



The Coast Guard Authorization Act of 2010 established new requirements for the commercial fishing industry. These new requirements will NOT take effect until the Coast Guard publishes regulations that implement the Law. Below are some of the forthcoming requirements you should know about. If you have any questions please contact your local Coast Guard office.



Commercial fishing continues to be the most dangerous occupation in America according to the Bureau of Labor Statistics, U.S. Department of Labor. On October 15, 2010, the President signed into law the Coast Guard Authorization Act of 2010 which established numerous new safety requirements for the nation's commercial fishing fleet. These new requirements build on the existing requirements set forth in the Commercial Fishing Industry Vessel Safety Act of 1988 and regulations found in Title 46 Code of Federal Regulations Part 28. When implemented through new or amended regulations, the commercial fishing industry should experience enhanced worker and vessel safety.

◆ Some changes are significant and likely to impact your vessel and fishing operations. For example, your vessel will be required to satisfactorily complete a dockside safety examination at least once every 2 years if you operate beyond 3 nautical miles of the baseline of the territorial sea or the coastline of the Great Lakes, regardless of whether your vessel is state-registered or federally-documented. Also, new vessels will have to meet certain construction standards, depending upon the length of the vessel.

◆ Operators and/or individuals in charge of a vessel operating beyond 3 nautical miles of the baseline will be required to keep a "safety logbook" for recording maintenance and testing of equipment, and required instruction and drills. Many operators may also have to complete a training program covering certain competencies.

◆ Please be advised that enforcement of the self-implementing new requirements is anticipated to begin in the near future, particularly those related to new vessel construction. New or amended regulations must be published to implement the other new requirements in the law, such as safety examinations, recording drills and equipment maintenance, and operating training. Public comments will be requested when those rules are published.

◆ The question that seems to be on everyone's mind is, "when will these new requirements take effect?" The Authorization Act implements some statutory timelines which take effect as a matter of law, but implementing regulations are subject to a clearance process that does not have a predictable termination date. The regulatory process values accuracy over expedience and as such, regulations are subject to modification throughout the clearance process.

◆ A rulemaking project has begun that will promulgate regulations to implement the new requirements in the Authorization Act, either by amending or adding provisions in 46 CFR Part 28 (F/V safety Regulations). The first step is to write what is called an Interim Rule (IR).

An interim rule will provide the following:

- Deemed fastest means for implementation;
- Rule language will follow Authorization Act verbiage to the letter; no discretionary language;
- Will utilize "Good Cause" exemption to APA since delays would frustrate the rule's purpose and would be contrary to the public interest. The APA is the Administrative Procedures Act and governs the way agencies can establish regulations;
- Defers the need for notice-and-comment procedures. Comments will come after issuance of the Interim Rule; and
- Allows for statutes to become enforceable.

◆ After the Interim Rule regulatory package is cleared at Coast Guard Headquarters, it goes to the Department of Homeland Security (DHS) for review, comment, and/or clearance which can take up to 90 days. Then the Office of Management and Budget (OMB) must also review, comment, and/or clear the rules package, another 90 days or so because it does not happen concurrently. After everyone has cleared/approved the proposed rules, they will be published in the Federal Register. There will be an opportunity for the public to comment on the rule and what is proposed for the Final Rule (FR). The Coast Guard will address any comments received after the IR and consider them before issuing the FR.

◆ We hope this information helps you understand the challenges faced in implementing the Authorization Act requirements. We expect it still may not answer all "your" questions but you should know that none of these regulations are currently in effect.

The Commercial Fishing Vessel Safety Program is designed to keep you, the commercial fisherman, safe so you and your vessel will return from every fishing trip you make.

Please feel free to contact Ted Harrington, (617) 223-8440, or Paul Bassick (617) 223-8315, or your local CFVS Examiner at one of the numbers below, should you have any questions.

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