

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 2

[Docket No. USCG–2007–27668]

RIN 1625–AB35

Approval of Classification Societies

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: Congress requires that classification societies conducting certain work in the United States must either be full members of International Association of Classification Societies (IACS) or approved by the Coast Guard. In this proposed rule, the Coast Guard proposes application procedures and performance standards that classification societies must meet in order to be approved. Through this proposed rule, the Coast Guard seeks to improve marine safety and environmental protection by assuring the consistency and quality of work conducted by classification societies that review, examine, survey, or certify the construction, repair, or alteration of a vessel in the United States.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before July 22, 2010 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2007–27668 using any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *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 methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Viewing incorporation by reference material: You may inspect the material proposed for incorporation by reference at room 1308, U.S. Coast Guard

Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–372–1371. Copies of the material are available as indicated in the “Incorporation by Reference” section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. William Peters, Office of Design and Engineering Standards, Coast Guard, telephone 202–372–1371, e-mail

William.S.Peters@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.

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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–2007–27668), 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>, select the Advanced Docket Search option on the right side of the screen, insert “USCG–2007–27668” in the Keyword box, press Enter, and then click on the balloon shape for “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–2007–27668 in the Keyword box and press Enter. Then, choose from the resulting list the types of documents you want to view. 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, SE., 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 now 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, 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

CFR Code of Federal Regulations
 COTP Captain of the Port
 DHS Department of Homeland Security
 IACS International Association of Classification Societies
 ICLL International Convention on Load Lines 1966
 IMO International Maritime Organization
 ISM International Management Code for the Safe Operation of Ships and for Pollution Prevention
 ISO International Organization for Standardization
 ISPS International Ship and Port Facility Security Code
 MARPOL 73/78 International Convention for the Prevention of Pollution From Ships, 1973, as modified by the Protocol of 1978
 MOU Memorandum of Understanding
 NAICS North American Industry Classification System
 NARA National Archives and Records Administration
 NEPA National Environmental Policy Act of 1969
 RO recognized organization
 SOLAS International Safety of Life at Sea
 U.S.C. United States Code

III. Background

In section 413 of the Coast Guard and Maritime Transportation Act of 2004, Congress amended 46 U.S.C. 3316(c) to require that, after December 31, 2004, a classification society, including an employee or agent of that society, may not review, examine, survey, or certify the construction, repair or alteration of a vessel in the United States unless the classification society is either approved by the Coast Guard or is a full member of the International Association of Classification Societies (IACS). Public Law 108–293, August 9, 2004. (For information on IACS see <http://www.iacs.org.uk>). On November 2, 2004, the Coast Guard published a “Notice of Policy” (69 FR 63548) in the **Federal Register** to provide guidance on the approval application process for classification societies that are not full members of IACS.

After reviewing applications from classification societies seeking approval under the provisions of 46 U.S.C. 3316(c) and the guidance in our notice, we decided that the procedures and criteria the Coast Guard uses to evaluate classification societies should be made part of Title 46, Code of Federal Regulations (46 CFR) in order to have a specific, consistent, and enforceable basis for approval determinations. We consider it prudent to incorporate the requirements of 46 U.S.C. 3316(c) into 46 CFR part 2 because maritime industry personnel and Coast Guard field inspectors are generally more

familiar with the Code of Federal Regulations than they are with the U.S. Code.

Inconsistencies in the applications we reviewed since January 2005 also reveal a need for clear regulations that explain the basis for approval. Furthermore, our analysis of the applications we reviewed since January 2005 indicates we can simplify the approval process to make requests easier to submit and evaluate.

To incorporate the requirements of 46 U.S.C. 3316(c) into regulations, the Coast Guard deems the International Maritime Organization (IMO) Resolution A.739(18), “Guidelines for the Authorization of Organizations Acting on Behalf of the Administration,” to provide sound and international recognized standard from which to base the Coast Guard’s review and approval program.

IMO acknowledges that classification societies often act as recognized organizations (ROs) under powers delegated by the flag state Administrations¹ when they perform technical and survey work on behalf of a government agency. Recognizing this relationship, IMO adopted Resolution A.739(18) that establishes minimum competency standards required by the applicable international conventions for ROs that act on behalf of Administrations to conduct vessel examinations, issue international certificates, perform surveys and certifications, and determine vessel tonnage. IMO Resolution A.739(18) is consistent with our minimum standards for a recognized classification society in 46 CFR Part 8, “Vessel Inspection Alternatives.”

To work on behalf of a flag state Administration, a recognized organization must sufficiently demonstrate that its business practices meet or exceed the performance standards described in IMO Resolution A.739(18). For example, the RO must show that it:

- Publishes and systematically maintains rules for the construction and maintenance of vessels;
- Is professionally staffed with strategically placed resources for geographic coverage;
- Maintains a high level of professional ethics;
- Is competent;
- Provides timely and quality services; and
- Maintains an internal quality system no less effective than the ISO 9000 series certification. (For

information on these standards or ISO, see <http://www.iso.ch>.)

When an RO demonstrates these competencies to the satisfaction of the Administration, its authorization is documented in a formal written agreement under the requirements of IMO Resolution A.739(18).

Similarly, a classification society that is not a full member of IACS must meet the following requirements for approval under the provisions of 46 U.S.C. 3316(c):

- a. Vessels surveyed by the classification society must have an adequate safety record;
- b. The classification society must have an adequate program to develop and implement safety standards for vessels it surveys;
- c. The classification society must have an adequate program to make their safety records available in an electronic format; and
- d. The classification society must have an adequate program to make the safety records of a vessel survey available to other classification societies, and to request records from other classification societies that previously surveyed the vessel for the purpose of a specific vessel survey.

To better assess the classification societies the Coast Guard evaluates the classification societies’ implementation of safety standards for vessels by examining worldwide port state control statistics for the classification society and the vessels it surveys. This data is found in the annual reports published by the world’s regional port state control organizations. These include, but are not limited to:

- Paris Memorandum of Understanding on Port State Control (Paris MOU: <http://www.parismou.org>);
- Memorandum of Understanding on Port State Control in the Asian-Pacific Region (Tokyo MOU: <http://www.tokyomou.org>);
- Mediterranean Memorandum of Understanding on Port State Control (Med MOU: <http://www.medmou.org>);
- Black Sea Memorandum of Understanding on Port State Control (Black Sea MOU: <http://www.bsmou.org>);
- The Latin American Agreement on Port State Control of Vessels (Vina del Mar MOU: <http://www.acuerdolatino.int.ar>);
- West and Central Africa Memorandum of Understanding on Port State Control (ABUJA MOU);
- Riyadh Memorandum of Understanding on Port State Control in the Gulf Region (Riyadh MOU: <http://www.riyadhmou.org>);

¹ The term “Administration” means the government whose flag a vessel is entitled to fly.

- Indian Ocean Memorandum on Port State Control (Indian Ocean MOU: <http://www.iomou.org>); and
- Caribbean Memorandum of Understanding on Port State Control (Caribbean MOU: <http://www.caribbeanmou.org>).

These Memoranda of Understanding (MOU) are regional agreements among countries to share port state control inspection results with the aim of eliminating the operation of sub-standard ships. The MOUs are managed by secretariats that maintain databases of inspection activities and results and often compile the data into annual reports. This data is available to the public and identifies, among other things:

- Vessel names and particulars;
- Inspection dates and locations;
- Classification societies;
- Deficiencies noted;
- Detentions imposed;
- Lists of detained vessels; and
- Lists of banned and targeted vessels.

For information on U.S. port state control results and the regional MOUs, see <http://www.uscg.mil/hq/g-m/pscweb/index.htm>. A copy of the most recent annual report from the United States and the regional organizations can be found in this docket.

The Coast Guard can evaluate the performance of a particular classification society by scrutinizing the port state control history of the vessels it surveys. For example, an annual report from a major MOU secretariat typically includes 3 years of data showing the performance of all ships listed by Administration and RO. The RO is usually the classification society.

This shared port state control data is indispensable for evaluating the safety performance of Administrations and classification societies. Not only can the Coast Guard check performance from the data in the annual reports, but trends can be tracked from year to year.

IV. Discussion of Comments

Two commenters responded to the November 2, 2004, "Notice of policy" (69 FR 63548). Both commenters asked several questions about the revised 46 U.S.C. 3316 and the Coast Guard's approval policy.

Two commenters asked if the new requirements would restrict classification societies from performing work related to the International Ship and Port Facility Security Code (ISPS Code) or the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code). The new requirements would only prohibit a non-compliant

classification society from reviewing, examining, surveying, or certifying the construction, alteration, or repair of a vessel in the United States. Work other than the construction, alteration, or repair of a vessel related to issuing certificates would not be affected.

Two commenters asked whether a vessel that is issued an international certificate or examined for classification purposes by a non-compliant classification society would be denied entry to U.S. ports. These vessels would not be denied entry to U.S. ports, but they might be subject to targeted port state control inspections.

Two commenters asked how an application should be formatted. An application can be made in either paper or a common electronic format, such as Portable Document Format (PDF).

One commenter asked if a non-compliant classification society may conduct classification surveys of vessels whose construction, repair, or alteration had been previously supervised by a compliant classification society. A non-compliant classification society may not review, examine, survey, or certify the construction, repair, or alteration of a vessel in the United States, regardless of who previously surveyed the vessel. To the extent practicable, a non-compliant classification society is not prohibited from surveying elements of a vessel that are not associated with that vessel's construction, repair, or alteration. Previous survey work performed by a compliant classification society would have no bearing on the prohibition of certain work by a non-compliant classification society.

One commenter asked that we define the term "adequate," as used extensively in the revised statutes. This term was not defined in the November 2004 "Notice of policy" (69 FR 63548). In this rulemaking, we propose clear, measurable performance standards to avoid vagueness. The term "adequate" is no longer used. If additional clarification is needed for the proposed performance standards, comments and suggestions can be submitted for this rulemaking.

Similarly, another commenter inquired about the meaning of the phrase "safety records." This phrase also was not defined in the November 2004 "Notice of policy" (69 FR 63548). The Coast Guard believes that the proposed rule, in detailing the performance standards for approval, fully defines the meaning of this phrase. If additional clarification is needed, comments and suggestions can be submitted for this rulemaking.

One commenter asked if a vessel with a list of repairs required by U.S. port

state control officers would be allowed to perform cargo operations and leave U.S. waters to make those repairs abroad under the review, examination, and survey of an RO. If such a vessel is neither detained nor held by the Captain of the Port (COTP), it would be able to depart the United States. Because the proposed rule would not apply to a vessel outside the United States, a non-compliant classification society could perform services permitted by the port state in which the repairs are to be made.

One commenter asked if the prohibition of non-compliant classification societies applies specifically to certain flag states. The prohibitions that would apply in the proposed rule are not associated with any flag state. The proposed requirements would only prohibit a non-compliant classification society from reviewing, examining, surveying, or certifying the construction, alteration, or repair of a vessel in the United States.

One commenter asked if a flag state inspector would be affected by the proposed rule. A flag state inspector who performs statutory work directly for a flag state would not be affected by the proposed rule.

One commenter inquired if the list of vessels surveyed by the classification society and included in the approval application should be limited to those surveyed for classification purposes. Following 46 U.S.C. 3316(C)(2), the safety records of all vessels surveyed by the classification society, whether or not they are surveyed for classification purposes, would be considered in the assessment of the safety record of the classification society.

Both previous commenters also inquired about the type of electronic format that would be acceptable to the Coast Guard for providing requested safety records. A commonly available electronic word processing format or access to a web-based electronic database, in which information on vessels surveyed by the classification society is available, would be acceptable.

V. Discussion of Proposed Rule

In this rulemaking, we propose to revise 46 CFR part 2 by adding definitions for "Administration," "classification society," "recognized organization," and "regional port state control secretariat."

We also propose to add a new section describing the procedures to apply for approval. Under this section, a classification society must demonstrate it has an adequate program to develop safety standards for vessels. This

requirement would be met by providing a copy of the written agreement that shows it is an RO for at least one Administration signatory to the:

- International Safety of Life at Sea (SOLAS);
- International Convention for the Prevention of Pollution From Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78);
- International Convention on Load Lines 1966 (ICLL); and
- Protocol of 1988 relating to the ICLL.

The written agreement must show that the classification society complies with IMO Resolution A.739(18). In addition, the Administration recognizing the classification society must not be on a port state control target list or equivalent.

In this rule, we also propose the classification society seeking Coast Guard approval must demonstrate it has an adequate program to implement safety standards for vessels by meeting the following requirements:

- The classification society must not be assigned a Priority I Matrix Point Assignment as identified in the most recent publication of “Port State Control in the United States” and as having more than one RO-related detention for the vessels it surveys during the past 3 years; and
- The classification society must demonstrate that the vessels it surveys have a worldwide detention rate of 2 percent or less based on the number of detentions related to the classification society’s activities divided by the number of vessel inspections for at least 40 port state control inspections.

Where sufficient performance records are not available from a regional port state control secretariat, the Coast Guard would consider applications for approval and vessel safety record data based on fewer than 40 inspections on a case-by-case basis.

In this rule, we also propose to require a classification society to demonstrate that it has a program to share information electronically with other classification societies and the Coast Guard. A description of this capability would be part of the Coast Guard approval application.

In this rule, we also propose to annually reevaluate the records of approved classification societies to ensure they continue to meet the conditions for approval. An annual review would help the Coast Guard identify classification societies with deteriorating safety records and decide what action is appropriate.

The Coast Guard proposes three courses of action that could be taken if

an approved classification society demonstrates substandard performance. A classification society could have its approval placed on probation, suspended, or revoked.

If a classification society approval is placed on probation, the classification society would be notified and could continue to conduct survey work. The Coast Guard would continue to monitor the classification society’s performance through port state control records. If the Coast Guard finds improved performance, probation could be lifted. On the other hand, if performance is still below the conditions of approval, the Coast Guard could suspend the approval.

When a classification society’s approval is suspended, it could no longer conduct survey work on vessels in the United States. The Coast Guard would continue to monitor the classification society’s performance and could remove the suspension or place the approval on probation, depending on the results of the annual review. Alternatively, if performance does not improve, the Coast Guard could revoke the approval.

When an approval is revoked, the classification society could no longer perform survey work on vessels in the United States and the Coast Guard would cease monitoring the society’s records. Before resuming survey work on vessels in the United States, the classification society would be required to obtain approval by resubmitting an application as outlined in the above paragraphs.

In this rulemaking, we also propose to add a new section to Part 2 referencing the penalty provisions of 46 U.S.C. 3318. We considered Coast Guard enforcement actions in the case where a non-approved classification society performs a prohibited review, examination, survey, or certification. Title 46 U.S.C. 3318 does not authorize the Coast Guard to penalize a classification society for violations of § 3316. Therefore, to enforce the provisions of § 3316, we propose to hold the owner, charterer, managing operator, agent, master, or individual in charge of a vessel responsible for ensuring compliant classification societies are employed for survey work when the vessel is in the United States.

VI. Incorporation by Reference

Material proposed for incorporation by reference appears in § 2.45–5. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in § 2.45–5.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

VII. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

A. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This proposed rule amends regulations to require Coast Guard approval of classification societies that are not full members of the IACS. This rulemaking would not affect classification societies that are current members of the IACS. This proposed rule comprises application procedures and the performance standards classification societies must meet for approval. This rulemaking would incorporate provisions based on the statutory requirements in 46 U.S.C. 3316(c). These statutory requirements have been enforced since January 2005. We expect minimal costs to industry as a result of this rulemaking.

The Coast Guard has been receiving applications since January 2005. Approved classification societies would not need to take additional action to comply with this rulemaking and would not incur additional cost if they comply with existing requirements. The provisions of this rulemaking that would require periodic review also do not impose changes that would result in additional costs since the Coast Guard currently performs these reviews of approved classification societies.

We do not expect additional applications at this time. Classification societies have had more than four years to submit applications and we estimate that most affected classification societies have submitted applications.² Additionally, we are not aware of the formation of any new classification societies and none of the approved classification societies have currently been placed on suspension or

² We expect only those classification societies with potential vessel activity in U.S. waters would consider submitting an application and need approval under current requirements, which are the requirements of this rulemaking.

revocation. There are currently 6 classification societies approved under the provisions of 46 U.S.C. 3316(c).³

We estimate the costs of preparing and reviewing one application below for illustration, even though we expect this rulemaking would not result in additional costs. Classification societies would incur the burden to prepare and submit applications for approval or re-approval. Based on information from the Coast Guard's Naval Architecture Division, we estimate that it would take a junior manager 8 hours to prepare an application and a senior manager 2 hours to review and approve it. We estimate the information used to prepare an application would be available as a result of existing classification society operations and require no additional data collection. Using wage rates of \$67 for the junior manager and \$88 for the senior manager, we estimate that the total industry cost for an application would be \$712 ((8 hours × \$67/hour) + (2 hours × \$88/hour)).⁴

The costs to government would be the time for the Coast Guard to review and reply to the application for approval. From our experience with earlier approvals, we estimate that it would take a junior officer 2 hours to review the application and draft a reply and a senior officer 0.5 hours to review and approve the reply. Using wage rates of \$67 for the junior officer and \$88 for the senior officer, we estimate the total government cost for an application to be \$178 ((2 hours × \$67/hour) + (0.5 hour × \$88/hour)). The estimated total cost for one application would be \$890 (\$712 + \$178). As discussed above, we expect no new classification societies to apply and the costs of this rulemaking to be minimal.

The benefits of this rulemaking derive from incorporating the approval information of 46 U.S.C. 3316(c) into 46 CFR part 2. We consider the maritime industry and Coast Guard field offices, in general, to be more familiar with the Code of Federal Regulations (CFR) than with the U.S. Code. By adding the

statutory requirements to the CFR we anticipate improved administrative clarity and efficiency.

At this time, based on available information since January 2005, we expect that this rulemaking would not be economically significant under Executive Order 12866 (*i.e.*, have an annual effect on the economy of \$100 million or more). The Coast Guard urges interested parties to submit comments that specifically address the economic impacts of this rulemaking. Comments can be made as indicated in the **ADDRESSES** section.

B. Small Entities

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

Classification societies affected by this proposed rule are classified under one of the following North American Industry Classification System (NAICS) 6-digit codes for water transportation: 488330—Navigation Services to Shipping or 488390—Other Support Activities for Water Transportation. According to the Small Business Administration's (SBA) size standards, a U.S. company classified under these NAICS codes with annual revenues less than \$7 million is considered a small entity.

The classification societies affected by this rulemaking are all foreign owned and operated. The affected classification societies are currently incurring the cost of the statutory requirements and this rulemaking would not require additional costs. In addition, we consider the costs of these requirements to not be substantial. See the “Regulatory Planning and Review” section for additional detail on cost impacts.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rulemaking would 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 rulemaking would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), 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. William Peters, Office of Design and Engineering Standards, Coast Guard, via phone at 202–372–1372 or e-mail at William.S.Peters@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.

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

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under OMB regulations implementing the PRA, “Controlling Paperwork Burdens on the Public” (5 CFR 1320), collection of information means the obtaining, soliciting, or requiring the disclosure to an agency of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons. “Ten or more persons” refers to the number of respondents to whom a collection of information is addressed by the agency within any 12-month period and does not include employees of the respondent acting within the scope of their employment, contractors engaged by a respondent for the purpose of complying with the collection of information, or current employees of the Federal government. Collections of information affecting ten or more respondents within any 12-month period require OMB review and approval.

³ Approvals as of 11/27/09 based on applicants since January 2005 that are not full members of the IACS. The current list includes Bulgarski Koraben Register, China Corporation Register of Shipping, Hellenic Register of Shipping, Indian Register of Shipping, International Naval Surveys Bureau, and Polski Rejestr Statkow. The current list of classification society approvals can be accessed at <https://homeport.uscg.mil/>. This site requires registration.

⁴ For the purpose of estimating preliminary costs to industry and government, we used standard loaded hourly rates used in Coast Guard Information Collection Requests. These hourly rates include wages, benefits, overhead, and other expenses. These rates are found at http://www.uscg.mil/directives/ci/7000-7999/CI_7310_1L.PDF (link as of 11/27/2009).

This proposed rule comprises application procedures classification societies must meet for approval. We expect fewer than ten entities (potentially none) would be affected by this requirement within any 12-month period. As such, the number of respondents is less than the threshold of ten respondents per 12-month period for collection of information requirements under the PRA.

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 an expenditure, we do discuss the effects of this 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 rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may 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 Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

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

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 uses the following voluntary consensus standards: IMO Resolution A.739(18) “Guidelines for the Authorization of Organizations Acting on Behalf of the Administration.” The proposed section that references this standard and the location where this standard is available is listed in 46 CFR 2.45–5.

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 (NEPA) (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 rule involves the

approval of classification societies that examine, survey, or certify the construction, repair, or alteration of a vessel. This rule falls under paragraphs 34(b) and (d) of Commandant Instruction M16475.1D, which refer to the delegation of authority and the inspection of vessels. 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 2

Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Vessels.

For the reasons listed in the preamble, the Coast Guard proposes to amend 46 CFR part 2 as follows:

PART 2—VESSEL INSPECTIONS

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

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

2. Add subpart 2.45 to read as follows:

Subpart 2.45—Classification Society Activities

Sec.

2.45–1 Definitions.

2.45–5 Incorporation by reference.

2.45–10 General.

2.45–15 Approval requirements.

2.45–20 Probation, suspension and revocation.

2.45–25 Application for approval.

2.45–30 Penalties.

Subpart 2.45—Classification Society Activities

§2.45–1 Definitions.

Administration means the Government of the State whose flag the ship is entitled to fly.

Classification society means an organization that, at a minimum, verifies that a vessel meets requirements embodying the technical rules, regulations, standards, guidelines and associated surveys, and inspections covering the design, construction, and/or through-life compliance of a ship's structure and essential engineering and electrical systems.

Recognized organization (RO) means an organization authorized to act on behalf of an Administration.

Regional port state control secretariat means an organization established to collect and maintain port state control

inspection data in addition to other functions under a regional agreement among countries.

§ 2.45–5 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Also, it is available for inspection at the Coast Guard's Office of Design and Engineering Systems (CG–521), 2100 Second Street, SW., Washington, DC 20593–0001, and is available from the sources indicated in this section.

(a) International Maritime Organization, 4 Albert Embankment, London SE1 7SR, U.K. +44 (0)20 7735 7611, <http://www.imo.org/>.

(b) IMO Resolution A.739(18), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, adopted 4 November 1993.

§ 2.45–10 General.

(a) A classification society (including an employee or agent of that society) must not review, examine, survey, or certify the construction, repair, or alteration of a vessel in the United States unless it is either a full member of the International Association of Classification Societies (IACS) or is approved under the provisions of this subpart.

(b) This subpart applies to a recognized organization that meets the definition of a classification society provided in § 2.45–1 of this subpart.

§ 2.45–15 Approval requirements.

(a) This section applies to a classification society that is not a full member of IACS.

(b) A classification society may be approved for purpose of § 2.45–10 if the following conditions are met:

(1) Vessels surveyed by the classification society must have a worldwide port state control detention rate of less than 2 percent based on the number of detentions related to the classification society's activities divided by the number of vessel inspections for at least 40 port state control inspection;

(2) The classification society must not be identified in the most recent publication of "Port State Control in the United States" as a Priority I and as having more than one Recognized Organization (RO)-related detention for the past 3 years;

(3) The classification society must comply with the minimum standards for a recognized organization recommended in IMO Resolution A.739(18), Appendix 1 (incorporated by reference, *see* § 2.45–5);

(4) The classification society must be an RO for at least one country under a formal written agreement that includes all of the elements described in IMO Resolution A.739(18), Appendix 2 (incorporated by reference, *see* § 2.45–5);

(5) The country for which the classification society is an RO:

(i) Must be signatory to each of the following: the International Safety of Life at Sea Convention (SOLAS), the International Convention on the Prevention of Pollution from Ships (MARPOL 73/78), the International Convention on Load Lines (ICLL), 1966, and the Protocol of 1988 relating to the ICLL, 1966; and

(ii) Must not be identified as a flag state targeted by the Coast Guard or equivalent by any regional port state control secretariat for additional port state control examinations; and

(6) The classification society must use a system to:

(i) Make its safety records and those of persons acting on behalf of the classification society available to the Coast Guard in electronic format;

(ii) Provide its safety records and those of persons acting on behalf of the classification society to another classification society that requests those records for the purpose of conducting surveys of vessels; and

(iii) Request the safety records of a vessel to be surveyed from any other classification society that previously surveyed that vessel.

(c) Where sufficient performance records are not available from a regional port state control secretariat, the Coast Guard may consider an equivalent safety performance indicator proposed by the classification society seeking approval.

§ 2.45–20 Probation, suspension and revocation.

(a) A classification society approved for the purpose of this subpart must maintain the minimum requirements for approval set forth in § 2.45–15.

(b) If an approved classification society fails to maintain compliance with paragraph (a) of this section, the

Coast Guard may place the classification society approval on probation, or suspend or revoke the classification society's approval, as appropriate.

(c) A classification society on probation is approved for the purpose of this subpart. The probation continues until the next review of the classification society's compliance with paragraph (a) of this section.

(1) If the review shows that compliance with paragraph (a) of this section is achieved, the probation may end.

(2) If the review shows significant improvement but compliance with paragraph (a) of this section is not achieved, the probation may be extended.

(3) If the review does not show significant improvement, and compliance with paragraph (a) of this section is not achieved, the approval may be suspended.

(d) A classification society whose approval is suspended is not approved for the purpose of this subpart. Suspension will continue until the next review of the classification society's compliance with paragraph (a) of this section.

(1) If the review shows compliance with paragraph (a) of this section, the classification society's approval may be restored.

(2) If the review shows significant improvement toward compliance with paragraph (a) of this section, the suspension may be extended.

(3) If the review does not show significant improvement and compliance with paragraph (a) of this section, the classification society's approval may be revoked.

(e) A classification society whose approval is revoked is not approved for the purpose of this subpart. The classification society may reapply for approval when the requirements of § 2.45–15 are met.

(f) The Coast Guard's Office of Design and Engineering Standards (CG–521) administers probations, suspensions, and revocations and makes all related notifications to affected classification societies.

§ 2.45–25 Application for approval.

An application for approval must be made in writing and in the English language to U.S. Coast Guard, Commandant (CG–521), Office of Design and Engineering Standards, 2100 Second Street, SW. STOP 7126, Washington, DC 20593–7126. The application must:

(a) Indicate the type of work the classification society intends to perform on vessels in the United States;

(b) Include documentation demonstrating that the classification society complies with § 2.45–15 of this subpart;

(c) Contain a list of the vessels surveyed by the classification society over the previous 3 calendar years. The list must include vessel names, flags, and IMO numbers, as well as initial vessel inspections and detentions; and

(d) Provide a summary of the safety records of vessels the classification society surveys for each of the previous

3 calendar years, including initial vessel inspections and detentions for all data contained in regional port state control Memoranda of Understanding and other port state control data sources, including the U.S. Coast Guard.

§ 2.45–30 Penalties.

The owner, charterer, managing operator, agent, master, or individual in charge of a vessel that employs a classification society to review, examine, survey or certify the construction, repair, or alteration of a

vessel in the United States is subject to civil penalties in accordance with Title 46 U.S.C. 3318 if the classification society is not a full member of IACS or not approved by the Coast Guard under this subpart.

Dated: April 16, 2010.

F.J. Sturm,

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

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