

SECTION D: PORT STATE CONTROL

CHAPTER 3: PROCEDURES TO ENSURE ACCOUNTABILITY FOR PORT STATE CONTROL BOARDINGS AND DETENTIONS

A. BACKGROUND

1. Introduction

Before implementation of the Port State Control Initiative on 1 May 1994, detention reports were reviewed only to fulfill international obligations. This amounted to tracking and consolidating information submitted in field units' detention reports and providing that information to the International Maritime Organization (IMO). This information included the type of vessel, its flag of registry, the nature of the deficiencies that gave rise to the detention, and the specific international treaty under which the detention was carried out (e.g. the International Convention for the Safety of Life at Sea (SOLAS)). The previous review process did not include a systematic check of a vessel's prior arrivals in U.S. ports to determine if the vessel's condition should have been discovered earlier. This process also did not provide feedback to Coast Guard field units or to operational commanders. Recognizing accountability as an important element in the Port State Control Program, the U.S. Coast Guard established a new review process to address this concern.

2. Congressional Interest

One of the major concerns raised by Congress in the 1994 Department of Transportation Appropriation hearings was the perceived lack of Coast Guard accountability for the conduct of its foreign vessel-boarding program. Congress pointed to recent cases where foreign flag vessels received a clean bill of health at one port only to be cited for substantial discrepancies when visiting another port a short while later. In certain cases, the discrepancies discovered were significant problems with major vessel systems which were obviously the result of long-term neglect by the vessel's owners/operators. These should have been detected at the first port where the vessel was boarded. Regardless of the type of boarding (e.g. annual examination, biennial Letter of Compliance (LOC) examination, reexamination or deficiency follow-up), boarding teams must be alert to the presence of readily detectable discrepancies affecting the vessel's vital systems.

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B. REVIEW PROCESS

To ensure program accountability, G-MOC implemented a review process to monitor the effectiveness and quality of Port State Control activities. This review process is initiated by G-MOC upon receipt of a detention Report. The review ensures that boardings are conducted in accordance with the policies set forth in this manual; verifies the applicability of deficiencies cited; and, where necessary, investigates why major discrepancies went undetected during prior boardings or why previous boarding opportunities may have been missed.

1. Purpose

The thrust of this effort is to improve the overall quality and consistency of Port State Control boardings, not to assess blame. Nonetheless, commanding officers are urged to take note of the congressional interest in the program and carefully assess their unit's performance in this extremely important and visible mission area.

2. Record Keeping

A file shall be maintained on each foreign vessel boarding which includes copies of examination books, work lists, detention reports and related message traffic or other correspondence as directed by the Coast Guard Paperwork Management Manual, COMDTINST M 5212.12. **Records documenting targeting/boarding decisions do not need to be maintained.** A copy of the Marine Information System (MSIS) Port Safety Vessel Scheduler (PSVS) with notations indicating boarding decisions is sufficient. If required boardings are missed, the notations should indicate why (e.g. hurricane, available boarding teams assigned to higher priorities, major oil spill, etc.).

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C. PROCEDURES

1. Reporting Requirements

G-MOC uses vessel interventions that lead to detention in U.S. waters as the trigger which initiates the Port State Control review process. A vessel is detained when it is found to be unsafe or when it presents an unreasonable threat to the environment. Whenever a vessel is detained under the provisions of an international convention, the OCMI/COTP notifies the vessel's master, the flag administration, the cognizant district commander (m) and G-MOC in accordance with Chapter D2, Section E, of this volume. On receipt of a report of detention, G-MOC initiates a review to determine if deficiencies were overlooked during previous boardings or if a boarding opportunity at a previous port call was missed.

2. Initial Review

G-MOC will immediately conduct an initial review upon receipt of a Report of detention to determine if the circumstances warranted a detention or whether other methods of Port State Control, as outlined in Chapter D2 of this volume, would have been more appropriate. In verifying the validity of the detention, the following factors must be considered.

Substandard determination

- a. If G-MOC determines that the vessel's hull, machinery equipment or operational safety was substantially below standards required by the relevant conventions, or the crew was not in conformance with the safe manning document, the vessel will be considered substandard. Detained vessels determined to be substandard will be reported to the IMO, flag state, owner/operator and posted electronically on the PSC web site.

Boarding History

- b. Boarding History. In all valid detention cases, G-MOC will review the vessel's boarding history for the 12 months preceding the detention. The vessel's boarding history is recorded in the MSIS Port Safety Vessel History (PSVH), the Vessel File Contact Log (VFCG) and the Vessel File Involved Parties (VFIP). The history includes information about the vessel such as its type, age, length, tonnage, owner, operator, classification society and flag of registry. The history also includes the date and location of U.S. port calls, the scope of previous boardings, the record of civil penalties, marine casualties, pollution incidents, any U.S. Port State Control measures applied, the status of the vessel's certificates, and a record of outstanding and resolved discrepancies.

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Foreign Vessel
Targeting Matrix

- c. Foreign Vessel Targeting Matrix. The Port State Control program is designed to identify which vessels entering U.S. waters pose the highest probability of being substandard. Under this process, various risk factors are considered to determine a vessel's boarding priority in accordance with the procedures set forth in Chapter D4 of this volume. During the initial review, G-MOC will consider the priority determination to evaluate whether potentially dangerous vessels were overlooked and not boarded in conformance with these targeting procedures.

"Nonconformity"

- (1) "Nonconformity". Targeting and boarding procedures are specified in MSM II-D1, D4, D5, D6, D7. As such, the prioritization of boardings and the boarding process itself must be consistent for all Coast Guard offices. When high priority vessels are not boarded or when serious deficiencies are not detected, the review process will be used to determine the reason for the apparent deviation from the established process. The failure to follow an established process is termed a "nonconformity."

Investigation

- (2) Investigation. G-MOC will review each detention to determine if possible nonconformities exist. If review indicates that a Coast Guard unit did not board a high priority vessel, or if a unit did not detect apparent deficiencies that should have been detected during previous boardings, further investigation will be initiated by notifying the appropriate district commander in writing. The district commander will investigate the matter, take appropriate action, and forward the findings and recommendations of the investigation to G-MOC.

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**3. Accountability
Investigation**

G-MOC will notify the cognizant district commander when the initial review reveals an apparent nonconformity.

Methodology

- a. Methodology. The district commander will conduct an investigation to determine why boarding opportunities were missed and/or why deficiencies went previously undetected. The investigation will normally involve contacting the affected field unit about the boarding in order to obtain additional information not recorded in MSIS.

Record Keeping
Guidance

- b. Record Keeping Guidance. Recognizing accountability as an important element in the Port State Control process, the program manager established new record keeping guidance. OCMI/COTPs are to track factors that may impact their ability to meet the Port State Control Initiative's boarding goals and objectives. These factors include the composition of the boarding team, qualifications and experience levels of marine inspectors and boarding officers, and other relevant conditions (e.g. overall unit workload at the time, weather conditions during the boarding, and availability of additional or more qualified personnel). Taking into account all relevant information, the district commander will determine the reason for the apparent nonconformity and recommend any process improvements and remedial action.

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4. Corrective Action Plans

District commanders and/or commanding officers, as appropriate, will implement corrective action to prevent recurrence of missed boarding opportunities, undetected deficiencies, or other reasons for failure to meet the Port State Control Program objectives.

Legitimate Nonconformity

- a. Legitimate Nonconformity. Certain nonconformities may be attributed to legitimate factors. For example, failure to board a prioritized vessel may be explained by unit work load, personnel unavailability due to pollution response activity, adverse weather conditions, or other circumstances beyond the control of the unit's commanding officer.

Factors

- (1) Factors. Legitimate factors for not detecting a "clear grounds" deficiency may include, but are not limited to, obstruction of a structural defect by the vessel's cargo, limited amount of time to conduct the boarding due to factors beyond the control of the boarding team, subsequent removal by the vessel's owner/operators of equipment placed on board the vessel temporarily to pass the examination, or inability to access spaces on the vessel without undue risk to the boarding team.

Action

- (2) Action. Where legitimate factors are the under-lying cause of the apparent nonconformity, the district commander may conclude that no process improvements are warranted. The district commander will report this conclusion to Coast Guard Headquarters and the affected field unit, and the matter will be closed.

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Flawed Nonconformity

- b. Flawed Nonconformity. Alternatively, certain non-conformities may be traced to flaws in the process itself. For example, training programs may have been insufficient to provide personnel with required knowledge, procedures may have been unclear, or methodology or equipment may have been inadequate to successfully complete certain tasks.

Process Flaw

- (1) Process Flaw. Where the underlying cause of the apparent nonconformity is a process flaw, the district commander will specify process improvements to prevent the recurrence of the conditions that impaired the unit's ability to achieve the goals established in the Port State Control Initiative. These may include, but are not limited to, improving training programs, adjusting the boarding team complement, clarifying or updating boarding procedures, or providing additional equipment.

Field Unit Mismanagement

- (2) Field Unit Mismanagement. Where the source of the nonconformity is field unit mismanagement, district commanders can use the established military and civilian personnel evaluation systems (i.e. the Officer Evaluation System, Enlisted Personnel Evaluation System, and Civilian Performance Management and Recognition System) to take appropriate remedial or disciplinary measures. Nonconformities traced to misconduct or negligence on the part of Coast Guard military or civilian personnel will be handled in accordance with existing disciplinary procedures.

5. Feedback Procedures

A feedback loop is established to promote continuous improvement and provide field commands with revised guidance. The district commander will report the results of all investigations to G-MOC. G-MOC will implement any changes to policy, boarding procedures or training identified by the review process as needed to improve the quality of Port State Control efforts throughout the Coast Guard. On their own initiative, district commanders may implement corrective action plans and process improvements within their area of responsibility. District commands and headquarters will measure the success of process improvements through continued reviews of detention reports.

6. Accountability Provisions

Commanding Officers will use performance evaluations to document an individual's success in implementing corrective actions and enforcing the Port State Control program. Personnel at all levels will be held accountable for meeting the objectives and time lines established in the corrective action plans. Results achieved in this regard are subject to documentation in personnel performance evaluations.

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7. Non-Reported Detention Reports As previously mentioned above, detention reports submitted to Headquarters are reviewed to determine whether the detained vessel was substandard. A small percentage of detention reports submitted to G-MOC do not meet this criteria. When this occurs, G-MOC will send an e-mail to the unit and district which submitted the report, explaining why the detention report was not forwarded to the IMO for reporting purposes. Non-reported detention reports are periodically sent to the Port State Control course for training purposes. It is hoped that with this feedback loop in place, the small number of non-reported detentions presently received will decrease even more in the future and that consistency, both in the field and at Headquarters, will improve.

8. Classification Society Attribution G-MOC also reviews detention cases to determine whether or not the classification society should be associated with the detention. Field units are strongly encouraged to provide as much information as possible in the detention reports, which will help G-MOC make this determination.

The following filtering principles may be applied for submitting a recommendation as to whether the classification society should be associated with this detention. Recommendations may be included in the e-mail sent to G-MOC-4.

→ Refer to Table D3-1 for filtering principles.

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TABLE D3-1: PSC FILTERING PRINCIPLES

Detentions are initiated only when a vessel is unfit to proceed to sea or is a threat to the marine environment.

- Voyage damage will not be associated with a classification society non-conformity unless other class related deficiencies are noted during the course of the damage survey.
- Class non-conformities will only be associated with equipment covered by a survey, conducted by classification society, or in which the classification society has issued the certificate on behalf of the flag State.
- When multiple deficiencies are noted, *only those deficiencies serious enough to justify detention* will be evaluated to determine classification society non-conformities.
- Outdated equipment, when the cause of a detention, will not be associated with a class non-conformity unless the equipment was outdated at the time of the last survey conducted by the classification society on behalf of the flag State.
- The absence of highly pilferable equipment such as fire hose nozzles, fire extinguishers, etc. will generally not be listed as a classification society non-conformity unless a large number is missing and it is *within 90 days* of the last survey by the classification society on behalf of the flag State.
- Expired certificates will not be associated with a classification society non-conformity unless the certificates were not endorsed or were improperly issued by the classification society when they conducted the last survey on behalf of the flag State.
- Detentions based on crewing issues, whether conducted in accordance with SOLAS or STCW will not be listed as class non-conformities.
- A *time limit of 90 days* will generally be placed on associating non-conformities with equipment failures (i.e. non-operational fire-pumps, emergency generators, etc.) unless it is apparent that the deficiency was long standing.
- Serious wastage or other structural deficiencies *not caused by voyage damage* will be listed as a classification society non-conformity.

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9. Appeals

As mentioned above, detention reports submitted by the field to Headquarters are reviewed for the validity of the detention and for association to a classification society, if warranted. In accordance with U.S. law, decisions of the OCMI are subject to appeal. This is a necessary and valid step in the detention process. This provision allows the involved party to provide information that may have been overlooked or omitted during the initial detention review process. Owners, operators and classification societies have a vested interest in the appeal process since their association with detentions is cause for their vessels to be targeted for boardings. Appeals received from the company concerning the validity of the detention are processed in accordance with 46 CFR 1.03. Appeals received from the classification society concerning their association with a detention are responded to by G-MOC.

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