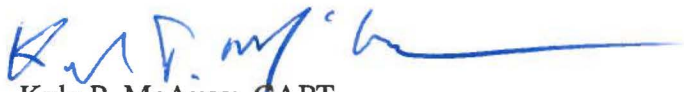




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CG-CVC Policy Letter 15-04  
NOV 18 2015

  
From: Kyle P. McAvoy, CAPT  
COMDT (CG-CVC)

To: Distribution

Subj: GUIDANCE ON PORT STATE CONTROL EXAMINATIONS FOR FOREIGN  
FLAGGED YACHTS

Ref:

- (a) 46 United States Code § 3301 (7)
- (b) Title 46, Code of Federal Regulations, Subchapter I
- (c) Title 46, Code of Federal Regulations, Subchapter A
- (d) International Convention for the Safety of Life at Sea (SOLAS)
- (e) MSM Volume II, Material Inspection, COMDINST M16000.7 (series)
- (f) Title 33, Code of Federal Regulations, Part 160
- (g) Title 33, Code of Federal Regulations, Part 138
- (h) MISLE Data Entry Requirements for Foreign Vessel Arrivals, Examinations and Operational Controls Work Instruction
- (i) Navigation and Vessel Inspection Circular No. 2-00, Inspection Guidance for Vessel Participants in marine Events of National Significance
- (j) Title 33, Code of Federal Regulations, Part 164
- (k) Title 33, Code of Federal Regulations, Parts 151, 155, 156, 159
- (l) Title 46, Code of Federal Regulations, Part 15
- (m) MSM Volume III, Material Inspection, COMDINST M16000.8 series, Section B
- (n) Title 46, Code of Federal Regulations Subchapter C
- (o) U.S. Coast Guard Maritime Law Enforcement Manual COMDINST M16247.1 (series)
- (p) Navigation and Vessel Inspection Circular No. 7-94, Guidance on the Passenger Vessel Safety Act

1. **PURPOSE.** The purpose of this policy letter is to set forth procedures for examination of foreign-flagged yachts that are passenger vessels and for other such vessels measuring 300 or more gross tons as measured under the ITC operating in U.S. navigable waters.

2. **ACTION.** District and Sector Commanders shall ensure compliance with the provisions of this policy letter, which provides national guidance and replaces local policies on this subject. This policy letter will be distributed by electronic means only. It is available on the internet at <http://homeport.uscg.mil/>.

3. **BACKGROUND.** Although yachts are normally operated as recreation vessels, they may be subject to inspection as seagoing motor vessels depending on their size and area of operation. Motor propelled yachts of at least 300 GT making voyages beyond the boundary line as defined in Title 46 CFR, Subchapter A are by definition "sea going motor vessels" and are subject to inspection under reference (a). To carry out the authority in reference (a), these large, motor propelled, foreign flagged

yachts, which carry 12 or fewer passengers from any port in the U.S., are subject to the regulations in reference (b). Since compliance would require plan review and inspection for certification, it is generally impracticable and often not possible for a foreign-flagged yacht to obtain and comply with a Certificate of Inspection. Alternatively, any vessel of a foreign nation signatory to SOLAS, with a valid safety equipment certificate, is exempted from the requirement to meet reference (b). However, some flag administrations will not issue a SOLAS safety equipment certificate to vessels that are less than 500 gross tons. Instead, these foreign-flagged, motor-propelled yachts that routinely operate in U.S. ports are surveyed and certificated under a Large Commercial Yacht Code adopted by their administration. Due to the potential dissimilarities between these Commercial Yacht Codes and Title 46 Subchapter I (or SOLAS), guidance on acceptable standards and examination procedures is necessary to ensure that a consistent and appropriate level of safety is applied via Port State Control (PSC) exams.

4. **DISCUSSION.** Each Large Commercial Yacht Code contains a set of requirements for yachts that are in commercial use for sport or pleasure, do not carry cargo, and do not carry more than 12 passengers. They were developed to address challenges in applying some of the international conventions such as SOLAS and Load Line to “super yachts.” The provisions in the international conventions allow flag administrations to adopt these equivalent standards if they are at least as effective as the required present regulations. In accordance with this policy letter, a Port State Control Officer (PSCO) may accept a valid Commercial Yacht Code Flag State certificate as an alternative to meeting reference (b) for certain foreign-flagged yachts as provided in enclosure (1). Additionally, foreign-flagged yachts have posed a low risk for non-compliance and, as a result, the scope and frequency of exams has been reduced with the exception of foreign-flagged yachts engaged in trade of at least 500 gross tons, which are required to comply with SOLAS. Enclosure (1) provides guidance on applicable requirements, scope, and frequency of the PSC safety exam.

a. Foreign-flagged yachts will fit in one of the three categories below.

(1) *Foreign-Flagged Yachts Engaged In Trade Carrying More Than 12 Passengers:* Despite its tonnage, a yacht that falls into this category is considered a passenger vessel in accordance with reference (d) and must have a valid Passenger Ship Safety Certificate (PSSC) and complete a Coast Guard Control Verification Examination as outlined in reference (e). Those vessels that do not possess a valid PSSC are subject to inspection for certification in accordance with Title 46 CFR, Subchapter H. This includes issuance of a Certificate of Inspection in the same manner as for a domestic vessel.

(2) *Foreign-Flagged Yachts Engaged In Trade Carrying 12 or Fewer Passengers:* A yacht that operates beyond the boundary line carrying not more than 12 passengers, of which at least one is for hire or chartered, except valid bareboat charters, is considered to be engaged in trade.

(3) *Foreign-Flagged Yachts Not Engaged In Trade Carrying Non-Paying Guests or Valid Bareboat Charter:* “Not engaged in trade” means that the guests do not contribute consideration as a condition of carriage on the vessel. In a valid bareboat charter, the owner must give up his or her vessel for the occasion as a complete demise, turning over incidents of ownership to the charterer; this includes complete management, control and operation.

5. PROCEDURES. Foreign-flagged yachts measuring 300 or more gross tons must submit a Notice of Arrival and hold a Certificate of Financial Responsibility in accordance with references (f) and (g). These foreign-flagged yachts certificated under SOLAS or other commercial and international codes as determined by their flag administration shall be screened in accordance with the procedures outlined in reference (e), section D, chapter four. Depending on the total points and priority assigned, the vessel may require a PSC safety exam. For vessels to which the tonnage measurement interim scheme adopted by the IMO applies, the gross tonnage to determine applicability will be included in the REMARKS column of the International Tonnage Certificate (1969). If the vessel is identified for an exam, the PSCO shall use enclosure (1) to determine the applicability, scope and frequency of the PSC exam. In addition to enclosure (1), the following guidance applies:

- a. Scope of Exam. Although the scope of the safety exam may be reduced per the guidance in enclosure (1), each safety exam must be to the extent necessary to verify the validity of the relevant certificates and the compliance of crew and equipment with applicable domestic and international laws. This includes a walk through safety exam to see the overall condition of the vessel and to ensure no unsafe conditions exist. During the walk through safety exam, PSCOs should ensure lifesaving appliances and firefighting equipment are sufficient for persons onboard and properly maintained and that the crew is familiar with their emergency duties and equipment. PSCOs should also conduct limited testing of the vessel's navigation equipment and pollution prevention equipment and visual examination of machinery and public spaces to check for safety hazards. If the vessel's certificates are valid and the PSCOs general impressions and visual observation reveal no serious deficiencies, the exam should be completed at this point.
- b. Deficiencies. All deficiencies should be documented as outlined in reference (e). A detention or other control action should only be exercised if the vessel is substandard as defined in IMO Procedures for Port State Control (Resolution A.1052(27)), and is unfit to proceed to sea or is an unreasonable risk to the environment.
- c. Documentation. PSCOs must document all examination activities using the Coast Guard Port State Control Report of Inspection Form A, CG-5437A and Coast Guard Port State Control Report of Inspection Form B, CG-5437B, if the latter is applicable. These foreign flagged yacht exams will be categorized in MISLE as a PSC safety exam and shall be entered into MISLE using reference (h).
- d. Marine Events of National Significance. Registered participants of a Marine Event of National Significance may be permitted to engage in excursions while carrying passengers for hire for the duration of the event. Registered participants may include foreign flagged vessels, including yachts. Guidance for the inspection of foreign flagged yachts operating as registered participants in Marine Events of National Significance can be found in reference (i).
- e. Coastwise Trade Laws. The carrying of passengers-for-hire must comply with the regulations governing coastwise transportation of passengers under 19 CFR 4.80a.
- f. Definitions. See enclosure (2).

6. DISCLAIMER. This guidance is not a substitute for applicable legal requirements nor is in itself a rule. It is not intended to nor does it impose legally-binding requirements on any party. It represents the Coast Guard's current thinking on this topic and may assist industry, mariners, the general public, and the Coast Guard, as well as other federal and state regulators, in applying statutory and regulatory requirements. You can use an alternative approach for complying with these requirements if the approach satisfies the requirements of the applicable statutes and regulations.

7. Questions or concerns regarding this policy may be directed to Commandant (CG- CVC-2) at (202) 372-1235 or emailed to [CGCVC@uscg.mil](mailto:CGCVC@uscg.mil).

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Enclosure: (1) Foreign Flagged Yacht Job Aid  
(2) Definitions

Distribution: All Area/District (p) Offices  
All Sectors/Activities and MSUs

**Foreign-Flagged Yachts Engaged In Trade Carrying More Than 12 Passengers <sup>(1)</sup>**

Size	Status Under SOLAS	Status Under U.S. Law	Examination Requirements
All Gross Tons	Passenger Ship	46 USC 3505 Inspected	Vessel must hold a valid Passenger Ship Safety Certificate. A Yacht Code flag State certificate is <b>NOT</b> acceptable. Vessel subject to plan review and inspection under the Certificate of Compliance Program with initial, annual, and periodic examinations as required.  Vessel may not engage in coastwise trade.

**Note 1:** Passenger count may include non-paying guests. Vessel is engaged in trade if it carries one or more paying passengers (persons contributing consideration as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, agent or any other person having interest in the vessel.) This section also applies to a vessel that is chartered and carrying more than 12 passengers.

**Foreign-Flagged Yachts Engaged In Trade Carrying 12 or Fewer Passengers <sup>(1)</sup>**

Size	Status Under SOLAS	Status Under U.S. Law	Examination Requirements
500 or more Gross Tons	Cargo Ship	46 USC 3301  Inspected Seagoing Motor Vessel	Vessel must hold a valid Cargo Ship Safety Equipment or Cargo Ship Safety certificate. A Yacht Code flag State certificate is <b>NOT</b> acceptable.  Vessel subject to MARPOL as outlined in the various Annex applicability sections. Vessel will also be subject to other international conventions such as ITC, Load Line, and STCW convention requirements. Subject to applicable U.S. requirements in references (j) and (k). This includes review of Non-Tank Vessel Response Plan for vessels.  Verify compliance with minimum safe manning document issued by their flag State.  Subject to Port State Control. PSCOs should use procedures applicable to the examination of foreign freight vessels, including existing PSC targeting processes.  Vessel may not engage in coastwise trade.
300 or more but less than 500 Gross Tons	Exempt From SOLAS with the exception of Chapter IV and V	46 USC 3301  Inspected Seagoing Motor Vessel	Vessel may hold a valid Cargo Ship Safety Equipment or Cargo Ship Safety certificate. A Yacht Code flag State certificate is acceptable.  Vessel subject to STCW. Depending on the tonnage / length, vessel may also be subject to MARPOL, Load Line & ITC. Subject to applicable U.S. requirements in references (j) and (k). This includes review of Non-Tank Vessel Response Plan for vessels 400 or more gross tons.  Verify compliance with minimum safe manning requirements in accordance with reference (l) and (m) or compliance with minimum safe manning document issued by their flag State.  Subject to limited Port State Control, at least once every two years.  Vessel may not engage in coastwise trade.
100 or more but less than 300 Gross Tons	Exempt From SOLAS with the exception of Chapter V	<b>Passenger Vessel Safety Act of 1993</b>	Uninspected Passenger Vessel A Yacht Code flag State certificate is acceptable, but not required. Vessel subject to STCW, reference (n) and may not engage in coastwise trade. <b>*What is presented here for uninspected vessels is for information only.*</b>
Less than 100 Gross Tons	Exempt From SOLAS with the exception of Chapter V	<b>Passenger Vessel Safety Act of 1993</b>	Inspected if carrying more than 6 passengers. <sup>(2)</sup> A Yacht Code flag State certificate is acceptable. If inspected, examine at least once every three years. Vessel subject to STCW and may not engage in coastwise trade. <b>*What is presented here for uninspected vessels is for information only.*</b>

**Note 1:** Passenger count may include non-paying guests. Vessel is engaged in trade if it carries one or more paying guests (persons for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, operator, charterer, agent or any other person having interest in the vessel).

**Note 2:** In accordance with 46 U.S.C. 4105 (b) (1), an uninspected vessel less than 79 feet that carries passengers to or from a port in the U.S. Virgin Islands can carry up to 12 passengers instead of being limited to 6 passengers if they comply with the Code of Practice for the Safety of Small Commercial Motor Vessels or Code of Practice for the Safety of Small Commercial Sailing Vessels.

**Foreign-Flagged Yachts Not Engaged In Trade Carrying Non-Paying Guests or Valid Bareboat Charter <sup>(1)</sup>**

Size	Status Under SOLAS	Status Under US Law	Examination Requirements
500 or more Gross Tons	Exempt From SOLAS	<b>46 USC 3301</b> Inspected Seagoing Motor Vessel	<p>Vessel may hold a valid Cargo Ship Safety Equipment or Cargo Ship Safety Certificate. A Yacht Code flag State certificate is acceptable.</p> <p>Vessel subject to MARPOL as outlined in the various Annex applicability sections. Subject to applicable U.S. pollution prevention requirements in reference (k). This includes review of Non-Tank Vessel Response Plan for vessels.</p> <p>Verify compliance with minimum safe manning requirements in accordance with reference (l) and (m) or compliance with minimum safe manning document issued by their flag State. <sup>(2)</sup></p> <p>Vessel subject to limited Port State Control, at least once every two years.</p>
300 or more but less than 500 Gross Tons	Exempt from SOLAS	<b>46 USC 3301</b> Inspected Seagoing Motor Vessel	<p>Vessel may hold a valid Cargo Ship Safety Equipment or Cargo Ship Safety Certificate. A Yacht Code flag State certificate is acceptable.</p> <p>Vessel may be subject to MARPOL if it measures 400 or more gross tons as outlined in the various Annex applicability sections. Subject to applicable U.S. pollution prevention requirements in reference (k). This includes review of Non-Tank Vessel Response Plan for vessels 400 or more gross tons.</p> <p>Verify compliance with minimum safe manning requirements in accordance with reference (l) and (m) or compliance with minimum safe manning document issued by their flag State. <sup>(2)</sup></p> <p>Vessel subject to a basic safety examination as described in MLEM, Chapter 3 under Vessel Safety Inspection and appendix (E) in reference (o).</p> <p>Examine at least once every three years.</p>
100 or more but less than 300 Gross Tons	Exempt from SOLAS	<b>Passenger Vessel Safety Act of 1993</b>	<p>Refer to reference (p) to determine whether vessel is Uninspected Passenger Vessel, Recreational Vessel or Small Passenger Vessel for compliance requirements. <sup>(3)</sup></p> <p>If inspected, examine at least once every three years.</p> <p><b>*What is presented here for uninspected vessels is for information only.*</b></p>
Less than 100 Gross Tons	Exempt from SOLAS	<b>Passenger Vessel Safety Act of 1993</b>	<p>Refer to reference (p) to determine whether vessel is Uninspected Passenger Vessel, Recreational Vessel or Small Passenger Vessel for compliance requirements.</p> <p>If inspected, examine at least once every three years.</p> <p><b>*What is presented here for uninspected vessels is for information only.*</b></p>

**Note 1:** Not engaged in trade means that the guests do not contribute consideration as a condition of carriage on the vessel.

**Note 2:** The certification of the crew and the flag Administrations minimum safe manning standard must be compatible with the objectives of the STCW Convention and U.S. laws and regulations.

**Note 3:** Foreign flag bareboat chartered vessels carrying more than 12 passengers are subject to inspection for certification. The vessels will still be considered pleasure yachts or recreational vessels for SOLAS, Load Line, etc. Foreign vessels that are chartered with no crew provided by the owner and carrying 12 or less passengers are considered recreational vessels. Refer to reference (p) for further information.

## Definitions

1. Consideration (46 U.S.C. 2101): An economic benefit, inducement, right or profit, including pecuniary payment accruing to an individual, person, or entity but not including a voluntary sharing of actual expenses of the voyage by monetary contribution or donation of food, fuel, beverage, or other supplies.
2. Elements of a Valid Bareboat Charter (MSM VOL II, Section B, Chapter 4):
  - a. The Master and crew should be paid by the charterer.
  - b. All food, fuel, and stores are provided by the charterer.
  - c. All port charges and pilotage fees are paid by the charterer.
  - d. Insurance is obtained by the charterer, at least to the extent of covering liability not included in the owner's insurance.
  - e. The charterer may discharge, for cause the master or any crewmember without referral to the owner.
  - f. The vessel is to be surveyed upon its delivery and return.
3. Passenger (46 U.S.C. 2101): A individual carried on a vessel, **except**:
  - a. The owner or an individual representative of the owner, or in the case of a vessel under charter, an individual charterer or individual representative of the charterer.
  - b. The Master or;
  - c. A member of the crew engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for on board services.
4. Passenger for Hire (46 U.S.C. 2101): A passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.
5. Passenger Vessel (46 U.S.C. 2101): A vessel of at least 100 gross tons;
  - a. Carrying more than 12 passengers, including at least one passenger for hire;
  - b. That is chartered and carrying more than 12 passengers.
6. Recreational Vessel (46 U.S.C. 2101): A vessel being manufactured or operated primarily for pleasure or leased, rented, or chartered to another for the latter's pleasure.
7. Small Passenger Vessel (46 U.S.C. 2101): A vessel of less than 100 gross tons;
  - a. Carrying more than 6 passengers, including at least one passenger for hire;
  - b. That is chartered with no crew provided or specified by the owner or the owner's representative and carrying more than 12 passengers.

8. Uninspected Passenger Vessel (46 U.S.C. 2101):
  - a. An uninspected vessel of at least 100 gross tons;
    - (1) Carrying not more than 12 passengers, including at least one passenger for hire; or
    - (2) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 12 passengers.
  - b. Of less than 100 gross tons;
    - (1) Carrying not more than 6 passengers including at least one passenger for hire or
    - (2) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 6 passengers.
  
9. U.S. Virgin Islands Rule (46 U.S.C. 4105 (b) (1)): In accordance with reference (o), Section 4105 of Title 46 US Code has been amended for Uninspected Passenger Vessels in the U.S. Virgin Islands. An uninspected vessel less than 79 feet that carries passengers to or from a port in the U.S. Virgin Islands can carry up to 12 passengers instead of being limited to 6 passengers if they comply with:
  - a. Code of Practice for the Safety of Small Commercial Motor Vessels (commonly referred to as the "Yellow Code"), as published by the U.K. Maritime and Coast Guard Agency or;
  - b. Code of Practice for the Safety of Small Commercial Sailing Vessels (commonly referred to as the "Blue Code")
  
10. Valid Certificate (MSM VOL II, Section D, Chapter 1):
  - a. Has been issued by a contracting government, party to a convention, or on behalf of the government or party by a recognized organization.
  - b. Contains accurate and effective dates;
  - c. Meets the provisions of the relevant convention; and
  - d. Corresponds to the particulars of the vessel and its equipment.