

U.S. Department
of Transportation

United States
Coast Guard



USCG-99-5040-3
Commandant
U.S. Coast Guard
DEPARTMENT OF TRANSPORTATION

99 APR -6 PM 4:33

DOCKET SECTION

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COMDTPUB P16700.4

NVIC 7-94

September 30, 1994

53456

NAVIGATION AND VESSEL INSPECTION CIRCULAR NO. 7-94

Subj: GUIDANCE ON THE PASSENGER VESSEL SAFETY ACT OF 1993

1. **PURPOSE.** This Circular provides compliance and enforcement guidance for the newly enacted Passenger Vessel Safety Act of 1993 (the Act).
2. **BACKGROUND.** The Act was signed into law on December 20, 1993. It makes several changes to the laws for passenger carrying vessels. The most significant change requires chartered vessels that carry more than 12 passengers to be inspected for certification. The Act affords certain vessels a phase-in period (extension) for compliance if they made application for inspection before June 21, 1994. Vessels granted an extension are required to come into full compliance with the regulations for passenger carrying vessels not later than December 21, 1996. The Act also provides for the special regulation of certain existing charter vessels of 100 to 300 gross tons, and former public vessels of 100 to 500 gross tons carrying fewer than 150 passengers on domestic voyages. The owners of these vessels must also have made application for inspection before June 21, 1994, to be considered subject to these special regulations. The Act aligns the inspection threshold for passenger vessels with those contained in international

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NON-STANDARD DISTRIBUTION: (See page 5 .)

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standards, brings submersible vessels carrying at least one passenger for hire under inspection, and allows "crewboats" to be treated as offshore supply vessels. Finally, the Act contains several new definitions that clarify previous language.

3. DISCUSSION.

- a. Bareboat charter agreements have traditionally been used in the marine industry as a mechanism to allow long-term charterers the ability to assume operational control of a vessel. In these agreements the charterer assumes the rights and liabilities of ownership for the vessel. The charterer is usually responsible for conducting a pre-charter and postcharter vessel survey, providing a crew, and assuming complete operational control of the vessel. Individuals soon began using bareboat charter agreements for short-term charters (as short as 4 hours in duration) to carry large numbers of people for events such as wedding receptions, graduation parties, or business meetings. Although these vessels were similar to comparable inspected vessels, under previous statutes these vessels were neither subject to, nor inspected as, passenger vessels. Previous statutes did not limit the number of individuals that could qualify for the owner (charterer) exception to the definition of passenger and also contained an exception for guests carried on vessels being operated only for pleasure. The Act limits the exception for owner (charterer) to one individual and eliminated the guest exception.

Additionally, many charter agreements allowed the owner of the vessel to either be a member of the crew or to provide the crew. The Act clearly delineates between charters that allow the owner to provide or specify the crew and those that do not. With the exception of those vessels subject to special regulation in paragraph 3.c below, vessels chartered with the crew provided or specified by the owner are subject to inspection as either small passenger vessels (under 100 gross tons and carrying more than six passengers) or passenger vessels (100 gross tons or more and carrying more than 12 passengers). It is important to note that the extension provision for charter vessels discussed in paragraph 3.b below is not afforded when the crew is provided or specified by the owner.

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- b. The Act provides for Coast Guard inspection and certification of vessels that are chartered without a crew provided or specified by the owner and carrying more than 12 passengers. These vessels were afforded a grace period until June 21, 1994, before they become subject to the provisions of the Act. Additionally, these vessels are eligible, upon meeting certain conditions, to receive a maximum 30 month extension period to come into compliance with the inspected vessel regulations. To be eligible for this extension, owners were required to make application for inspection before June 21, 1994. Applications received after this date cannot be considered for an extension.
- c. Several existing vessels that are chartered and over 100 gross tons are constructed from materials that preclude them from meeting the structural fire protection requirements of Title 46 Code of Federal Regulations Subchapter H. With the change in the definition of a passenger vessel, these chartered vessels will now fall into the passenger vessel category. As their construction does not comply with the existing regulations, the Act authorizes the Coast Guard to develop special regulations. Special regulations will include structural fire protection, manning, operating and equipment requirements. Detailed guidance is provided in enclosure (1).
- d. Under previous statutes, the U.S. inspection threshold (the minimum number of passengers that determines when a vessel must be inspected by the Coast Guard) for passenger vessels was significantly different than international criteria. The Act brings our domestic statutes regarding passenger vessel inspection more into line with the international standards by adopting the 12 passenger criteria for vessels over 100 gross tons. Vessels of 100 gross tons or more carrying 12 or less passengers, including at least one passenger for hire, or that are chartered with the crew provided or specified by the owner are now uninspected passenger vessels. Interim guidance is provided in enclosure (1) for this new class of uninspected vessels.

NOTE: Vessels of less than 100 gross tons carrying more than six passengers one of which is for hire or are chartered with a crew provided are still subject to inspection. The 12 passenger threshold applies when such vessels are chartered without the crew provided or specified by the owner.

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- e. The Act amends and adds several definitions in Title 46 United States Code (U.S.C.) Section 2101. The Act provides a single consolidated definition of "passenger" for all passenger vessels. It also defines the terms "passenger for hire" and "consideration," and amends the definition of a "passenger vessel," "small passenger vessel," "sailing school vessel," "submersible vessel," "offshore supply vessel" and "uninspected passenger vessel."
 - f. Many existing vessels that are chartered are of foreign build. Under 46 U.S.C. 883 (Jones Act) these vessels are not allowed to engage in coastwise trade. Under 46 U.S.C. 289 et seq., these vessels are generally prohibited from transporting passengers between ports or places in the U.S., either directly or by way of a foreign port. Carriage of passengers for hire on a domestic voyage is considered coastwise trade. However, under existing U.S. Customs determinations, it is not coastwise trade when foreign vessels carry passengers for hire on foreign voyages or in bareboat charter operations where the charterer receives consideration from the passengers (becoming for hire) on domestic voyages. Additional information on foreign vessels is contained in enclosure (1).
 - g. The Act amends the definition of Offshore Supply Vessel to include vessels carrying "individuals in addition to the crew." Thus, crewboats carrying individuals employed in the exploration, exploitation, or production of offshore mineral or energy resources are now within the definition of Offshore Supply Vessel. This allows crewboats that do not carry persons other than oil industry personnel to be certificated as offshore supply vessels rather than small passenger vessels. These vessels will be subject to the safety standards of Title 46 CFR Subchapter T or the final version of Title 46 CFR Subchapter L at the owners option.
 - h. The Act expands the Coast Guard's excursion permit authority to allow the issuance of special permits to vessels that are not certificated, This authority still has limitations and must be implemented by regulation.
4. IMPLEMENTATION. Enclosure (1) contains comprehensive information on how the Act will affect vessel owners, operators, charterers, and builders.
- a. The first part of, the enclosure contains applicability and enforcement guidance, including charts, a matrix that identifies the regulations that apply under a particular set of conditions, and specific guidelines to apply depending upon the type of vessel.

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- b. The second part of the enclosure is a section-by-section analysis of the Act. Included are interpretations of the Act, giving specific operating scenarios. The sections of the Act are reprinted in italic above each description.

Officers-in-Charge, Marine Inspection are encouraged to disseminate the information presented in this NVIC to affected segments of the maritime community.



J. C. CARD
Rear Admiral, U.S. Coast Guard
Chief, Office of Marine Safety,
Security and Environmental Protection

- Encl: (1) Guidance on the Act
(2) Sample Extension Certificate

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ENCLOSURE (1)
TO
NAVIGATION AND INSPECTION
CIRCULAR NO. 7-94

GUIDANCE ON THE
PASSENGER VESSEL SAFETY ACT
OF 1993 (THE ACT)

Prepared By
Merchant Vessel Inspection and
Documentation Division
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Washington, D. C.
September 1994

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APPLICABILITY & ENFORCEMENT

I. REFERENCE CHARTS

A. NOTES FOR USING CHARTS A AND B

Charts "A" and "B" compare how the various vessel types and operations were categorized under the previous statutory language and how they are categorized under the Act. These charts do not cover vessels that are used in other commercial services. A vessel is considered recreational (REC) only if it is not used: to carry passengers for hire; as a charter with crew provided; as a charter vessel with no crew provided carrying more than 12 passengers; in other commercial services.

TO USE CHARTS A and B:

Step 1: Determine the gross tonnage of the vessel. If the gross tonnage is under 100, use chart A. If the gross tonnage is 100 or more, use chart B.

Step 2: In order to determine what category the vessel would fit into the following questions must be addressed:

- a. How many passengers will the vessel be carrying?
- b. Will the vessel be used to carry passengers for hire?
- c. Will the vessel operate under a charter agreement?
- d. Will the crew of the vessel be provided or specified by the owner of the vessel?

NOTES for Charts A and B:

- ¹ Previous policy determinations allowed the owner of a vessel under a bareboat charter to, under certain conditions, furnish the crew of the vessel. Provided the charterer exercises direct control over the selection, payment, and retains the authority to dismiss the crew, the owner may furnish the crew and the charter may be considered one with no crew provided or specified by the owner. See paragraph II.C, Charters, for further guidance.
- ² Under the previous statutes, persons on board a vessel chartered with no crew (bareboat chartered) were not considered passengers. They were either all representatives of the charter-party or guests on board a vessel being operated only for pleasure. Now everyone on board such a vessel is considered a passenger except the individual owner or charterer, the master, or the crew.
- ³ Under the prior statutes, persons on board a privately owned recreational vessel were not considered passengers but rather were guests of the owner on board a vessel being operated only for pleasure.

COMPARISON OF OLD LAW TO THE PASSENGER VESSEL SAFETY ACT

CHART: A

| VESSELS UNDER 100 GROSS TONS | | |
|--|------------------|---------|
| VESSEL | OLD LAW | THE ACT |
| Not more than 6 passengers, <u>1 of whom is for hire</u> whether chartered or not | UPV | UPV |
| More than 6 passengers , <u>1 of whom is for hire</u> whether chartered or not | SPV | SPV |
| Chartered <u>with crew provided</u> , Not more than 6 passengers | UPV ¹ | UPV |
| Chartered <u>with crew provided</u> , More than 6 passengers | SPV ¹ | SPV |
| Chartered with NO crew provided, Not more than 12 passengers | REC ² | REC |
| Chartered with NO crew provided, More than 12 passengers | REC ² | SPV |
| Submersible vessel, at least 1 passenger for hire | UPV | SPV |
| Not chartered, carrying any number of passengers , <u>no passengers for hire</u> | REC ³ | REC |

REC = Recreational Vessel

SPV = Small Passenger Vessel

UPV = Uninspected Passenger Vessel

CHART: B

| VESSELS 100 GROSS TONS OR MORE | | |
|--|------------------|---------|
| VESSEL | OLD LAW | THE ACT |
| Not more than 12 passengers, <u>1 of whom is for hire</u> whether chartered or not | PV | UPV |
| -More than 12 passengers, <u>1 of whom is for hire</u> whether chartered or not | PV | PV |
| Chartered <u>with crew provided</u> , Not more than 12 passengers | PV ¹ | UPV |
| Chartered <u>with crew provided</u> , More than 12 passengers | PV ¹ | PV |
| Chartered with NO crew provided, Not more than 12 passengers | REC ² | REC |
| Chartered with NO crew provided, More than 12 passengers | REC ² | PV |
| Submersible vessel, at least 1 passenger for hire | PV | PV |
| Not chartered, carrying any number of passengers, <u>no passengers for hire</u> | REC ³ | REC |

REC = Recreational Vessel

PV = Passenger Vessel

UPV = Uninspected Passenger Vessel

B. NOTES FOR USING CHART C

Chart "C" is a compliance matrix which identifies whether a vessel is a UPV, PV, SPV, or REC under the Act depending upon four variables. These variables are: (1) Gross tonnage; (2) Number of passengers; (3) Whether the vessel is carrying "passengers for hire"; and (4) The status of the vessel (chartered with crew, chartered without crew, or not chartered).

TO USE CHART C:

Step 1: Determine the gross tonnage of the vessel. If under 100, use the top portion of the matrix. If 100 or over, use the bottom portion of the matrix.

Step 2: Determine the number of passengers the vessel carries. Refer to the definition of a passenger on pages 2 and 3.

Step 3: Determine if the vessel carries "passengers for hire." Refer to the definition of a "passenger for hire" on page 26.

Step 4: Determine the charter status of the vessel. Is there a charter agreement for the vessel?

- a. If the answer is no, look under the "CHARTER" "NO" column in the matrix to determine what requirements would apply to the vessel.
- b. If the answer is yes, then ask; Is the owner providing or specifying the crew for the vessel?
 1. If the answer is yes, look under the "CHARTER" "WICREW" column in the matrix to determine what requirements would apply to the vessel.
 2. If the answer is no, look under the "CHARTER" "W/O CREW" column in the matrix to determine what requirements would apply to the vessel.

CHART: C

| COMPLIANCE MATRIX | | | | | |
|-------------------|-----------------|---------------------|---------|--------|----------|
| GROSS TONNAGE | # of PASSENGERS | PASSENGERS FOR HIRE | CHARTER | | |
| | | | NO | W/CREW | W/O CREW |
| < 100 | ≤ 6 | YES | UPV | UPV | UPV |
| < 100 | > 6 | YES | SPV | SPV | SPV |
| < 100 | 7 - 12 | NO | REC | SPV | REC |
| < 100 | > 12 | NO | REC | SPV | SPV |
| * < 100 | ≥ 1 | YES | SPV | SPV | SPV |
| ≥ 100 | ≤ 12 | YES | UPV | UPV | UPV |
| ≥ 100 | ≤ 12 | NO | REC | UPV | REC |
| ≥ 100 | > 12 | YES | PV | PV | PV |
| ≥ 100 | > 12 | NO | REC | PV | PV |
| * ≥ 100 | ≥ 1 | YES | PV | PV | PV |

UPV = Uninspected Passenger Vessel

REC = Recreational Vessel

SPV = Small Passenger Vessel

PV = Passenger Vessel

* Submersible Vessels only

> Greater than
< Less than

≥ Greater than or equal to
≤ Less than or equal to

II. GENERAL

- A. **Philosophy** - One of the primary goals of the Act was to eliminate the confusion surrounding the use of **bareboat** charter agreements for the carriage of passengers. The previous statutory language defining passenger did not limit a vessel from having an unlimited number of charterers (owners), which created a situation where large numbers of people were being carried by vessels not subject to inspection. The Act's consolidated definition of passenger and provisions for a vessel to only allow a single charterer to be exempted as a passenger, subjects many vessels that are chartered to inspection and certification for the first time. The Act allows these vessels a phase-in period for compliance with the regulations and authorizes the Coast Guard to develop special requirements for certain existing vessels. It is clearly the intent of the Act to have the Coast Guard work cooperatively with the industry in raising the level of safety of these vessels. The initial certification of these vessels should be conducted without placing undue hardships on the vessel owners. Officers-in-Charge, Marine Inspection (OCMI) are encouraged to use a reasonable approach in determining what standards provide an equivalent level of safety that affords the same protection provided the passengers and crew aboard currently "inspected" and "uninspected" vessels. Only in cases where the vessels are in fact found to be hazardous for the intended operations should the operations be terminated.
- B. **Equivalencies and Special Consideration** - Recognizing that the majority of the previously uninspected charter vessels are not designed nor constructed to inspected vessel standards, and the infeasibility of certain items being brought into full compliance with the regulations warrant a reasonable approach in addressing equivalencies and special consideration. Requests for equivalencies or alternative arrangements should be submitted in writing by the vessel owner to the cognizant OCMI. The equivalency request should include the basis or rationale for the equivalency. Equivalencies can include route and operating restrictions, as well as additional equipment requirements to make up for a design deficiency. The OCMI should evaluate each equivalency and may render determinations in most cases. However, to ensure national consistency, equivalency requests involving vessel structure, structural fire protection, stability and subdivision should be forwarded with the OCMI's recommendation to Commandant (G-MVI) for final approval. For vessels under 100 gross tons the OCMI may give special consideration to departures from the specific requirements contained in 46 CFR 177, 180, 181, 182, 183, and 184 when special circumstances or arrangements warrant such departures as per 46 CFR 175.25. To facilitate future inspections the OCMI should document both equivalencies and special considerations by clearly noting them in a vessel's file and entering them as an inspection note in the Marine Safety Information System.
- C. **Charters** - Whether a vessel is chartered is a key element in the application of various sections of the Act. Many owners refer to their vessel(s) as "charter boats" or operations as "charter operations." Although this is common terminology on the waterfront, for the purposes of the Act a charter is an agreement where the charterer has the use of the vessel and may take on legal obligations, to the vessel owner, the crew, passengers carried, and others. If the purported charter operation is not controlled by a written charter agreement, or if consideration is received for the carriage of individuals on board, the vessel should be considered as carrying "passengers for hire."

The Act references two different types of charters, one with the crew provided or specified by the owner or owner's representative and one with no crew provided or specified by the owner or owner's representative. If the charterer pays the crew, has the option of selecting the crew, and retains the authority to dismiss the crew for cause, the charter may be considered to be one with no crew specified or provided by the owner. provided the above conditions are met, the owner of

the vessel may offer suggestions to, and furnish the crew, and the charter may still be considered as one with no crew specified or provided by the owner. The owner of the vessel may require minimum general levels of proficiency for whatever crew is retained based on federal statute (i.e., licenses, merchant mariner documents, etc.) in the interest of ensuring the vessel is manned by a competent crew, and not be considered as specifying or providing the crew. Valid **bareboat** charters meeting the conditions identified below may be considered as charters with no crew provided or specified by the owner.

Although, vessels that are **bareboat** chartered are now subject to inspection for certification if carrying more than twelve passengers, such vessels may still be considered pleasure yachts or recreational vessels for other purposes, i.e., International Convention for the Safety of Life at Sea (**SOLAS**), load line, vessel documentation, and admeasurement. A valid **bareboat** charter is one where the incidents of ownership have been transferred to the charterer. When necessary to determine if a valid **bareboat** charter exists, the OCMI should discuss the vessel's operations with the vessel owner and make a determination if the vessel's charter is a valid **bareboat** charter. The elements listed below are indicative but not conclusive of a valid **bareboat** charter arrangement. Conversely, a valid **bareboat** charter may exist where one or more of the listed elements is not met. In any particular case, each arrangement must be evaluated on its own merits.

1. The charterer must have the option of selecting the crew. Although a master or crew may be furnished by the owner, full possession and control must be vested in the charterer. This does not preclude the charterer from taking advice from the master and crew regarding hazardous conditions such as, inclement weather, navigational obstructions, etc.
2. The master and crew are paid by the charterer.
3. All food, fuel, and stores are provided by the charterer.
4. All port charges and **pilotage** fees, if any, are paid by the charterer.
5. Insurance is obtained by the charterer, at least to the extent of covering liability not included in the owner's insurance. A greater indication of full control in the charterer is shown if all insurance is carried by the charterer (of course, the owner retains every right to protect his or her interest in the vessel).
6. The charterer may discharge, for cause, the master or any crew member without referral to the owner.
7. The vessel is to be surveyed upon its delivery and return.

Any provision that tends to show retention of possession or control of the vessel such as the owner of the vessel being aboard during the charter of the vessel contradicts the claim that a valid **bareboat** charter exists.

- D. **Documentation and Admeasurement** - Although the Act amended the definition of passenger for vessel inspection purposes, it has not been construed to affect vessel documentation or admeasurement requirements. U.S. flag vessels operating on a valid **bareboat** charter, and used solely for recreational purposes, may operate on a Certificate of Documentation endorsed solely for recreational purposes and not require readmeasurement, even if required to be inspected under the Act. Vessels of five net tons or more that carry one passenger for hire, or that are chartered

with a crew provided or specified by the owner must be documented with a coastwise endorsement if operated on a coastwise route, or with a registry endorsement if operated on a foreign route or on a "voyage to nowhere." If these vessels are over 24 meters (79 feet) in length they are required to be admeasured under the formal measuring system. All U.S. and foreign vessels over 24 meters in length and engaged in foreign voyages must have an International Tonnage Certificate after July 18, 1994. Table 1 at the end of this enclosure provides a condensed summary of the vessel documentation requirements. Specific guidance regarding documentation or admeasurement may be sought from Commandant, Vessel Documentation and Tonnage Survey Branch (G-MVI-5), telephone number (202) 267- 1492.

- E. **Load Lines** - The Act does not amend the load line statutes contained in 46 United States Code (U.S.C.) Chapter 51. Passenger vessels operating on a valid **bareboat** charter, and used solely for recreational purposes, are considered recreational vessels for load line purposes and exempt from the load line requirements. All passenger vessels operating with passengers for hire, or with the crew provided or specified by the owner, are subject to the load line regulation& if they meet the length/tonnage requirements and are engaged in the voyages contained in 46 CFR Subchapter E - Load Lines.
- F. **Plan Review** - Part of the inspection process usually involves the submittal of plans, specifications, and technical data for review to ensure that the vessel meets the requirements for route and service intended. It is well recognized that many of the vessels coming under initial certification may not meet existing structural requirements, as well as, equipment and machinery regulations. The Act recognizes that instantaneous full compliance would pose an undue financial burden on vessel owners, and provisions were made to phase the vessels in over a 30 month extension period. Plans and specifications should be submitted to the cognizant OCMI for review and approval. OCMI's are encouraged to conduct local review of the plans whenever practicable or possible. Where alternatives/equivalencies arise, the OCMI should follow the guidance contained in paragraph II.B above. If the OCMI deems certain plans, specifications or technical material warrant additional review, they may be forwarded to the Marine Safety Center.
- G. **Fire Fighting** - In general, each passenger carrying vessel should be equipped with fire fighting equipment including pumps (hydrants, hoses, and ancillaries), detection systems, extinguishers and extinguishing systems, etc. commensurate with the applicable governing regulations for the vessel. Installation of fire detection and protection equipment in excess of that required is permitted provided that the excess equipment does not endanger the vessel or individuals on board in any way. The excess equipment must, at a minimum, be listed and labeled by an independent, nationally recognized testing laboratory and be in accordance with an appropriate industry standard for design, installation, testing, and maintenance. Existing equipment may remain and/ or substitute for that required by regulation, at the discretion of the cognizant OCMI, so long as it is serviceable and meets the intent of the applicable regulations regarding overall protection ability. Any replacement, alteration, modification, or new installation of fire fighting/protection equipment must be made in strict accordance with applicable regulations. Where necessary, interim guidance relevant to specific vessel type is contained in section III.
- H. **Lifesaving Equipment** - In general, each passenger carrying vessel shall be equipped with lifesaving equipment including personal flotation devices, ring life buoys, exposure suits, emergency position indicating radio beacons, visual distress signals, retroreflective material, etc. commensurate with the applicable governing regulations for that vessel. Except for a liferaft, life float, or buoyant apparatus installed before June 21, 1994, each liferaft, life float, or buoyant apparatus used to meet the regulations must be Coast Guard approved. Subject to the acceptance of the cognizant OCMI, unapproved "primary lifesaving" equipment on board the vessel before

June 21, 1994, may be used to meet the requirements as long as it is in good and serviceable condition. In addition, unapproved liferafts must also meet the conditions as specified under the guidelines of NVIC 1-92. Where necessary interim guidance relevant to specific vessel type is contained in section III.

- I. **International Convention for the Safety of Life at Sea (SOLAS)** - SOLAS is an international convention to ensure commercial vessels meet a minimum international standard of safety. SOLAS applies to all passenger vessels carrying more than 12 passengers on international voyages, where the crew is provided or specified by the owner or engaged in passenger for hire operations. There are some fundamental differences between the provisions in the Act and SOLAS. Under SOLAS, pleasure yachts not engaged in trade are exempt. Although a vessel may be subject to inspection under the Act, vessels operating under a valid bareboat charter agreement for recreational purposes are considered yachts and not subject to the provisions of SOLAS regardless of the number of individuals carried.

- J. **Manning** - The Act grants the Coast Guard the authority to establish different manning and operating requirements for certain vessels going through initial certification and the new category of uninspected passenger vessel. Recognizing that many of these vessels have not taken advantage of tonnage reduction schemes and they physically resemble and operate similarly to small passenger vessels warrant departure from the existing manning statutes. The following interim guidance is offered regarding the manning of these vessels:
 1. Title 46 U.S.C. 8104(d) generally requires a three watch system for all vessels of at least 100 gross tons (except a vessel operating only on rivers, harbors, or lakes). All UPVs and passenger vessels of less than 300 gross tons (500 gross tons for former public vessels) carrying 150 or less passengers that have applied for either an extension or exemption in accordance with the Act are provided relief from the three watch system. These vessels may be manned similarly to small passenger vessels.
 2. Title 46 U.S.C. 8301(a)(5) requires a licensed engineer on passenger vessels of at least 300 gross tons. Title 46 CFR 15.820 requires that a person with a license to operate as chief engineer be on board vessels of at least 200 gross tons. OCMIs are encouraged to evaluate the need for licensed engineers on vessels over 200 gross tons. However, relief from these requirements based on the machinery arrangement and machinery control may be afforded to UPVs and passenger vessels identified in paragraph II.J. 1 above.
 3. Title 46 U.S.C. 8701(a) requires merchant mariner documents for anyone engaged or employed on board a merchant vessel of over 100 gross tons. This threshold has been raised to 200 gross tons for the UPVs and passenger vessels identified in paragraph II.J. 1 above.

Additional guidance regarding manning is contained in section III, GUIDELINES FOR SPECIFIC TYPES OF VESSELS. This guidance is interim in nature, additional requirements may be proposed in due course through rulemaking.

III. GUIDELINES FOR SPECIFIC TYPES OF VESSELS

- A. **Existing T-Boats** - The Act does not significantly affect the status of existing inspected small passenger vessels. However, the new definitions of passenger for hire and consideration may affect exactly who is considered a passenger on the vessel dependent upon the individual vessel operations.
- B. **Uninspected Passenger Vessels Less Than 100 Gross Tons (6 PACKS)** - These are vessels of less than 100 gross tons: carrying not more than 6 passengers, including one passenger for hire; or chartered with the crew provided or specified by the owner and carrying not more than 6 passengers. The Act does not affect the status of these existing uninspected passenger vessels. Although there is no significant change to current uninspected passenger vessels, there may be a change to exactly who is considered a passenger on the vessel dependent upon the individual vessel operations. These vessels are not afforded the exemption for an individual charterer under the definition of passenger unless, as stated in paragraph II.C, the owner transfers operational control of the vessel via a written agreement to the charterer. In other words, 6-packs do not become 7-packs.
- C. **Uninspected Passenger Vessels of at Least 100 Gross Tons (12 PACKS)** - This is a new category of uninspected vessels of at least 100 gross tons: carrying not more than 12 passengers, including at least one passenger for hire; or chartered with the crew provided or specified by the owner and carrying not more than 12 passengers. Until applicable regulations are promulgated, current uninspected passenger vessel regulations (46 CFR Subchapter C) apply to these vessels as well as the manning provisions as specified below.

Uninspected passenger vessels of at least 100 gross tons carrying not more than 12 passengers shall be similarly manned to Subchapter T vessels. Uninspected Passenger Vessel licensing shall apply. This means that all individuals presently licensed as OUPV may also operate on vessels:

1. Of between 100 and 199 gross tons on ocean or coastwise routes while carrying 12 passengers or less; and
2. Of at least 100 gross tons on other than ocean or coastwise routes while carrying 12 passengers or less.

The complement of officers and crew on uninspected passenger vessels of at least 200 gross tons and operated on ocean or coastwise routes shall be similar to Subchapter T vessels. However, the licensed officers must have licenses for the appropriate tonnage. Additionally, the crew members on vessels (except vessels operated on only rivers and lakes) of at least 200 gross tons are required to hold merchant mariner documents and 50% of the unlicensed deck crew must be rated as at least able seaman.

Once regulations have been developed, individuals desiring to be licensed as OUPV for vessels of at least 100 gross tons carrying not more than 12 passengers may be required to show service on vessels of increased size and may be required to pass additional examinations.

- D. **Vessels of at Least 100 Gross Tons but Less Than 300 Gross Tons and Former Public Vessels of at Least 100 Gross Tons but Less Than 500 Gross Tons** - An exemption was provided in the law for certain vessels that fall within the tonnage and status limitations above. This exemption is limited to existing vessels that have been in charter operations sometime in the year prior to enactment of the law (December 20, 1992 - December 20, 1993). The majority of

these vessels are constructed of materials, and are of such arrangement, that prohibit them from complying with the passenger vessel regulations. Although the actual size and operation of these vessels are similar to small passenger vessels and in most cases the inspection and manning regulations for small passenger vessels are more appropriate, these vessels have not taken advantage of tonnage reductions to bring their gross tonnages below 100. In order to be exempted from the provisions of the Act, vessel owners must have made written application for this exemption before June 21, 1994, with the local Coast Guard Marine Safety Office. Consequently, there is a fixed number of vessels receiving this exemption. After June 21, 1994, all other vessels of at least 100 gross tons that are chartered and carrying more than 12 passengers will require inspection as passenger vessels. Vessels receiving this exemption will be limited to domestic voyages and a maximum passenger capacity of 150. Vessels receiving this exemption may also be eligible for the extension under Section 5 13 of the Act if they are chartered with no crew provided.

Satisfactory documentation of a charter between December 20, 1992, and December 20, 1993, is required for this exemption. The status of whether the vessel was chartered is dependent on the vessel and not the owner. It does not matter if the vessel was owned by another party when it was chartered in the last year. Satisfactory documentation of a charter may include but is not limited to:

- a legal charter agreement,
- written statements of oral agreements from the charterer or master of the vessel,
- vessel logs of charter operations, or
- business receipts.

For the reasons addressed above, the exemption calls for the establishment of different structural fire protection, manning, operating, and equipment requirements. These different requirements will be established by regulation. Until the development of regulations, these vessels shall be inspected to the standards in Title 46 CFR Subchapter T except as noted in the interim guidelines. Vessel owners should be afforded six months from June 2 1, 1994, for total compliance with the interim guidelines, including compliance with Title 46 CFR Subchapter T and H. outstanding deficiencies should be documented using CG form 835. The interim guidelines are identified below:

1. **Hazardous Conditions - Especially hazardous conditions** that pose an immediate danger to the passengers or crew shall be corrected immediately. These include any hazardous conditions involving the vessel structure, electrical system, and machinery installation, such as grossly inadequate, missing, unsound, or severely deteriorated frames or major structural members; wiring systems without proper grounding or **overcurrent** protection; and significant fuel or exhaust system leaks. Items that are of less significance can be placed on a work list with a time line for completion mutually agreed upon by the vessel owner and the OCMI. particular attention should be paid to the following systems:
vessel ¹s structure, electrical system, and machinery installations. Corrections of a hazardous condition shall be made using good marine practice.
2. **Route** - Vessels that do not meet the intact stability requirements of 46 CFR Subchapter S shall be limited to voyages within 20 nautical miles from a harbor of safe refuge,

provided they have a history of safe operation on these waters. Vessels may be limited to more restrictive routes based on service history.

3. **Manning Requirements** - Vessels of at least 100 gross tons but less than 300 gross tons and former public vessels of at least 100 gross tons and less than 500 gross tons carrying not more than 150 passengers shall be similarly manned to a Subchapter T vessel. Vessels carrying over 50 passengers shall have at least one additional deckhand. All deckhands on vessels carrying more than 50 passengers shall be trained to the level recommended in NVIC 1-9 1, and at least one of the deckhands shall be trained to the level of senior deckhand. All licensed officers shall have licenses for the appropriate tonnage. If the machinery arrangement and means of machinery control so warrant, the OCMI may consider a licensed engineer for vessels of at least 200 gross tons. The crew members on vessels (except vessels operated on only rivers and lakes) of at least 200 gross tons are required to hold merchant mariner documents and 50% of the unlicensed deck crew must be rated as at least able seaman.
4. **Operating Requirements** - The operating requirements in 46 CFR Subpart 185 apply. Vessels carrying overnight passengers will be limited to a maximum of 49 overnight passengers.
5. **Equipment Requirements** -
 - a. **Lifesaving** - The lifesaving requirements in 46 CFR Subchapter T, Part 180 for T-L vessel apply, except inflatable liferafts are required for primary lifesaving. A rescue boat or suitable rescue arrangements must be provided to the satisfaction of the OCMI. See section II regarding acceptance of unapproved primary lifesaving equipment.
 - b. **Fire Fighting** - The vessel shall be outfitted with portable fire extinguishers as deemed necessary by the cognizant OCMI (at a minimum, compliance with 46 CFR Subpart 76.50 is required).
 - c. **Means of Escape** - In addition to Title 46 CFR Subpart 177.15, Means of Escape, Title 46 CFR Subparts 78.47-40 and 78.47-43 apply.
 - d. **Engineering** - An examination of each vessel's engineering equipment and systems should be made to determine its general condition. Electrical installations shall be as such to prevent shock or fire hazards. The installation should be examined for inadequate connections, loose or frayed wiring, improper over current protection, proper grounding, etc. Main engine and auxiliaries should be examined to determine if any immediate hazards exist. Excessive fuel or oil leaks, exhaust leakage, or other especially hazardous conditions should be corrected. The pressure vessel requirements in 46 CFR Subpart 176.25-30 apply. ASME standard boiler and pressure vessels may be accepted as equivalents. The steering apparatus requirements in 46 CFR Subpart 182.30 apply. The miscellaneous requirements in 46 CFR Subpart 184 apply.

The OCMI shall conduct an examination and issue a Certificate of Inspection (COI) provided the conditions for an exemption have been met. The COI's condition of operation shall be endorsed with the following statement "this vessel is operating under an exemption afforded in The Passenger Vessel Safety Act of 1993 and as such is limited to domestic voyages and a maximum

of passengers capacity passengers and may be subject to additional regulations and restrictions as provided for in Sections 5 11 and 5 12 of the Act.”

NOTE: Passenger capacity is not to exceed 150.

Provided these vessels are chartered with no crew provided or specified by the owner, they may receive an extension as outlined below. Vessels should not be permitted to operate with passengers if the vessel has any especially hazardous conditions. OCMI's may extend these dates but may also restrict operations if they feel it is necessary.

This exemption from the regulations for certain passenger vessels will be valid for the service life of the vessel or until regulations are developed, provided the vessel remains certified by the Coast Guard for passenger carrying service. If a vessel owner chooses to surrender a COI and then decides to recertify the vessel, the exemption will no longer be valid. In these cases, the vessel must comply with the regulations for passenger vessels in order to become certified to carry passengers again.

E. Vessels Chartered with No Crew Provided or Specified by the Owner and Carrying More Than 12 Passengers -

1. General - Vessels (chartered with no crew provided or specified by the owner and carrying more than 12 passengers) now come under inspection. The Act provides for an extension period to allow these vessels time to come into compliance with the regulations for passenger carrying vessels. This extension may apply to all vessels regardless of tonnage. In order to qualify for this extension, these vessels must meet several conditions identified in the Act. The vessel owner must have made application for inspection to the nearest Coast Guard Marine Safety Office, before June 21, 1994, to be eligible for an extension.

Once application is made the owner should schedule an initial examination with the local Coast Guard, Marine Safety Office. The purpose of this examination will be to determine whether any hazardous conditions exist on board the vessel and to check for compliance with the conditions for an extension. If a hazardous condition exists, it must be remedied prior to the carriage of passengers.

An extension certificate will be issued to vessels meeting the requirements for an extension. The extension certificate (or COI when issued) should denote the route and service, operating conditions, total persons allowed, maximum passengers, required manning, required equipment and trade status (if necessary) of the vessel. Including the trade status of the vessel will reduce the possibility of passenger vessels with recreational endorsements from inadvertently engaging in commercial activities as addressed in paragraphs II.D, E, and I above. Enclosure (2) is a sample extension certificate.

If no hazardous conditions exist, but the conditions for an extension are not completed, a work list should be issued detailing what needs to be completed to receive an extension certificate. Vessels may not operate in an uninspected vessel service after June 21, 1994, unless they have either an extension certificate or a COI.

Extensions are valid for a maximum of 30 months from June 21, 1994, (up to and including December 20, 1996) or upon certification of the vessel, whichever occurs first. It is anticipated that follow-up inspections will be conducted to ensure the work plan is being followed. If the OCMI determines that the owner is not making a good faith effort to complete the work plan, the

OCMI may restrict the vessel from operating while carrying more than 12 passengers until the owner demonstrates that such efforts are being made. Additionally, annual reexaminations should be conducted during the extension period to ensure the vessel continues to meet the conditions and requirements of the extension certificate.

All work, materials used, and modifications made to a vessel operating under an extension after June 21, 1994, shall comply with the regulations for passenger carrying vessels. This also applies to vessels under construction that have applied for an extension.

2. Vessels less than 100 Gross Tons that are Chartered with No Crew Provided or Specified by the Owner and Carrying more than 12 Passengers -

Conditions that must be met for an Extension - Compliance with the below listed items or full compliance with 46 CFR Subchapter T is required to operate a vessel less than 100 gross tons, chartered with no crew provided or specified by the owner and carrying more than 12 passengers after June 21, 1994. Compliance with item a. is required immediately following the initial examination and before passengers are carried.

- a. **Hazardous Conditions - Especially hazardous conditions** that pose an immediate danger to the passengers or crew as described in paragraph III.D. 1 above shall be corrected immediately. In addition, correction of a hazardous condition need not meet the small passenger vessel regulations but in any case shall be made using good marine practice
- b. **Lifesaving** - The vessel must meet the lifesaving requirements in 46 CFR Subchapter T.
- c. **Fire Fighting** - In general, the vessel should meet the fire protection requirements in 46 CFR Subchapter T. However, additional portable fire extinguishers may be used as an acceptable interim measure in lieu of the required fire main systems or fixed extinguishing systems. If these interim measures are utilized, **OCMIs** should ensure the work plan prioritizes the installation of these systems.
- d. **Stability** - Verify the stability of the vessel is satisfactory for the size, route, and number of passengers by one of the following means.
 - (1) Vessels over 19.8 meters (65 feet) in length or vessels under 19.8 meters in length carrying more than 150 passengers - demonstrate compliance with 46 CFR Subpart 17.1. Vessels under 19.8 meters in length carrying 150 or less passengers - demonstrate compliance with 46 CFR Subpart 17.1.030.
 - (2) Demonstrate a substantial history of safe operation using either vessel logs or charter agreements that detail the route and number of passengers carried. In general five (5) years of charter type operations under a similar route and similar passenger capacity will be considered a substantial history. Final acceptance is subject to the **OCMI's** discretion.

NOTE: These vessels are required to meet the subdivision requirements for a Subchapter T vessel. These requirements may be addressed in the work plan during the extension period.

- e. Manning - These vessels shall be similarly manned to Subchapter T vessels.
- f. Work Plan - A detailed work plan addressing all items required to come into compliance with the small passenger vessel regulations must be submitted to and approved by the cognizant OCMI.

The work plan should include at a minimum a detailed time line of when or how the following areas will be brought into compliance with the regulations.

PLANS
SUBDIVISION
STABILITY
HULL STRUCTURE
RAILS
SEATING
FIRE PROTECTION EQUIPMENT
STRUCTURAL FIRE PROTECTION (if required)
BILGE SYSTEM
MACHINERY (main and auxiliary)
FUEL SYSTEM
PRESSURE VESSELS
ELECTRICAL SYSTEM
STEERING
MOORING
COMMUNICATIONS
NAVIGATION
ACCOMMODATIONS
HEATING AND COOKING EQUIPMENT
POLLUTION PREVENTION (including the Marine Sanitation Device)
DRYDOCKING (before June 21, 1995)
INTERIM MEASURES CORRECTED

NOTE: COMPLIANCE WITH THE CONDITIONS TO OBTAIN AN EXTENSION DOES NOT ALLOW A VESSEL TO CARRY PASSENGERS FOR HIRE. PASSENGERS FOR HIRE MAY ONLY BE CARRIED AFTER MEETING THE REQUIREMENTS FOR SMALL PASSENGER VESSELS AND OBTAINING A CERTIFICATE OF INSPECTION.

3. **Vessels of at Least 100 Gross Tons that are Chartered with No Crew Provided or Specified by the Owner and Carrying more than 12 Passengers** - With the exception of those vessels identified earlier that are afforded an exemption, vessels must meet the structural fire protection standards of 46 CFR Subchapter H by the end of the extension period or prior to receiving a COI. This requirement may exclude vessels constructed or being constructed from wood or fiberglass from being certified as passenger vessels. In order to be considered eligible for certification, proposals must be submitted that demonstrate equivalency with the fire protective requirements. These proposals should be forwarded with the OCMI's recommendations to Commandant (G-MVI-1) for

Vessels that are already inspected and certificated as miscellaneous vessels because they are seagoing motor vessels over 300 gross tons should have their COI endorsed reflecting the vessel is operating under an extension as allowed by the Passenger Vessel Safety Act of 1993.

Conditions that must be met for an Extension -

Compliance with the following items or full compliance with 46 CFR Subchapter H is required to operate a vessel of at least 100 gross tons that is chartered with no crew provided or specified by the owner and carrying more than 12 passengers after June 2 1, 1994. Compliance with item a. is required immediately following the initial examination and before passengers are carried.

- a. **Hazardous Conditions** - Any hazardous conditions that pose an immediate danger to the passengers or crew shall be corrected immediately as described in paragraph III.D. 1 above.
- b. **Lifesaving** - The vessel must meet the lifesaving requirements in 46 CFR Subchapter H. Inflatable liferafts may be substituted for required lifeboats with the OCMI's approval. See section II regarding acceptance of unapproved primary lifesaving equipment.
- c. **Fire Fighting** - In general, the vessel should meet the fire protection requirements in 46 CFR Subchapter H. However, additional portable fire extinguishers may be used as an acceptable interim measure in lieu of the required fire main systems or fixed extinguishing and detection systems. If interim measures are utilized, OCMI's should ensure the work plan prioritizes the installation of these systems.
- d. **Stability** - Verify the stability of the vessel is satisfactory for the size, route, and number of passengers by one of the following means.
 - (1) Demonstrate compliance with the intact stability requirements in 46 CFR Part 17 1, Subpart C. The subdivision requirement in this chapter may be addressed in the work plan during the extension period.
 - (2) Demonstrate a substantial safe operating history as described in paragraph III.E.2.d.(2) above.
- e. **Manning** - Vessels of less than 300 gross tons and carrying 150 or fewer passengers may be similarly manned to Subchapter T vessels. Vessels carrying over 50 passengers shall have at least one additional deckhand. All deckhands on vessels carrying more than 50 passengers shall be trained to the level recommended in NVIC 1-91, and at least one of the deckhands shall be trained to the level of senior deckhand. The vessel's officers must hold licenses for the appropriate tonnage. Vessels carrying more than 150 passengers or of 300 gross tons or more, shall be similarly manned to inspected Subchapter H passenger vessels, which includes a 3 watch system.

If the machinery arrangement and means of machinery control so warrant, the OCMI may consider a licensed engineer for vessels of at least 200 gross tons.

The crew members on vessels (except vessels operated on only rivers and lakes) of at least 200 gross tons are required to hold merchant mariner documents and 50% of the unlicensed deck crew must be rated as at least able seaman.

- f. **Work Plan** - A detailed work plan addressing all items required to come into compliance with the passenger vessel regulations must be submitted following the provisions of paragraph III.E.2.f above.

F. **Foreign Vessels** - The Act applies to certain foreign flag vessels embarking passengers from U.S. ports. Foreign flag vessels that are chartered carrying more than 12 passengers must comply with one of the following options.

1. **Passenger Ship Safety Certificate** - Vessels must have a valid Passenger Ship Safety Certificate (PSSC) and have completed a Coast Guard Control Verification Examination in accordance with NVIC 1-93; or
2. **U.S. Law** - Foreign flag vessels not having a PSSC must comply with the provisions of the Act. Foreign flag **bareboat** chartered vessels carrying more than 12 passengers are subject to inspection for certification or examination for receiving an extension. Foreign flag vessels are not allowed to engage in coastwise trade. In general, foreign flag vessels applying for inspection under the Act will be treated similarly to a reflagging of a U.S. vessel. NVIC 10-8 1, CH-1 should be used as guidance.

Foreign flag vessels of at least 100 gross tons but less than 300 gross tons may also apply (before June 21, 1994) for the exemption offered for U.S. vessels in this class. As this exemption limits vessels to domestic routes only, foreign flag vessels under this exemption and subsequent regulations will not be able to engage in coastwise trade or carry passengers for hire, except on voyages to nowhere.

Foreign vessels that are chartered with no crew provided by the owner and carrying 12 or less passengers will still be considered recreational vessels and not require any change to their present operations.

G. **Submersible Vessels** - Submersible vessels carrying at least one passenger for hire must comply with the laws for passenger carrying vessels. Vessels less than 100 gross tons are subject to the applicable section of Title 46 CFR Subchapter T - Small Passenger Vessels. As these regulations were primarily written for surface craft, the Coast Guard developed policy in the form of NVIC 5-93: Guidance for the Certification of Passenger Carrying Submersibles. To date all passenger carrying submersibles carrying more than 6 passengers and operating in U.S. waters are designed and built to these guidelines. This guidance is extended to all submersibles carrying more than one passenger for hire. Submersible vessels that are operating under a charter agreement and not carrying passengers for hire shall be treated the same as other vessels operating under such agreement.

H. **Offshore Supply Vessels** - Crewboats can now be classed as offshore supply vessels. If certificated as an OSV, these vessels may not carry passengers. However, they may carry those individuals excepted from the definition of a passenger on an OSV including individuals employed in a phase of exploration, exploitation, or production of offshore mineral or energy resources served by the vessel. This definition is reprinted in the second part of this enclosure (Section 502 of the Act).

- I. **Sailing School Vessels** - The threshold of instructors and students that may be carried has been raised by one from at least 6 individuals to more than 6 individuals to align the threshold for these rules with the small passenger vessel threshold.

SECTION BY SECTION DESCRIPTION

The changes and effects of the law are discussed in this section. The sections of the Act are reprinted in italics with a description immediately following each section in normal print. Only those sections that require explanation will be followed with a description.

TITLE V - PASSENGER VESSEL SAFETY

SEC. 501. SHORT TITLE.

This title may be cited as the "Passenger vessel Safety Act of 1993."

SEC. 502. PASSENGER.

Section **2101(21)** of title 46, United States Code, is amended to read as follows:

'(21) passenger' --

- "(A) means an individual carried on the vessel except
- "(i) 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;
 - "(ii) the master; or
 - "(iii) 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.
- "(B) on an offshore supply vessel, means an individual carried on the vessel except
- "(i) an individual included in clause (i), (ii), or (iii) **of** subparagraph (A) **of** this paragraph;
 - "(ii) an employee **of** the owner, or **of** a subcontractor to the owner, engaged in the business **of** the owner;
 - "(iii) an employee **of** the charterer, or **of** a subcontractor to the charterer, engaged in the business **of** the charterer; or
 - "(iv) an individual employed in a phase **of** exploration, exploitation, or production **of** offshore mineral or energy resources served by the vessel;
- "(C) on a fishing vessel, **fish** processing vessel, **or fish** tender vessel, means an individual carried on the vessel except -
- "(i) an individual included in clause (i), (ii), or (iii) **of** subparagraph (A) **of** this paragraph;
 - "(ii) a managing operator;
 - "(iii) an employee **of** the owner, or **of** a subcontractor to the owner, engaged in the business **of** the owner;
 - "(iv) an employee **of** the charterer, or **of** a subcontractor to the charterer, engaged in the business **of** the charterer; or
 - '(v) an observer or sea sampler on board the vessel pursuant to a requirement **of** State or Federal law; or
- "(D) on a sailing school vessel, means an individual carried on the vessel except
- "(i) an individual included in clause (i), (ii), or (iii) **of** subparagraph (A) **of** this paragraph;
 - "(ii) an employee **of** the owner **of** the vessel engaged in the business **of** the owner, except when the vessel is operating under a demise charter;
 - "(iii) an employee **of** the demise charterer **of** the vessel engaged in the business **of** the demise charterer; or
 - "(iv) a sailing school instructor or sailing school student."

DESCRIPTION - Section 502 amends the definition of a passenger. It creates a general definition of a passenger and then cites some special criteria according to vessel type. It also eliminates the former exemption for guests on board a vessel operated only for pleasure.

The new general definition of “passenger” includes a statutory exemption that specifically excludes an **individual** representative of the vessel’s owner, or, in the case of a chartered vessel, an **individual** charterer or representative of the charterer. In either case, only one individual on board may exercise this statutory exemption; the remaining members of the ownership or chartering group are considered “passengers,” when on board, thereby subjecting the vessel to regulation depending upon size and the number of passengers carried.

The above statutory exemption was intended to limit the number of individuals that are exempt from being considered a passenger on board vessels. This amendment does not alter the existing threshold for Uninspected Passenger Vessels less than 100 gross tons that carry not more than 6 passengers. These vessels although often referred to as charter vessels, are not entitled to this “charterer” exemption unless the actual charter arrangement or contractual engagement is such that the charterer takes over control of the vessel.

SEC. 503. PASSENGER VESSEL.

Section 2101(22) of title 46, United States Code, is amended to read as follows:

*“(22) passenger vessel’ means 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; or

*“(C) that is a submersible vessel carrying at least one passenger **for hire**.*

DESCRIPTION - Section 503 amends the definition of a passenger vessel from “a vessel of at least 100 gross tons carrying **at least one passenger for hire**” to a definition that is, at least in one respect, more in line with the International Safety of Life at Sea (SOLAS) convention which defines a passenger ship as “... a ship which carries more than twelve passengers.”

It also brings under inspection large charter vessels, of at least 100 gross tons, and carrying more than 12 passengers.

Submersible vessels of at least 100 gross tons or more, carrying at least one passenger for hire, are also defined as passenger vessels.

SEC. 504. SMALL PASSENGER VESSEL.

Section 2101(35) of title 46, United States Code, is amended to read as follows:

*“(35) ‘small passenger vessel’ means a vessel **of less than 100 gross tons** -*

*“(A) carrying more than **6 passengers** **1** including at least one passenger **for hire**;*

“(B) that is chartered with the crew provided or specified by the owner or the owner’s representative and carrying more than 6 passengers;

“(C) that is chartered with no crew provided or specified by the owner or the owner’s representative and carrying more than 12 passengers; or

*“(D) that is a submersible vessel carrying at least one passenger **for hire**. ”.*

DESCRIPTION - Section 504 of the Act does not change the passenger threshold from 6 to 12 passengers. Vessels of less than 100 gross tons which carry more than 6 passengers, including at least one passenger for hire, or that are chartered with the crew provided or specified by the owner and carry more than 6 passengers are still regulated as small passenger vessels.

There are, however, two major changes to the definition of “small passenger vessel.” First, the definition requires that at least one passenger be a passenger **for hire** in a non-charter situation. The term “passenger for hire” is now defined in 46 U.S.C. 2101(21a). Secondly, chartered vessels are included in the definition. Two types of charter arrangements subject a vessel to inspection as a small passenger vessel:

1. Vessels of less than 100 gross tons that are **chartered with the crew provided or specified by the owner or the owner’s representative and are carrying more than 6 passengers**, are subject to inspection as small passenger vessels.
2. Vessels of less than 100 gross tons that are **chartered with no crew provided or specified by the owner or the owner’s representative and are carrying more than 12 passengers**, are also subject to inspection as small passenger vessels.

SEC. 505. UNINSPECTED PASSENGER VESSEL.

Section 2101(42) of title 46, United States Code, is amended to read as follows:

“(42) ‘uninspected passenger vessel’ means an uninspected vessel -

“(A) of a least 100 gross tons

*“(i) carrying not more than 12 passengers, including at least one passenger **for** hire; or*

“(ii) that is chartered with the crew provided or specified by the owner or the owner’s representative and carrying not more than 12 passengers; and

“(B) of less than 100 gross tons

*“(i) carrying not more than 6 passengers, including at least one passenger **for** hire; or*

“(ii) that is chartered with the crew provided or specified by the owner or the owner’s representative and carrying not more than 6 passengers.”.

DESCRIPTION - Section 505 broadens the definition of an uninspected passenger vessel (UPV) to include vessels that are over 100 gross tons carrying up to 12 passengers, including one passenger for hire. These vessels will not be subject to inspection, but will be required to be operated by Coast Guard licensed individuals, and will eventually have to meet safety standards consistent with their service. Interim standards have been developed, and are contained in the Applicability and Enforcement part of this enclosure.

SEC. 506. PASSENGER FOR HIRE.

Section 2101 of title 46, United States Code, is amended by inserting between paragraphs (21) and (22) a new paragraph (21a) to read as follows:

"(21a) passenger for hire' means 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."

DESCRIPTION - The determination of what constitutes the carriage of a "passenger for hire" must be made on a case by case basis. This determination is dependent upon the actual operation of a vessel and the flow of consideration as determined by the facts of each case. In general, there needs to be some form of tangible consideration or promise of performance being passed for a "passenger for hire" situation to exist.

SEC. 507. CONSIDERATION.

Section 2101 of title 46, United States Code, is amended by inserting between paragraphs (5) and (6) a new paragraph (5a) to read as follows:

"(5a) 'consideration' means an economic benefit, inducement, right, or profit including pecuniary payment accruing to an individual, person, or entity, but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies."

DESCRIPTION - Section 507 amends 46 U.S.C. 2101 by adding a definition of the term "consideration." Although this term was used in the prior definition of a "passenger," it was not previously defined by statute. Generally, some tangible amount of worth exchanged for carriage on a vessel such as payment, exchange of goods or a promise of performance is required. "Consideration" does not include a voluntary sharing of the actual expenses of a voyage. Additionally, employees or business clients that have not contributed for their carriage, and are carried for morale or entertainment purposes is not included as exchange of consideration.

SEC. 508. OFFSHORE SUPPLY VESSEL.

Section 2101(19) of title 46, United States Code, is amended by inserting "individuals in addition to the crew," immediately after "supplies," and by striking everything after "resources" to the period at the end.

DESCRIPTION - This section amends the definition of an "offshore supply vessel" (OSV) as "a motor vessel of more than 15 gross tons but less than 500 gross tons that regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources." This amendment now brings crew boats under the definition of an OSV, thus allowing them to carry individuals employed in the offshore mineral and energy industry and not be subject to inspection as a small passenger vessel. Crew boats engaged in the carriage of such individuals may now be inspected as OSVs rather than small passenger vessels.

SEC. 509. SAILING SCHOOL VESSEL.

Section 2101(30) of title 46, United States Code, is amended in subparagraph (B) by striking 'at least 6' and substituting "more than 6".

DESCRIPTION - This section amends the definition of a sailing school vessel to include a vessel carrying more than 6 individuals who are sailing school instructors or sailing school students, rather than at least 6 individuals. This technical change aligns the instructor/student threshold for these vessels with the passenger threshold of small passenger vessels.

SEC. 510. SUBMERSIBLE VESSEL.

Section 2101 of title 46, United States Code, is amended by inserting between paragraphs (37) and (38) a new paragraph (37a) to read as follows:

"(37a) 'submersible vessel' means a vessel that is capable of operating below the surface of the water. ".

SEC. 511. GENERAL PROVISION.

(a) Section 2113 of title 46, United States Code, is amended to read as follows:

"§2 113. Authority to exempt certain vessel

"If the Secretary decides that the application of a provision of part B, C, F, or G of this subtitle is not necessary in performing the mission of the vessel engaged in excursions or an oceanographic research vessel, or not necessary for the safe operation of certain vessels carrying passengers, the Secretary by regulation may

"(1) for a vessel, issue a special permit specifying the conditions of operation and equipment;

"(2) exempt an oceanographic research vessel from that provision under conditions the Secretary may specify;

"(3) establish different operating and equipment requirements for vessels defined in section 2101(42)(A) of this title;

"(4) establish **different** structural fire protection, manning, operating, and equipment requirements for vessels of at least 100 gross tons but less than 300 gross tons carrying not more than 150 passengers on domestic voyages if the owner of the vessel-

"(A) makes application for inspection to the Coast Guard within 6 months of the date of enactment of the Passenger Vessel Safety Act of 1993; and

"(B) provides satisfactory documentation that the vessel was chartered at least once within the previous 12 months prior to the date of enactment of that Act; and

"(5) establish **different** structural fire protection, manning, operating, and equipment requirements for former public vessels of the United States of at least 100 gross tons but less than 500 gross tons, carrying not more than **150 passengers** on domestic voyages, **if** the owner of the vessel -

(A) makes application for inspection to the Coast Guard within 6 months of the date of enactment of the Passenger Vessel Safety Act of 1993; and

"(B) provides satisfactory documentation that the vessel was chartered at least once within the previous 12 months prior to the date of enactment of that Act. ".

(b) Section 4105 of title 46, United States Code, is amended

(1) by inserting "(a)" before the text; and

(2) by adding a new subsection (b) to read as follows:

"(b) Within twenty-four months of the date of enactment of this subsection, the Secretary shall, by regulation, require certain additional equipment which may include **liferafts** or other lifesaving equipment, construction standards, or **specify** additional operating standards for those uninspected passenger vessels defined in section 2101(42)(A) of this title.

DESCRIPTION - Section 5 11 addresses exemptions for certain vessels, gives the Coast Guard flexibility in regulating the new category of "uninspected passenger vessels," and provides flexibility in

regulating certain large passenger vessels. The authority of the Coast Guard to issue excursion permits has also been expanded.

1. **SPECIAL PERMITS:** Authority is given to the Coast Guard to issue special permits to vessels, thus broadening authority from the now standard excursion permit for certified vessels to include special permits for vessels that are not certificated. Since authority is only given by regulation, the Coast Guard is presently developing these regulations.
2. **NEW STANDARDS FOR UNINSPECTED PASSENGER VESSELS:** This section gives the Coast Guard 24 months to establish regulations for the new category of uninspected passenger vessels of at least 100 gross tons carrying not more than 12 passengers. Interim guidance is provided in Applicability and Enforcement, section III, of this enclosure.
3. **PROVISIONAL STANDARDS:** The Coast Guard is given authority to establish different requirements for existing vessels of 100 - 300 gross tons and existing former public vessels of 100 - 500 gross tons provided the vessel owner makes an application for inspection before June 21, 1994, and the vessel was chartered at least once between December 20, 1992, and December 20, 1993. These standards will be developed to enable these vessels, which have become subject to regulation as passenger vessels, to obtain certification. Vessels that can not comply with existing regulations because of methods or materials of construction may be evaluated for acceptability on a case by case basis using alternative methods for compliance which the Coast Guard has determined provide an acceptable level of safety. Applicability and Enforcement, section III, of this enclosure contains additional guidance for these vessels.

SEC. 512. EQUIPMENT AND STANDARDS FOR CERTAIN PASSENGER VESSELS.

(a) Section 3306 of title 46, United States Code, is amended by adding at the end the following new subsections:

*"(h) The Secretary shall establish appropriate structural **fire** protection, manning, operating, and equipment requirements for vessels of at least 100 gross tons but less than 300 gross tons carrying not more than **150 passengers** on domestic voyages, which meet the eligibility criteria of section **2113(4)** of this title.*

*"(i) The Secretary shall establish appropriate structural fire protection, manning, operating, and equipment requirements for **former** public vessels of the United States of a least 100 gross tons but less than 500 gross tons carrying not more than 150 passengers on domestic voyages, which meet the eligibility criteria of section **2113(5)** of this title."*

*(b) The Secretary of Transportation shall, within twenty-four months of the date of enactment of this Act, prescribe regulations establishing the structural **fire** protection, manning, operating, and equipment requirements for vessels which meet the requirements of subsections (h) and (i) of section 3306 of title 46, United States Code, as amended by this Act.*

(c) Before the Secretary of Transportation prescribes regulations under subsections (h) and (i) of section 3306 of title 46, United States Code, as amended by this Act, the Secretary may prescribe the route, service, manning, and equipment for those vessels based on existing passenger vessel and small passenger vessel regulations.

DESCRIPTION - This section tasks the Coast Guard to develop requirements for those vessels of at least 100 gross tons but less than 300 gross tons, and former public vessels of the United States of at least 100 gross tons but less than 500 gross tons, that carry not more than 150 passengers on domestic voyages, and that meet the eligibility criteria of section 2113(4) and (5). It also gives the Coast Guard

authority to prescribe interim requirements for these vessels based on existing regulations for passenger carrying vessels. Further guidance is provided in Applicability and Enforcement, section III, of this enclosure.

SEC. 513. APPLICABILITY DATE FOR REVISED REGULATIONS

(a) APPLICABILITY DATE FOR CERTAIN CHARTERED VESSELS.-

Revised regulations governing small passenger vessels and passenger vessels (as the **definitions** of those terms in section 2101 of title 46, United States Code, are amended by this Act) shall not, before the date that is 6 months **after** the date of enactment of this Act, apply to such vessels when chartered with no crew provided.

(b) EXTENSION OF PERIOD.- The Secretary of the department in which the Coast Guard is operating shall extend **for** up to 30 additional months or until issuance of a **certificate** of inspection, whichever occurs first, the period of inapplicability **specified** in subsection (a) **if** the owner of the vessel concerned carries **out** the provisions of subsection (c) to the satisfaction of the Secretary.

(c) CONDITIONS FOR EXTENSION- To receive an extension authorized by subsection (b), the owner of the vessel shall

- (1)** make application **for** inspection with the Coast Guard within 6 months **after** the date of enactment of this Act;
- (2)** make the vessel available **for** examination by the Coast Guard prior to the carriage of passengers;
- (3)** (A) correct especially any hazardous conditions involving the vessel's structure, electrical system, and machinery installation, such as (i) grossly inadequate, missing, unsound, or severely deteriorated frames or major structural members; (ii) wiring systems or electrical appliances without proper grounding or overcurrent protection; and (iii) significant fuel or exhaust system leaks;
(B) equip the vessel with lifesaving and **fire** fighting equipment, or the portable equivalent, required **for** the route and number of persons carried; and
(C) verify through stability tests, calculations, or other practical means (which may include a history of **safe** operations) that the vessel's stability is satisfactory **for** the size, **route**, and number of passenger; and
- (4)** develop a work plan approved by the Coast Guard to complete in a good faith **effort** all requirements necessary **for** issuance of a certificate of inspection as soon as practicable.]

(d) OPERATION OF VESSEL DURING EXTENSION PERIOD.-The owner of a vessel receiving an extension under this section shall operate the vessel under the conditions of route, service, **number** of passengers, manning, and equipment as may be prescribed by the Coast Guard **for** the extension period.

DESCRIPTION - Vessels chartered with **no** crew provided or specified by the owner or the owner's representative were not subject to the rules for passenger vessels or small passenger vessels until June 21, 1994. Furthermore, these vessels may receive up to a 30 month extension after June 21, 1994 (to December 21, 1996), if they meet the conditions for an extension as specified in the Act.

TABLE 1
DOCUMENTATION REQUIREMENTS
ALL PASSENGER VESSELS OVER FIVE NET TONS

PASSENGER VESSELS REQUIRING DOCUMENTATION

PASSENGERS FOR HIRE OR

CHARTER VESSELS WITH CREW PROVIDED OR
 SPECIFIED BY OWNER OR WITH OWNER ABOARD

TYPE OF VOYAGE

REQUIRED ENDORSEMENT(S)^{1,2}

Between points in U.S.
 or beginning & ending
 at same port without
 entering international
 waters

Coastwise

Foreign

Registry

To or in Guam,
 American Samoa, U.S.
 Virgin Islands,
 Midway, or Kingman
 Reef; or³ "Voyage to
 Nowhere"

Registry or
 Coastwise

PASSENGER VESSELS NOT REQUIRING DOCUMENTATION

VESSELS OPERATED SOLELY FOR
 RECREATIONAL PURPOSES, WITH ANY
 NUMBER OF PASSENGERS, MEETING ALL OF
 FOLLOWING CONDITIONS:

NO PASSENGERS FOR HIRE.

IF CHARTERED, NO CREW PROVIDED OR
 SPECIFIED, OWNER NOT ABOARD.

NO FISH CAUGHT DURING RECREATIONAL
 OPERATION ARE SOLD. (SEE FOOTNOTE
 2.)

THESE VESSELS ARE NOT REQUIRED TO BE
 DOCUMENTED. IF DOCUMENTED, MAY
 OPERATE UNDER ANY ENDORSEMENT. MAY,
 HOWEVER, NEED TO BE INSPECTED FOR
CERTIFICATION IN ACCORDANCE WITH
 PVSA, EVEN IF OPERATING SOLELY ON
 RECREATIONAL ENDORSEMENT.

¹ Multiple endorsements are permitted. Actual use of vessel determines endorsement under which it is operating in such cases. (46 CFR 67.15)

² Documentation with a fisheries endorsement is required if fish, shellfish, marine animals, vegetations, shells, or pearls are harvested, caught, or transported for commercial purposes in navigable waters of U.S. or EEZ. Includes party vassals on which catch or portion thereof is given to crew for sale and even sale of single tuna caught in tournament.

³ voyages to nowhere must begin and end at the same port in the U.S., and must proceed into international waters. Voyages to nowhere may be considered domestic voyages. However, if trip is for purposes of catching fish, coastwise and fisheries endorsements are required. No intermediate stops are permitted.

Commanding Officer
Marine Safety Office
155 Columbia Dr.
Tampa, FL 33606
(813) 228-2193

***** SAMPLE*****

15 January 1994

Suncoast Charters, Inc.
111 River Street.
Naples, FL 33890

EXTENSION CERTIFICATE FOR CHARTERED VESSEL WITHOUT CREW PROVIDED

Section 5 13 of the Passenger Vessel Safety Act of 1993 (the Act), provides for an extension of the applicability date of the regulations governing small passenger vessels and passenger vessels chartered with no crew provided. Section 5 13 (d) of the Act authorizes the Coast Guard to prescribe the conditions of route, service, number of passengers, manning, and equipment for the operation of the vessel during the extension period.

Having met the conditions for extension prescribed in Section 5 13 (c) of the Act, you are hereby authorized to charter your vessel, MV **UPWRITE ONE**, O.N. 65432 1, with no crew provided, until the expiration date of this certificate on 20 December 1996, under the following conditions:

Service: Charter vessel with no crew provided.

Route Permitted: Lakes, Bays, and Sounds; Tampa Bay and Tributaries.

Trade Endorsement: Coastwise, Registry

Total Persons Allowed: 51

Maximum Number of Passengers: 48

Required Manning: 1 Master, 1 Senior Deckhand, 1 Deckhand. When operating with less than 25 passengers, only the master and senior deckhand are required. When operating with 12 or fewer passengers, no crew is required.

The senior deckhand shall be designated in writing by the master with a copy retained on board the vessel. The senior deckhand should be qualified and trained in accordance with the guidance of NVIC 1-91.

When the vessel is away from a shoreside dock, or has passengers aboard, or both, for more than 12 hours in any 24 hour period, an alternate crew shall be provided. The total persons allowed shall remain as indicated above. A licensed master/operator is acting under the authority of his/her license at all times when he or she is the only licensed master/operator aboard the vessel.

Required Lifesaving Equipment: Total equipment for 51 persons.

2 Lifefloats/Buoyant apparatus for 30 persons
5 1 Adult and 6 Child life preservers

1 Ring Buoy with light and line attached

The minimum number of child-size life preservers required is 6. When more than 6 children are carried, additional child-sized life preservers shall be carried so that the vessel has an approved child-size life preserver suitable for each child aboard.

Reaquired Fire fighting Equipment:

Fixed Extinguishing System -

500 pound HALON for the engine room

Portable Fire Extinguishers -

1 B-I and 1 B-11

This certificate shall be kept on the vessel when it is chartered and made available for Coast Guard examination

Officer in Charge,
Marine Inspection
Tampa, FL

*****SAMPLE*****