

Subject :

*Implementation and enforcement
of ISM Code by US Coast Guard*

NK TECHNICAL INFORMATION

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To Ship Owners and Ship Management Companies concerned

Dear Sir(s)

We notified you of the Guidelines for Port State Control on the ISM Code which were issued by the PSC Committee of the European Commission, the United States Coast Guard (USCG) and the Australian Maritime Safety Authority (AMSA) in *Technical Information* No.226 dated 1 October, 1997.

We have also obtained information from the USCG with regard to checking for ISM Code compliance at Phase I and Phase II enforcement by USCG Officers. We attach this information for your reference.

If you need more information about these matters, please do not hesitate to contact us. (ClassNK Ship Management Assessing Division, Head Office, Tokyo, Tel: 81-3-5226-2034, Fax: 81-3-5226-2030)

Attached:

U.S. COAST GUARD IMPLEMENTATION AND ENFORCEMENT OF THE
ISM CODE (Summary)

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*U.S. COAST GUARD IMPLEMENTATION AND ENFORCEMENT
OF THE INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE
(Summary)*

General Enforcement Policy

1.1 On July 1, 1998, ISM compliance will be strictly enforced on both U.S. and non-U.S. vessels. There is no discretion and this is not simply a matter of policy - it is the law. A U.S. vessel not holding the proper ISM certificates, will have its USCG Certificate of Inspection amended to limit it to domestic service. The vessel will also be required to surrender its other international certificates issued under SOLAS and will thereby be excluded from international trade. Further, if it is discovered that a U.S. vessel has operated in contravention of the law, civil penalty actions will be initiated (a fine of up to \$5,000 per day can be levied under 46 USC 3318). Additionally, the master of the vessel could be charged for misconduct (a willful violation of law) under existing suspension and revocation procedures.

1.2 As previously stated, U.S. law clearly requires all vessels in our waters that are subject to SOLAS to have full ISM certification. Under authority of this law, as well as the rights afforded the U.S. as a party to the SOLAS convention, the Coast Guard will ensure through its port State control program that all non-U.S. vessels greater than 500 gross tons calling at U.S. ports comply with the ISM Code. There will be two distinct phases to this enforcement program: 1) Phase I - prior to entry into force, and 2) Phase II - after entry into force. A new NVIC is being finalized to provide policy guidance on specific procedures for ensuring mandatory compliance.

2. Phase I Enforcement

2.1 Under Phase I (between 1 January 1998 and 30 June 1998), the Coast Guard will conduct a pre-enforcement inspection campaign to assess vessels' progress toward compliance. If a vessel already has its certification, relevant information (dates of issuance for the Document of Compliance & Safety Management Certificate and the name of the certifying entity) will be entered into the Coast Guard's Marine Safety Information System computer database. If a vessel has not yet achieved ISM certification, a letter to the master will be issued informing him of the ISM requirements, entry into force dates and the Coast Guard's enforcement policy. A similar approach has been taken by the Paris MOU members.

2.2 To further "front load" information on vessels' progress toward ISM certification, a request for a list of ships holding Safety Management Certificates has been made to the International Association of Classification Societies (recognizing that its members will perform the majority of ISM certifications for Administrations). Additionally, the Coast Guard has made a similar request of the regional PSC regimes around the world (Paris, Tokyo, Vina del Mar and Caribbean MOUs). It is the Coast Guard's intent to not only compile the information received for U.S. purposes, but to also make all information available to appropriate, interested parties involved with PSC.

2.3 Various methods are being employed to publicize the entry into force dates and the Coast Guard's enforcement policy. Numerous presentations have been, and will continue to be, given announcing the USCG's zero tolerance for ISM non-compliance, as well as will be posted discussing compliance dates and articles will be published in various periodicals

regarding the policy.

3. Phase II Enforcement

3.1 Upon the entry into force of the ISM Code (the beginning of Phase II, from 1 July 1998) the in-port screening process for vessels' compliance with ISM will commence. The current advance notice of arrival regulations will be changed to require the reporting of ISM compliance status. This regulatory change will be enacted to coincide with the 1 July entry into force date.

3.2 Vessel masters will be required to provide in their advance notice of arrival to the Coast Guard's Captains of the Port the dates of the company's Document of Compliance (DOC) and the vessel's Safety Management Certificates (SMC) as well as the name of the organization issuing these certificates. If an inbound vessel is determined not to be in compliance (no certification), the Captain of the Port will issue an order for the vessel to leave U.S. waters and not return until proof of compliance is provided.

3.3 In those rare instances when a vessel without ISM certification slips through the pre-arrival screening process, arrives in port and is subsequently boarded (for any reason), it will be detained, cargo operations will be restricted, civil penalty action will commence, and the flag State and class society will be contacted. An expanded PSC examination will be conducted to determine the overall condition of the vessel. Assuming there are no deficiencies (apart from the lack of ISM certification) which would result in the vessel's being detained, the vessel will be issued a Captain of the Port Order to leave U.S. waters and not return until full compliance is achieved.

3.4 The Safety Management Certificate (SMC) represents the flag State's verification that the vessel has an adequate SMS in place which complies with the ISM Code. During the course of routine PSC boarding this certificate (required by Chapter IX of SOLAS) will be examined along with the vessel's other required international certificates. In addition, a copy of the company's Document of Compliance (DOC), issued to the owner, manager, or bareboat charter, will be examined. A company must hold a valid DOC endorsed for the specific vessel types comprising its fleet before a SMC can be issued.

3.5 Interim Safety Management Certificates will be accepted only for new vessels recently delivered or for vessels whose management has recently changed. The interim SMC's should be valid for a period no longer than six months. Interim Documents of Compliance may be issued to newly established companies or where new ship types are being added to an existing DOC. Interim DOC's should be valid for a period no longer than twelve months. The U.S. will not accept interim certificates with periods of validity longer than six months for SMC's or twelve months for DOC's. Interim certificates must not be used to extend the current IMO implementation dates. These interim certificates will be reviewed and accepted or rejected on a case-by-case basis.

3.6 Upon completion of the document check, the boarding officers will conduct a general walk through of the vessel as part of the regular port State control examination procedures. In the process, the PSCO will be making mental notes about how operations serious structural deficiencies, significant problems with lifesaving and fire fighting equipment, machinery operations and maintenance, pollution prevention, or evidence of inadequate

crew training will give the boarding team cause to question the validity and/or adequacy of the ship's SMS. The examination will then be expanded to take a closer look to determine where the system breakdown is and what is causing it.

3.7 In situations where the validity of the ISM Code certification is in question, an expanded ISM Code certification is in question, an expanded ISM Code examination will be conducted, involving a review of the vessel's SMS documentation. The following items will be checked for inclusion in the documentation:

- .1 The company's safety and environmental policy;
- .2 Procedures for preparation and response to emergency situations including steering failures, loss of bridge control, fire, abandon ship, grounding, flooding, collision, medical emergencies, oil spills, and emergency drills;
- .3 The company's designated person for the SMS;
- .4 Procedures for reporting accidents and non-conformities with the provisions of the Code to the designated person; and,
- .5 Verification that written operational procedures and maintenance manuals required by the Safety Management Manual are onboard and understood by the responsible crew members.

3.8 In addition, the following operational requirements of the ISM Code will be verified;

- .1 The officers and crew are familiar with the SMS and procedures relating to their duties;
- .2 The company training program is in place for all personnel, including new crew members, and that all personnel are familiar with their duties;
- .3 The officers are familiar with the schedule of internal audits that is specified in the Safety Management Manual and can verify that internal audits have taken place (the PSCO will not examine the results of internal audits, only verify that they are being conducted);
- .4 Verify that the procedures relating to the deficient system(s) are documented as required by the Safety Management Manual and that the appropriate individuals are familiar with the procedures;
- .5 Verify that routine maintenance was performed and recorded as required;
- .6 Verify that the appropriate non-conformities are documented and the SMS is in fact used for the continuous improvement of vessel operations.

3.9 The boarding team may also examine the results of the last external audit performed by the organization issuing the ISM certificates, including the status of any open non-conformities;

3.10 Regulation 6 of Chapter IX of SOLAS authorizes control of a vessel for non-compliance

with the vessel's SMC in accordance with Chapter XI and I. Vessels will only be detained under this authority if the required certificates are not on board or an expanded ISM Code examination reveals serious non-conformities with the implementation of the Code. If a vessel is detained due to non-compliance with the ISM Code, the flag State and ISM certifying entity will be notified and asked to attend the vessel to address the non-conformities identified during the examination and verify the vessel's compliance with the ISM Code.

3.11 Serious non-conformities with the ISM Code include:

- .1 Lack of the required certificates attesting to the validity of the SMS
- .2 Lack of a Safety Management Manual; or,
- .3 Major safety system deficiencies, that is, critical systems' procedures required by the Safety Management Manual are not on board and the systems in question are severely deteriorated to the extent that they make the vessel unseaworthy or constitute a threat to the crew or the marine environment

3.12 In situations where serious non-conformities with other international safety requirements are identified which establish clear grounds for expanding an examination and/or detention, yet there is evidence to indicate that a valid SMS has been implemented, a review of the SMS will be included in the expanded examination. Under these circumstances, the focus of the SMS review will be to identify and possible non-conformities with the SMS with relation to the serious non-conformities identified during the general examination. The vessel's crew will then be required to address these non-conformities using the procedures provided by their SMS. This includes preparation of a report of non-conformity to the company and development of a set course of action to correct the non-conformity. Once this is done and the serious non-conformities that led to the expanded examination and detention have been corrected, the vessel will be released.

4. *Summary of Phase II Enforcement*

4.1 The following is a summary of the Coast Guard's ISM Code enforcement policy for non-U.S. flag vessels operating in U.S. waters:

- .1 Units will implement ISM screening procedures from 1 July 1993 using the required pre-arrival information and any other front loaded data collected during Phase I;
- .2 A vessel known to be in compliance with the Code will be targeted for boarding under the existing criteria of the PSC boarding priority matrix;
- .3 If ISM Code compliance can not be determined with certainty prior to a vessel's arrival in port, it will be assigned Priority II status and given an annual PSC examination (i.e., permitted to enter port; no cargo operations until exam satisfactorily completed and ISM compliance verified);
- .4 If determined prior to entry to not be in compliance with the ISM Code, the vessel will be issued a COTP order requiring it to leave U.S. waters and to not return until compliance can be demonstrated;

- .5 Any vessel discovered in port without ISM certification will be detained, its cargo operations restricted, civil penalty action initiated, its flag State notified, an expanded examination conducted, and be issued a COTP order to depart U.S. waters (so long as lack of certification is the only detainable deficiency identified); and,
- .6 If a vessel without ISM certification enters port under a claim of force majeure, a COTP order will be issued restricting cargo operations until a boarding team can verify the validity of the claim. If valid, the vessel will be ordered to depart once the situation leading to force majeure has ceased.

5. Conclusion

5.1 The ISM Code represents the culmination of an evolving recognition within the maritime community that the "human element" is a critical factor in preventing casualties and pollution incidents. The scope of the ISM Code, for the first time, addresses the management's relationship to and the human elements as it relates to operational concerns. It is this support by management which is the critical element to an effective SMS.

5.2 Unless properly implemented and enforced, the ISM Code can not serve the purpose for which it was created and its effectiveness will degenerate to that of the proverbial paper tiger. Therefore, all involved parties must diligently execute their responsibilities in order for the Code to become a viable tool to eliminate substandard shipping and enhance maritime safety. The Coast Guard clearly intends to do its part both as a flag State and as a port State.

5.3 As with any new program, it is virtually certain that the aforementioned policies and procedures will require some degree of refinement. Regardless of this refinement, the Coast Guard will remain resolute in its policy of zero tolerance for non-compliance with this vitally important addition to the SOLAS convention.