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Coast Guard

33 CFR Part 160

Advance Notice of Arrival: Vessels Bound for Ports and Places in the United States; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[CGD 97–067]

RIN 2115–AF54

Advance Notice of Arrival: Vessels Bound for Ports and Places in the United States.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: In an Interim Rule (IR) published on December 11, 1997, the Coast Guard amended the notice of arrival requirements for certain vessels which must comply with the International Safety Management (ISM) Code, prior to their entering U.S. waters. This final rule completes the rulemaking action that allows the Coast Guard to monitor the ISM Code certification status of vessels prior to operating in U.S. waters and ensure that safety management system requirements are being met.

DATES: This final rule is effective September 16, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Gauvin, Project Manager, Vessel and Facility Operating Standards Division (G–MSO–2), at (202) 267–1053, or fax (202) 267–4570.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 11, 1997, the Coast Guard published an interim rule entitled ''Advance Notice of Arrival: Vessels Bound for Ports and Places in the United States,'' in the **Federal Register** (62 FR 65203). The Coast Guard received eight letters during the comment period which closed on January 12, 1998, commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The Ports and Waterways Safety Act of 1972 [86 Stat. 424], as amended by the Port and Tanker Safety Act of 1978 [92 Stat. 1271], authorizes the Secretary of the Department in which the Coast Guard is operating to require the receipt of notice from any vessel destined for or departing from a port or place under the jurisdiction of the U.S. This does not include a vessel declaring force majeure or a vessel on innocent passage through U.S. waters. This notice may include any information necessary for the control of the vessel and for the safety of the port or marine environment. See 33 U.S.C. 1223; 33 CFR part 160, subpart C.

In October 1996, the Coast Guard Authorization Act of 1996 [110 Stat. 3901] amended title 46 of the U.S. Code by adding Chapter 32, ''Management of Vessels.'' Under this new law, the Secretary of Transportation was directed to prescribe regulations and enforce compliance with the ISM Code for safety management systems on vessels engaged on a foreign voyage. This authority was delegated to the Commandant of the Coast Guard on April 24, 1997 (62 FR 19935), in 49 CFR 1.46 (fff) and (ggg).

On December 24, 1997, a final rule entitled ''Rules for the Safe Operation of Vessels and Safety Management Systems'' was published in the **Federal Register** (62 FR 67492). This rule establishes the requirements for safety management systems in 33 CFR part 96. This rule became effective on January 23, 1998.

The notice of arrival requirements state that vessels which must meet Chapter IX (ISM Code regulations) of the International Convention for the Safety of Life at Sea (SOLAS), 1974 provide their ISM certification status by message to the U.S. Coast Guard, at least 24 hours prior to entering a U.S. port or place. It should be noted that passenger vessels that are below 500 gross tons, carrying more than 12 passengers, and engaged on a foreign voyage are not covered by this rule, even through these passenger vessels under 500 gross tons will be required to be certificated to the ISM Code requirements of SOLAS and 33 CFR part 96.

The purpose of this rule is to permit the Coast Guard to enforce the requirements of 33 CFR 96.390 (46 U.S.C. 3204(c)), which prohibits a vessel from operating in U.S. waters without having on board a valid copy of a company's Document of Compliance certificate or a valid original of the vessel's Safety Management Certificate. Collecting a vessel's certification status before arrival in port is vital to determining appropriate enforcement actions by Coast Guard officials at U.S. ports. An affected vessel that does not have the ISM Code certificates on board will be denied entry into a U.S. port or place after the effective date of the ISM Code. A vessel that has the proper ISM Code certificates will be boarded annually under the existing standards of the U.S. Port State Control program. During these boardings, if the vessel is found to have valid certificates but has not properly implemented or maintained its safety management system, the vessel may be detained in port until corrections are made to the system. The vessel's flag state or organization acting on behalf of its flag state, will be requested by the Coast Guard to attend to the vessel to ensure corrections, or take actions to manage the corrections of non-conformities to the vessel's safety management system prior to the vessel departing the port. U.S. enforcement policy regarding the Port State Control Program and safety management system requirements for foreign vessels operating in the U.S. are provided in the Coast Guard's Navigation and Vessel Inspection Circular (NVIC) 4–98, which was published on March 17, 1998. This NVIC can be received by sending a written request to the Coast Guard's National Maritime Center, 4200 Wilson Boulevard, Suite 510, Arlington, Virginia 22203–1804, or by telephone at (703) 235–1604. The document can be downloaded through the internet from the Coast Guard's home page on the World Wide Web located at http://www.uscg.mil/hq/g-m/nvic/index.htm. Go to the NVIC link, select all NVICS published in the 1990's, select the year 1998, and then select and download NVIC 4–98.

Discussion of Comments and Changes

The Coast Guard received a total of 8 documents containing 14 comments to the public docket. No written comment requested a public hearing and none was held.

All changes to each section of the rule are discussed within the following paragraphs:

1. Three comments received supported the interim rule as written and its intent to monitor compliance with the certification of vessels' safety management systems. A fourth comment went further to discuss that the Coast Guard's use of the notice of arrival requirements to stop a vessel from entering or operating in U.S. waters could endanger a vessel if it is unsafe and could hamper efforts to ensure international compliance with these new international regulations. That comment also stated that a certificate did not ensure that a vessel was safe or had safe operating practices. The Coast Guard agrees that a certificate is not absolute proof of safety, but vessels are required under 46 U.S.C.

3204(c) to have safety management system certificates documenting their compliance on board the vessel to operate in U.S. waters. The notice of arrival system is the most effective way of ensuring compliance with these mandatory statutory requirements for certification.

The Coast Guard was delegated the responsibility to enforce 46 USC 3204(c) and is not provided with the ability to allow variance from the requirement. If a vessel is unsafe or unseaworthy, the master can claim a force majeure entrance to a U.S. port, even without the required certificates. The Coast Guard will verify claims of force majeure. Also, the Coast Guard will continue to board vessels under the current port state control management program which includes verification that the vessel's safety management system is being used by the vessel's crew. In such cases where safe operation of the vessel is in question, the Coast Guard will be in contact with the vessel's Flag State or recognized organization acting on the Flag State's behalf, to notify them of the vessel's situation as required by SOLAS. In response to the comment suggesting an ability of the notice of arrival to hamper compliance with safety management system requirements internationally, the Coast Guard expects this action to have the opposite effect. Approximately 7,500 to 8,000 individual foreign flag vessels per year make U.S. port calls. This notification process will ensure that each vessel complies with the new SOLAS safety management system and U.S. requirements on the proper effective date, or it will not be allowed to trade with the U.S. No changes were made to this rule due to these comments.

2. One comment requested that a company and vessel additionally provide their compliance information on ISO quality standard certification as part of this notification requirement. The ISO quality standards are not mandated for use on vessels or by their company under U.S. law or international regulations. These ISO quality standards are voluntary industry standards not mandated, except possibly by commercial contract. Thus, only those companies that wish to be certificated to these quality standards do so. ISO standards are developed along the same basic performance elements as safety management systems. The collection of quality system certification information would not provide the Coast Guard with any information or indicators of safe operation of a vessel, not included by providing the safety management system certification under the ISM Code. Therefore, the Coast Guard does not see a need for collection of this information, and has not changed these rules due to this comment.

3. One comment requested that the notification process include notification of oil (bunker and cargo) transfers, and ballast water exchange information, as well as the ISM Code certification status. As this comment requests collection of new information not discussed in the interim rule and outside the scope of this rulemaking, the Coast Guard could not include such a request without an additional opportunity for public comment. However, there is an ongoing rulemaking on ballast water discharge controls. A Notice of Proposed Rulemaking (NPRM) entitled ''Implementation of the National Invasive Species Act of 1996 (USCG–1998–3423)'' was published on April 10, 1998, in the **Federal Register** (63 FR 17782). This written comment was forwarded to the NPRM docket for that rulemaking to ensure it is reviewed during the comment period for that NPRM which was reopened on June 16, 1998, and closes on August 8, 1998. There is no change to this rule in response to this comment.

4. Four comments stated that the second effective date of the notification in 33 CFR 160.207(d)(2), January 1, 2000, was too far in advance of the second effective date of the ISM Code compliance requirements for freight vessels and self-propelled mobile offshore drilling units of 500 gross tons or more engaged on foreign voyages (July 1, 2002). One comment recommended that the second effective date of notification be amended to January 1, 2002. The comments also recommended that the collection of the ISM Code certification information be a one-time notification requirement, as opposed to a continuous requirement. The Coast Guard agrees that the second effective date should be moved to a date closer to the second effective date of the ISM Code. Therefore, the second effective date of 33 CFR 160.207(d)(2) is amended to January 1, 2002, in the final rule.

The Coast Guard disagrees that the notification of ISM Code certification compliance be completed only once. The Coast Guard is required to enforce 46 CFR 3204(c) constantly, not just on the effective date of the ISM Code. To ensure compliance before operation in U.S. waters, the Coast Guard must verify ISM Code certification on any new vessel, vessel whose owner or management company changes, vessel with name changes, or other changes which would effect their original ISM Code certification and safety management systems. Also, vessels can have their certificates invalidated and terminated by Flag States if found in non-compliance at re-issuance of the certificate or during interim audits and endorsement of certificates. As these requirements will be in constant dynamic alteration, the Coast Guard must keep appraised of a vessel's compliance status on a visit by visit notification for U.S. port entry. No change was made to the final rule due to these comments.

5. One comment requested that this rule be terminated after the initial collection of information, while a second comment requested that the rule be terminated on July 1, 2004. The Coast Guard disagrees with these requests. There are no other actions that are currently available, without the Coast Guard boarding every vessel which enters a U.S. port, to ensure compliance of these ISM Code certification programs for safety management systems. In the future, some other action may allow oversight of the ISM Code certification compliance information without this collection of information requirement. If this does occur, the Coat Guard will consider removing these notification requirements from the regulations in 33 CFR 160.207. No change was made to the final rule due to this comment.

6. One comment recommended that the ISM Code certification information be filed in the Marine Safety Information System (MSIS) database for vessels, but not in that section of the database that indicates non-compliance status. Also, this comment supported Flag States sharing vessel boarding information, but cautioned that this could lead to incorrect data being passed between Flag States. For all vessels, the ISM Code certification information will be filed with other listed documents in the Vessel File of Listed Documents (VFLD) in MSIS. This is an information collection file used as a reference by the Coast Guard to determine vessel historical background. It is updated when new information is collected during vessel boardings, inspections, and examinations. This information is not normally updated by information received from a notification of arrival message. This information is updated after the Coast Guard visually checks the actual documents on board the vessel during an annual boarding or inspection. Thus, this information is not normally placed in a non-compliance data file. However, if the vessel does not provide the proper certification notification prior to entry into a U.S. port or is found in non-compliance after boarding in a U.S. port, a report of

detention or intervention may be filed with IMO, the vessel Flag State, and a violation processed by the Coast Guard, which would be recorded in the vessel's boarding history files on MSIS. No change was made to the final rule due to this comment.

7. One comment stated that the applicability for passenger vessels was incorrectly stated in the interim rule, 33 CFR 160.207(d)(1). The interim rule states the applicability of a passenger vessel as: ''a passenger vessel carrying 12 or more passengers'' when it should state, ''a passenger vessel carrying more than 12 passengers.'' The Coast Guard agrees with this comment and corrected this typographical error, in a **Federal Register** notice of correction (63 FR 5458) published on February 3, 1998. The corrected wording is found in this final rule.

8. One comment stated that there may be situations where agents representing a vessel's owner may not be aware of the vessel's compliance with the ISM Code certification and may not be able to provide the notification information prior to vessel arrival. In such situations, it was requested that the Coast Guard not lodge a violation report against the vessel or the vessels' agent. In a situation where the certification status is not known before a vessel arrives in a port or place within the U.S., the vessel will not be allowed into port under 46 CFR 3204(c). If the vessel's ISM Code certification status is already known and appears valid from previous U.S. boardings and MSIS data, the Coast Guard COTP may allow the vessel to enter port. However, the COTP will determine on a case-by-case basis whether a civil violation action should be taken due to the circumstances of the situation. No change to the final rule or other Coast Guard policy is made in response to this comment.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This rule will amend established reporting regimes, which are now customary procedures. The information to be reported is readily available aboard the vessel by international convention. Modern electronic communication systems make it easier to report this information, and will only add seconds to the delivery of currently required reports.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, the Coast Guard has reviewed it for potential economic impact on small entities.

This rulemaking will affect U.S. oceangoing shipping companies and their vessels of specific categories of more than 500 gross tons, or passenger vessels of 500 gross tons or more carrying more than 12 passengers engaged on a foreign voyage. These companies and their vessels are not considered small businesses or small entities. Small passenger vessels are the only small entities required to comply with the ISM Code. A small passenger vessel is generally one carrying more than 6 passengers and is 100 gross tons or less (See 46 U.S.C. 2101 (35)). Since the new reporting requirements only affect passenger vessels of 500 gross tons or more, there is no impact or reporting requirement for a small passenger vessel engaged on a foreign voyage.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistant for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No written or verbal comments were received to this rulemaking docket which requested or stated a need for assistance for small entities to comply with these reporting requirement. Thus, no actions are specifically required.

Collection of Information

This final rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As stated in the interim rule, the Coast Guard solicited comments on the collection of information to: (1) Evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information will have practical utility; (2) evaluate the accuracy of the Coast Guard's estimate of the burden of the collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond by allowing the submittal of responses by electronic means or the use of other forms of information technology. The Coast Guard received no comments directed specifically at these questions and has responded to any information request comments in the ''Discussion of Comments and Changes'' section of this rulemaking.

As required by 5 U.S.C. 3507(d), the Coast Guard submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has approved the collection. The amendment to 33 CFR 160.207 and the corresponding approval number from OMB is OMB Control Number 2115–0557, which expires on April 30, 2001.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

The Coast Guard analyzed this final rule under the principles and criteria contained in Executive Order 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Figure 2–1, paragraph (34)(d) of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 160 as follows:

1. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 49 CFR 1.46.

2. Revise § 160.207 paragraphs (d) and (e) to read as follows:

§ 160.207 Notice of arrival: Vessels bound for ports or places in the United States.

* * * * *

(d) *International Safety Management (ISM) Code (Chapter IX of SOLAS) Notice.* If you are the owner, agent, master, operator, or person in charge of a vessel that is 500 gross tons or more and engaged on a foreign voyage to the United States, you must provide the ISM Code notice described in paragraph (e) as follows:

(1) *ISM Code notice beginning January 26, 1998, if your vessel is*—a passenger vessel carrying more than 12 passengers, a tank vessel, a bulk freight vessel, or a high-speed freight vessel.

(2) *ISM Code notice beginning January 1, 2002, if your vessel is*—a freight vessel not listed in paragraph (d)(1) or a self-propelled mobile offshore drilling unit (MODU).

(e) *Content and Manner of ISM Code Notice.*

(1) ISM Code notice includes the following:

(i) The date of issuance for the company's Document of Compliance certificate that covers the vessel.

(ii) The date of issuance for the vessel's Safety Management Certificate, and,

(iii) The name of the Flag Administration, or the recognized organization(s) representing the vessel flag administration, that issued those certificates.

(2) If you meet the criteria in paragraph (d) of this section, you must give the ISM Code notice to the Coast Guard Captain of the Port of the port or place of your destination in the U.S. at least 24 hours before you enter the port or place of destination. The ISM Code notice may be combined and provided with the report required by paragraph (a) of this section.

Dated: August 6, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–22005 Filed 8–14–98; 8:45 am]

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