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United States Coast Guard

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16700
MOC Policy Ltr No. 1-99
DEC 15

From: Commandant
To: Distribution

Subj: GUIDANCE ON PORT STATE CONTROL ISM CODE ENFORCEMENT

Ref: (a) Navigation and Vessel Inspection Circular (NVIC) 4-98

1. Several Marine Safety Offices and District Offices have requested additional guidance on the enforcement of the ISM Code. In response to this request, G-MOC will be drafting Change 1 to reference (a), which will include a flow chart (refer to enclosure 1) to assist in the ISM-related deficiency decision-making process. This policy letter will cancel upon publication of Change 1.

2. There have also been several questions raised by the field with regard to the enforcement of the ISM Code. The following questions and answers are provided:

a. What are examples of a major non-conformity under the ISM Code? The definition of a major non-conformity (IMO Resolution A.788 (19) implementation guidelines) is, "an identifiable deviation which poses a serious threat to personnel or ship safety, or a serious risk to the environment and requires an immediate corrective action." For example, an inoperable fire pump that is repaired prior to departure, is usually not grounds for the invalidation of the SMC. However, this deficiency may lead to a major non-conformity if it is a chronic situation, indicating that an SMS has not been properly implemented. Since it may take several boardings to identify a poor SMS in this fashion, it is critical that PSCO's review the vessel's previous boarding results in order to track repeated deficiencies.

In addition, the lack of effective and systematic implementation of a requirement of the ISM Code is also considered a major non-conformity. Evidence should indicate that the basic component(s) in question are completely missing (e.g., no SMS documentation on board, no training program in place). This kind of a major non-conformity typically takes a longer period of time to correct. The identification of a major non-conformity by the PSCO is sufficient grounds for the COTP to question the validity of the SMC. **A vessel is considered to be ISM compliant if all major non-conformities are cleared prior to departure. The vessel will be targeted as a Priority 1 boarding at future U.S. ports if a major non-conformity remains outstanding after the vessel's release from detention.**

b. Who can the flag State call in to perform these external audits? The flag State can call in any RO that they have authorized to act on their behalf.

c. What does a COTP do if you disagree with the Recognized Organization's (RO) findings? If the COTP disagrees with the RO's determination that a vessel's SMS is in compliance with the ISM Code, a COTP Order shall be issued for the vessel to depart the port (after all of the serious materiel deficiencies have been corrected). A VPI notice shall also be entered into MSIS as per NVIC 4-98, and the vessel will be denied entry into all U.S. ports until the vessel can provide adequate proof of compliance with the ISM Code. In other words, if the unit believes that a vessel has a major ISM Code non-conformity, and the RO does not issue a major non-conformity to the vessel, the vessel shall be treated as if a major non-conformity were issued.

d. Should a representative from the unit accompany the auditor during the external audit? If resources permit, an ISM trained representative from the unit should accompany the auditor. This will be left to the discretion of the COTP.

e. How long should a vessel be denied entry to U.S. ports after a **major** non-conformity has been issued by the RO, or identified by the COTP? Vessels may only be denied entry into U.S. ports until they can prove compliance with the ISM Code (correction of the major non-conformity). Sufficient proof of compliance will be left to the discretion of the attending COTP. All vessels that are denied entry into U.S. ports for non-compliance with the ISM Code are immediately reported to the other international PSC regimes by G-MOC.

f. Should the OCMI/COTP issue requirements for vessels to correct non-conformities discovered during the expanded examination of the SMS? No. Notes may be entered into MSIS in order to track these deficiencies. Appropriate corrective action can then be verified during future boardings. Corrective action deadlines for non-conformities are set by the company, not by the port State.

3. If you have any further questions regarding this matter, please call LT Darren Drury at the above number.

M. J. PONTIFF
By direction

Encl: (1) ISM Code Enforcement Procedures Flow Chart

Dist: CG LANTAREA (Am)
CG PACAREA (Pm)
All Districts (m)
All Activities
All Marine Safety Offices