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FM COMDT COGARD WASHINGTON DC//CG-5PC/CG-5RE//
TO AIG 4906
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COMLANTAREA COGARD PORTSMOUTH VA//LANT-54/LANT-35//
COMPACAREA COGARD ALAMEDA CA//PAC-3/PAC-54/PAC-33//
INFO COMDT COGARD WASHINGTON DC//CG-CVC/CG-MLE/TMII//
COMCOGARD FORCECOM NORFOLK VA
COGARD TRACEN YORKTOWN VA
COMCOGARD MLE ACADEMY CHARLESTON SC
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SUBJ: INTERIM GUIDANCE ON MANDATORY DOCKSIDE SAFETY EXAMINATIONS OF COMMERCIAL FISHING INDUSTRY VESSELS AND ENFORCEMENT DURING AT-SEA BOARDINGS
A. COAST GUARD AUTHORIZATION ACT (CGAA) OF 2010, SECTION 604
B. IMPLEMENTATION OF THE COMMERCIAL FISHING INDUSTRY VESSEL REGULATIONS, COMDTINST 16711.13B
C. TITLE 46 UNITED STATES CODE CHAPTER 45
D. TITLE 46 CODE OF FEDERAL REGULATIONS (CFR) PART 28
E. MARITIME LAW ENFORCEMENT MANUAL (MLEM), COMDTINST M16247.1 (SERIES)
1. PURPOSE. THIS MESSAGE PROVIDES INFORMATION ON NEW COMMERCIAL FISHING VESSEL (CFV) SAFETY REQUIREMENTS, COMPLETION OF CFV DOCKSIDE SAFETY EXAMINATIONS ON THOSE VESSELS AS REQUIRED BY REF (A), AND ESTABLISHES GUIDANCE FOR COAST GUARD ENFORCEMENT POSTURE ON 4100F BOARDINGS. WHILE THE REGULATIONS TO FULLY IMPLEMENT THE PROVISIONS OF REF (A) ARE STILL UNDER DEVELOPMENT, THE REQUIREMENT FOR APPLICABLE CFVS TO UNDERGO AT LEAST A BIENNIAL SAFETY EXAMINATION TAKES EFFECT 16 OCT 2012. IN RECOGNITION OF THE POTENTIALLY SIGNIFICANT WORKLOAD AND RESOURCE IMPACTS ASSOCIATED WITH IMPLEMENTATION OF MANDATORY CFV EXAMINATIONS, THE GUIDANCE IN THIS MESSAGE IS INTENDED TO GIVE OPERATIONAL COMMANDERS MAXIMUM FLEXIBILITY WHILE REMAINING RESPONSIVE TO CONGRESSIONAL INTENT AS EXPRESSED IN REF (A).
2. BACKGROUND. CURRENTLY, IAW REF (B) DOCKSIDE SAFETY EXAMINATIONS ARE VOLUNTARY EXCEPT FOR VESSELS ON WHICH NOAA FISHERIES OBSERVERS MAY EMBARK, OR WHEN REQUIRED BY STATE LAW. IN 2010, REF (A) ESTABLISHED A REQUIREMENT FOR A MANDATORY DOCKSIDE SAFETY EXAMINATION EVERY TWO YEARS ON COMMERCIAL FISHING VESSELS THAT OPERATE BEYOND THREE NAUTICAL MILES (NM) OF THE TERRITORIAL SEA BASELINE OR COASTLINE OF THE GREAT LAKES. WHILE THE U.S. CODE, REF (C), HAS BEEN AMENDED, REF (D) HAS NOT YET BEEN REVISED TO REFLECT THIS REQUIREMENT.
3. NEW REQUIREMENT: PER REF (A), ALL COMMERCIAL FISHING, FISH TENDER, AND FISH PROCESSING VESSELS THAT OPERATE BEYOND 3 NM OF THE TERRITORIAL SEA BASELINE OR COASTLINE OF THE GREAT LAKES (OR OPERATE WITH MORE THAN 16 INDIVIDUALS ON BOARD, OR IS A FISH TENDER VESSEL ENGAGED IN THE ALEUTIAN TRADE) MUST SUCCESSFULLY COMPLETE A DOCKSIDE EXAM AT LEAST ONCE EVERY TWO YEARS. THE COAST GUARD WILL IMPLEMENT THIS MANDATORY EXAM REQUIREMENT ON OCTOBER 16, 2012. ALL CFVS TO WHICH THE REQUIREMENT APPLIES ARE EXPECTED TO COMPLETE A DOCKSIDE EXAM AS SOON AS POSSIBLE AFTER THAT DATE IF THE VESSEL HAS NOT ALREADY COMPLETED AN EXAM, AND DISPLAY A VALID SAFETY DECAL. DISTRICT COMMANDERS MAY CONSIDER GRANTING SPECIFIC GEOGRAPHIC TRANSIT EXEMPTIONS OF THIS REQUIREMENT, USING THE GOOD CAUSE AND NO ADVERSE IMPACT CRITERIA OF EXISTING EXEMPTION AUTHORITY AS SET FORTH IN REF (D).
4. DEFINITION OF OPERATE: FOR THE PURPOSE OF THIS NEW REQUIREMENT, A CFV WILL BE CONSIDERED TO BE A VESSEL "THAT OPERATES" WHENEVER IT IS ENCOUNTERED IN THE AREA DESCRIBED IN PARAGRAPH THREE OF THIS MESSAGE. VESSELS ENCOUNTERED INSIDE 3 NM WILL BE SUBJECT TO THE EXAMINATION

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REQUIREMENT IF THE OWNER/OPERATOR ACKNOWLEDGES FISHING OUTSIDE OF 3NM, OR VESSEL TRIP REPORTS AND COMMERCIAL LANDINGS DATA INDICATE FISHING BEYOND 3 NM. HOLDING A NATIONAL MARINE FISHERIES SERVICE (NMFS) FEDERAL FISHERIES PERMIT MAY OR MAY NOT BE SUFFICIENT TO ESTABLISH THAT A VESSEL IS OPERATING BEYOND 3 NM.

5. CERTIFICATE OF COMPLIANCE (COC): REFS (A) AND (C) REQUIRE THAT A CERTIFICATE OF COMPLIANCE BE ISSUED TO A VESSEL AFTER SUCCESSFULLY COMPLETING A DOCKSIDE EXAM. THIS CERTIFICATE IS CURRENTLY UNDER DEVELOPMENT. IN THE INTERIM, A VALID CFV SAFETY DECAL, A FORM CG-5587 SHOWING SATISFACTORY COMPLETION OF AN EXAM, A DISTRICT-SPECIFIC DOCKSIDE EXAMINATION FORM SHOWING SUCCESSFUL COMPLETION OF AN EXAM, OR A LETTER OF COMPLIANCE FROM AN ACCEPTED THIRD PARTY ORGANIZATION (MARINE SURVEYORS QUALIFIED AND DESIGNATED BY THAT ORGANIZATION) ARE ACCEPTABLE METHODS OF DOCUMENTATION FOR THE PURPOSE OF DETERMINING COMPLIANCE WITH CURRENT REQUIREMENTS IN LIEU OF A COC.

6. DOCKSIDE ACTIVITIES:

A. DOCKSIDE SAFETY EXAMINATIONS. UNTIL OCTOBER 15, 2012, CFV SAFETY EXAMS WILL CONTINUE ON A NO-FAULT/NO-VIOLATION BASIS WITH A WORK LIST BEING PROVIDED TO VESSELS THAT DO NOT SATISFACTORILY COMPLETE THE EXAM. AFTER OCTOBER 15, 2012, CFVS THAT OPERATE BEYOND 3 NM SHALL BE GIVEN A DOCKSIDE SAFETY EXAM IF THERE IS NO PROOF OF HAVING SUCCESSFULLY COMPLETED A SAFETY EXAM (NO PRESENCE OF A VALID SAFETY DECAL). IF AN OWNER/OPERATOR REFUSES AN EXAM, OR THE EXAM IS NOT SUCCESSFULLY COMPLETED, THE OWNER/OPERATOR SHALL BE GIVEN WRITTEN NOTICE BY THE EXAMINER THAT IT SHOULD BE COMPLETED SUCCESSFULLY WITHIN 30 DAYS, OR AS SOON AS PRACTICALLY POSSIBLE. SECTOR COMMANDERS/OCMIS MAY EXTEND THE COMPLIANCE DATE BEYOND 30 DAYS (OUT TO AS MUCH AS 90 DAYS) IF CG RESOURCE SHORTFALLS PREVENT EARLIER ACTION. A SAMPLE LETTER OF NOTIFICATION OF THE EXAM REQUIREMENT TO BE USED FOR THIS PURPOSE BY EXAMINERS AND OTHER SECTOR PERSONNEL IS AVAILABLE ON THE CG-CVC-3 CG PORTAL SITE AT HTTPS://CGPORTAL.USCG.MIL/CTL/1IGTSM1 OR AT WWW.FISHSAFE.INFO. FOR A FAILED SAFETY EXAM, A COPY OF THE EXAM FORM WITH A LIST OF DEFICIENCIES AND DATE BY WHICH THEY MUST BE CORRECTED SHALL BE PROVIDED TO THE OWNER/OPERATOR. THE NOTICE AND EXAM DEFICIENCIES MUST BE DOCUMENTED IN MISLE. SECTOR COMMANDERS/OCMIS MAY EXTEND THE TIME TO COMPLETE THE EXAM OR CORRECT DEFICIENCIES BASED ON AVAILABILITY OF PERSONNEL TO ACCOMMODATE EXAM REQUESTS OR CONDUCT FOLLOW-UP EXAMS, OR IF THE VESSEL IS COMPLETING SEASONAL FISHING OPERATIONS. ANY EXTENSION GRANTED TO COMPLETE AN EXAM MUST BE PROVIDED IN WRITING AND DOCUMENTED IN THE VESSEL'S FILE IN MISLE. DOCKSIDE EXAMINATIONS MUST BE PERFORMED IAW REF (B).

B. PRIORITY OF DOCKSIDE EXAMINATIONS. WHEN DETERMINING PRIORITY FOR VESSELS REQUIRING DOCKSIDE EXAMINATIONS, VESSELS ALREADY IDENTIFIED AS HIGH RISK AND VESSELS CONSIDERED TO BE PARTICIPATING IN HIGH RISK FEDERAL FISHERIES BY DISTRICT CFVS COORDINATORS AND SECTOR/LOCAL EXAMINERS SHOULD TAKE PRECEDENCE. VESSELS SUBJECT TO NOAA OBSERVER CARRIAGE REQUIREMENTS SHOULD ALSO BE CONSIDERED A HIGH PRIORITY WHEN DETERMINING EXAM SCHEDULES. DISTRICT CFVS COORDINATORS SHALL ACCESS MISLE FOR INFORMATION ABOUT VESSELS BOARDED AT-SEA WITHOUT A CURRENT SAFETY DECAL AND ENSURE THE APPROPRIATE SECTOR IS NOTIFIED FOR SCHEDULING DOCKSIDE EXAMS FOR THESE VESSELS.

C. QUALIFIED EXAMINERS. CG PERSONNEL (ACTIVE DUTY, RESERVE, AND CIVILIAN EMPLOYEES) WHO ARE QUALIFIED IAW THE CFVS EXAMINER PQS AND/OR DESIGNATED BY THE SECTOR CMDR MAY PERFORM ANY CFV SAFETY EXAMINATION. CG AUXILIARY PERSONNEL WHO HAVE QUALIFIED AS A CFV EXAMINER AS OUTLINED IN CG-543 POLICY LETTER 12-02 DTD 1 MAR 2012 MAY PERFORM EXAMINATIONS AS DIRECTED OR LIMITED BY THE SECTOR CMDR. ANY QUALIFIED AND DESIGNATED EXAMINER IS AUTHORIZED TO ISSUE SAFETY DECALS TO VESSELS THAT SATISFACTORILY COMPLETE AN EXAM.

D. EDUCATION AND OUTREACH. CFVS EXAMINERS AND PROGRAM COORDINATORS

SHALL DISSEMINATE INFORMATION ABOUT MANDATORY EXAMINATIONS AND PENDING REGULATORY CHANGES AS WIDELY AS POSSIBLE TO VESSEL OWNERS, OPERATORS, AND INDUSTRY ORGANIZATIONS. IT SHOULD BE STRESSED THAT VESSEL OWNERS/OPERATORS ARE RESPONSIBLE TO REQUEST AND MAKE THEIR VESSELS AVAILABLE FOR A SAFETY EXAM. IF APPLICABLE TO THEIR VESSEL, FAILURE TO SATISFACTORILY COMPLETE A SAFETY EXAM AT LEAST ONCE EVERY TWO YEARS IS NON-COMPLIANCE WITH 46 USC 4502(F)(2).

E. OPERATIONAL CONTROLS. LACK OF A SUCCESSFULLY COMPLETED DOCKSIDE SAFETY EXAM, EITHER BEFORE OR AFTER OCTOBER 15, 2012, IS NOT IN ITSELF SUFFICIENT REASON TO APPLY A COTP ORDER OR OPERATIONAL CONTROL ON A CFV. AN ORDER SHOULD BE PLACED ON A VESSEL WHOSE VOYAGE HAS BEEN TERMINATED UNTIL THE ESPECIALLY HAZARDOUS CONDITION HAS BEEN CORRECTED AND THE VESSEL IS DEEMED IN FULL COMPLIANCE WITH ALL APPLICABLE REGULATIONS, THUS MEETING THE REQUIREMENTS TO BE ISSUED A SAFETY DECAL.

7. AT-SEA ENFORCEMENT:

A. BOARDING OPERATIONS: COMMERCIAL FISHING VESSEL AT-SEA BOARDINGS SHALL CONTINUE TO BE CONDUCTED AND RECORDED IAW REF (E).

B. EDUCATION AND OUTREACH: BETWEEN THE DATE OF THIS MESSAGE AND OCTOBER 15, 2012, WHEN BOARDED, ALL COMMERCIAL FISHING VESSELS OPERATING BEYOND 3 NM OF THE BASELINE OR COASTLINE OF THE GREAT LAKES SHALL BE INFORMED THAT A DOCKSIDE SAFETY EXAM WILL BE REQUIRED EVERY TWO YEARS AFTER OCTOBER 15, 2012. OWNERS/OPERATORS SHOULD BE ADVISED THAT THEY ARE RESPONSIBLE TO REQUEST AND MAKE THEIR VESSELS AVAILABLE FOR A SAFETY EXAM. A LETTER OF NOTIFICATION TO BE USED BY BOARDING OFFICERS DURING CONTACTS WITH FISHERS IS AVAILABLE ON CG-CVC-3 CG PORTAL SITE AT HTTPS://CGPORTAL.USCG.MIL/CTL/1IGTSM1 OR AT WWW.FISHSAFE.INFO. ISSUANCE OF THE NOTIFICATION LETTER MUST BE ANNOTATED IN THE MISLE BOARDING ACTIVITY NARRATIVE TAB AS DESCRIBED IN SUB-PARAGRAPH E.6.

C. BOARDING REPORT: AFTER OCTOBER 15, 2012, LACK OF A SUCCESSFULLY COMPLETED DOCKSIDE SAFETY EXAM WITHIN THE PAST TWO YEARS SHALL RESULT IN THE BOARDING OFFICER ISSUING A WRITTEN WARNING IN THE FOLLOWING MANNER: THE LACK OF A CURRENT EXAMINATION SHALL BE NOTED ON THE CG-4100F BOARDING REPORT AS THE VESSEL'S NON-COMPLIANCE WITH 46 USC 4502(F)(2), REQUIREMENT FOR A BIENNIAL EXAMINATION. THE CG-4100F SHOULD ALSO ADVISE THE INDIVIDUAL IN CHARGE OF THE VESSEL THAT THE EXAM SHOULD BE COMPLETED WITHIN 30 DAYS. OPERATIONAL COMMANDERS MAY EXTEND THE COMPLIANCE DATE BEYOND 30 DAYS (OUT TO AS MUCH AS 90 DAYS) IF CG RESOURCE SHORTFALLS PREVENT EARLIER ACTION. WHILE IN VIOLATION OF REFS (A) AND (C), THERE IS NOT YET AN ASSOCIATED CODE OF FEDERAL REGULATIONS (CFR) CITATION. BOARDING OFFICERS SHALL NOTE A LACK OF A CURRENT EXAM AND SAFETY DECAL AS A VIOLATION/DEFICIENCY IN THE MISLE BOARDING ACTIVITY AS DESCRIBED IN SUB-PARAGRAPH E. SUBSEQUENT BOARDINGS OF A CFV WITHOUT A CURRENT EXAM SHALL BE HANDLED IN THE SAME MANNER AS THE INITIAL INCIDENT, WITH THE BOARDING OFFICER ISSUING AN ADDITIONAL WRITTEN WARNING. WHILE THIS CONSEQUENCE DOES NOT DIRECTLY PUNISH VIOLATORS, IT WILL ENABLE EXAMINERS TO IDENTIFY HIGH PRIORITY VESSELS.

D. VOYAGE TERMINATION: LACK OF A SUCCESSFULLY COMPLETED DOCKSIDE SAFETY EXAM, EITHER BEFORE OR AFTER OCTOBER 15, 2012, IS NOT A SUFFICIENT REASON FOR TERMINATION OF THE VESSEL'S VOYAGE UNTIL REF (D) IS AMENDED. IAW REF (B), THE DECISION TO TERMINATE A VOYAGE REMAINS AT THE DISCRETION OF THE DISTRICT COMMANDER AND WITH RESPECT TO THE CURRENT CRITERIA LISTED IN REF (D).

E. MISLE GUIDANCE: AFTER THE DATE OF THIS MESSAGE, TO ENSURE CFVS EXAMINER VISIBILITY OF VESSELS THAT WILL BE REQUIRED TO COMPLETE DOCKSIDE EXAMS, THE COMPLIANCE STATUS OF VESSELS BOARDED MUST BE RECORDED IN MISLE AS FOLLOWS:

1) UNDER THE "BOARDING DATA" TAB, CLICK "VIOLATIONS/DEFICIENCIES"

2) SELECT "DOCUMENTATION"

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3) SELECT "INSPECTED WITH DEFICIENCIES NOTED" AND THEN "ADD"
4) FILL OUT THE SECTION IN THE FOLLOWING MANNER:
SYSTEM --- DOCUMENTATION
SUB-SYSTEM --- CERTIFICATES/DOCUMENTS
COMPONENT --- CERTIFICATE OF COMPLIANCE (FISH)
FIND CITE --- LEAVE BLANK
DETAILS --- "COMMERCIAL FISHING VESSEL WAS OPERATING
BEYOND 3NM OF BASELINE OR SHORELINE OF GREAT
LAKES WITHOUT A CURRENT DOCKSIDE SAFETY EXAM,
SAFETY DECAL, OR CERTIFICATE OF COMPLIANCE."
DUE DATE --- DATE OF MISLE ENTRY
5) SAVE AND CLOSE.
6) UNDER THE "NARRATIVE" TAB, FOR ALL CFVS BOARDINGS OUTSIDE OF 3NM FROM THE TERRITORIAL SEA BASELINE OR SHORELINE OF THE GREAT LAKES, INCLUDING VESSELS IN COMPLIANCE WITH CURRENT REQUIREMENTS, INSERT THE FOLLOWING IN ADDITION TO ANY OTHER NECESSARY STATEMENT(S): "ISSUED MASTER WRITTEN NOTIFICATION OF NEW CFVS BIENNIAL SAFETY EXAMINATION AND CERTIFICATE OF COMPLIANCE REQUIREMENTS."
8. PUBLIC AFFAIRS GUIDANCE IS UNDER DEVELOPMENT AND WILL BE RELEASED BY SEPCOR. SIGNIFICANT MEDIA INTERACTION HAS ALREADY OCCURRED ON THIS TOPIC.
9. QUESTIONS MAY BE DIRECTED TO THE FOLLOWING STAFF POCS:
A. FOR DOCKSIDE SAFETY EXAMINATION GUIDANCE: MR. JACK KEMERER, JACK.A.KEMERER(AT)USCG.MIL, 202-372-1249
B. FOR AT-SEA ENFORCEMENT GUIDANCE: LT CHRISTOPHER CONDIT, CHRISTOPHER.M.CONDIT(AT)USCG.MIL, 202-372-2185
10. CG-CVC AND CG-MLE WILL MONITOR THE IMPLEMENTATION PROGRESS OF THESE NEW REQUIREMENTS AND ADJUST POLICY AND ENFORCEMENT AS NECESSARY.
11. CAPT PAUL F. THOMAS, DIRECTOR OF INSPECTIONS AND COMPLIANCE, AND CAPT WILLIAM J. MILNE, DIRECTOR OF LAW ENFORCEMENT, MARITIME SECURITY, AND DEFENSE OPERATIONS POLICY, SEND.
12. INTERNET RELEASE IS NOT AUTHORIZED.
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