, APPS implements the MARPOL Protocol. APPS also directs the Secretary to "designate those persons authorized to issue on behalf of the United States the certificates required by the MARPOL Protocol." 33 U.S.C. 1904. By enacting this specific provision, it was the intent of Congress to give the Coast Guard, as delegated by the Secretary, the exclusive authority to regulate within this field. Therefore, we have determined that this rule does not have implications for federalism.

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 proposed rule would not result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

G. Taking of Private Property

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866, supplemented by Executive Order 13563, 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 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or

cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This proposed rule involves the delegation of authority, the inspection and documentation of vessels, and congressionally-mandated regulations designed to improve or protect the environment.

This action falls under section 2.B.2, figure 2-1, paragraphs (34)(b) and (d), of the Instruction, and under section 6(b) of the "Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" (67 FR 48243, July 23, 2002). We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 46 CFR Part 8

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 8 as follows:

Part 8 - VESSEL INSPECTION ALTERNATIVES

1. The authority citation for part 8 is revised to read as follows:

Authority: 33 U.S.C. 1903, 1904, 3803 and 3821; 46 U.S.C. 3103, 3306, 3316, and 3703; Department of Homeland Security Delegation No. 0170.1 and Aug. 8, 2011 Delegation of Authority, Anti-Fouling Systems.

2. Revise § 8.300 to read as follows:

§ 8.300 Purpose and preemption.

This subpart establishes options for vessel owners and operators to obtain required international convention certification through means other than those prescribed elsewhere in this chapter. The regulations in this subpart have preemptive effect over any State or local regulation within the same field.

3. Amend § 8.320 as follows:

a. In paragraph (b)(12), remove the word "and";

b. In paragraph (b)(13), remove the period at the end of the sentence and add, in its place, the text "; and";
and

c. Add paragraph (b) (14) to read as follows:

§ 8.320 Classification society authorization to issue international certificates.

* * * * *

(b) * * *

(14) MARPOL 73/78 International Energy Efficiency Certificate.

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DATED: SEPTEMBER 25 2012

F. J. STURM
Acting Director of Commercial Regulations and Standards,
U. S. Coast Guard

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