

Westlaw

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Interpreter Releases Report and analysis of immigration and nationality law  
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**\*1269** 10. Coast Guard Issues Final Rule Requiring Crewmember Identification Documents

The U.S. Coast Guard has published a final rule which requires each crewmember on a foreign commercial vessel en route to a U.S. port or place of destination or at a U.S. port or place or on a U.S. commercial vessel coming from a foreign port or place of departure to a U.S. port or place of destination to carry and present upon demand an acceptable identification document when in U.S. navigable waters. The vessel operators are required to ensure that crewmembers comply with this requirement. The Maritime Transportation Security Act of 2002 [FN41] directed that specific types of identification documents be identified as acceptable forms of identification to meet this purpose, thus necessitating this rule.

The proposed rule can be found in 73 Fed. Reg. 27778 (May 14, 2008). [FN42] The agency received 27 comments on the proposed rule and made three changes based on those comments. However, the agency notes:

We remind mariners that compliance with the requirements in this rule, however, does not relieve vessel crewmembers and operators of any requirements under the Immigration and Nationality Act (INA) or INA implementing regulations. We have made no changes from the proposed rule based on these comments.

The provision to which this refers is found in 33 CFR § 160.315(b) and states:

(b) Compliance with the requirements in this section does not relieve vessel crewmembers and operators of any requirements under the Immigration and Nationality Act (INA) or INA implementing regulations. Likewise, compliance with INA requirements does not relieve vessel crewmembers and operators of the requirements in this section.

Two of the three changes made to the final rule can be found in the definitions in 33 CFR § 160.310. The Merchant Mariner Credential (MMC) has been added to the list of approved acceptable identification documents found in the definition of acceptable identification. Also the definition of navigable waters has been amended to read:

Navigable waters of the United States means the same as this term is defined in 33 CFR 2.36(a). This includes a 12-nautical-mile wide U.S. territorial sea as measured from the baseline, U.S. internal waters subject to tidal influence, and certain U.S. internal waters not subject to tidal influence.

The Coast Guard has also amended 33 CFR § 160.305 "to clarify that 33 CFR part 160, subpart D requirements will not apply to crewmembers and operators on a vessel bound for a U.S. port or place of destination under force majeure." The section now reads:

Requirements in this subpart do not apply to crewmembers and operators on a vessel bound for a U.S. port or place of destination under *force majeure*.

A new information collection is associated with this final rule. The new collection, entitled Crewmember

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Identification Documents, OMB No. 1625-0113, “comprises the recordkeeping necessary to possess, present on demand, and ensure compliance with requirements for identification of crewmembers on foreign and U.S. vessels in navigable waters of the United States.” The estimated 838,084 respondents include all crewmembers on a foreign vessel in the navigable waters of the U.S. en route to a U.S. port or place of destination or at a U.S. port or place and all crewmembers on a U.S. commercial vessel in the navigable waters of the U.S. coming from a foreign port or place of departure to a U.S. port or place of destination as well as the operators of those foreign and U.S. vessels. The information collection was approved by the Office of Management and Budget and is good through November 2011.

The notice of the final rule is found in 74 Fed. Reg. 19135 (Apr. 28, 2009). It is effective May 28, 2009.

[FN41]. Pub. L. No. 107-295, 116 Stat. 2064, 2080-81 (Nov. 25, 2002).

[FN42]. See 85 Interpreter Releases 1487 (May 19, 2008) for discussion of the proposed rule.  
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