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## WHAT IS A SAFETY MANAGEMENT SYSTEM FOR TOWING VESSELS?

### BACKGROUND

On September 9, 2004, The President signed the Coast Guard and Maritime Transportation Act of 2004 into law. Section 409 of the Act amended 46 USC 3306 by adding these words: ð(j) The Secretary may establish by regulation a safety management system appropriate for the characteristics, methods of operation, and nature of service of towing vessels.ð

Another safety management system already exists in the Code of Federal Regulations at 33 CFR Part 96. A number of towing vessel operators who make foreign voyages already comply with the existing regulations and want to be able to continue to use the existing system that meets SOLAS requirements.

The American Waterways Operators wants to be able to have its members comply with a Safety Management System for vessels in domestic operation that apparently is close to their existing Responsible Carrier Program.

This paper presents the existing Safety Management System already on the books and reserves comments for the future.

### 33 CFR Part 96 Rules For The Safe Operation Of Vessels and Safety Management Systems

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**AUTHORITY:** 46 U.S.C. 3201 et. seq.; 46 U.S.C. 3103; 46 U.S.C. 3316, 33 U.S.C. 1231; 49 CFR 1.45, 49 CFR 1.46.  
**SOURCE:** CGD 95-073, 62 FR 67506, Dec. 24, 1997, unless otherwise noted.

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<b>Subpart A – General</b>
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**33 CFR §96.110 Who Does This Subpart Apply To?**

This subpart applies to you if--

- (a) You are a responsible person who owns a U.S. vessel(s) and must comply with Chapter IX of SOLAS;
- (b) You are a responsible person who owns a U.S. vessel(s) that is not required to comply with Chapter IX of SOLAS, but requests application of this subpart;
- (c) You are a responsible person who owns a foreign vessel(s) engaged on a foreign voyage, bound for ports or places under the jurisdiction of the U.S., which must comply with Chapter IX of SOLAS; or
- (d) You are a recognized organization applying for authorization to act on behalf of the U.S. to conduct safety management audits and issue international convention certificates.

**33 CFR §96.120 Definitions.**

(a) Unless otherwise stated in this section, the definitions in Chapter IX, Regulation 1 of the International Convention for the Safety of Life at Sea (SOLAS) apply to this part.

(b) As used in this part--

Administration means the Government of the State whose flag the ship is entitled to fly.

Authorized Organization Acting on behalf of the U.S. means an organization that is recognized by the Commandant of the U.S. Coast Guard under the minimum standards of subparts A and B of 46 CFR part 8, and has been authorized under this section to conduct certain actions and certifications on behalf of the United States.

Captain of the Port (COTP) means the U.S. Coast Guard officer as described in 33 CFR 6.01-3, commanding a Captain of the Port zone described in 33 CFR part 3, or that person's authorized representative.

Commandant means the Commandant, U.S. Coast Guard.

Company means the owner of a vessel, or any other organization or person such as the manager or the bareboat charterer of a vessel, who has assumed the responsibility for operation of the vessel from the shipowner and who on assuming responsibility has agreed to take over all the duties and responsibilities imposed by this part or the ISM Code.

Designated person means a person or persons designated in writing by the responsible person who monitors the safety management system of the company and vessel and has:

- (1) Direct access to communicate with the highest levels of the company and with all management levels ashore and aboard the company's vessel(s);
- (2) Responsibility to monitor the safety and environmental aspects of the operation of each vessel; and

- (3) Responsibility to ensure there are adequate support and shore-based resources for vessel(s) operations.

Document of Compliance means a certificate issued to a company or responsible person that complies with the requirements of this part or the ISM Code.

International Safety Management (ISM) Code means the International Management Code for the Safe Operation of Ships and Pollution Prevention, Chapter IX of the Annex to the International Convention for the Safety of Life at Sea (SOLAS), 1974.

Non-conformity means an observed situation where objective evidence indicates the non-fulfillment of a specified requirement.

Major non-conformity means an identifiable deviation which poses a serious threat to personnel or vessel safety or a serious risk to the environment and requires immediate corrective action; in addition, the lack of effective and systematic implementation of a requirement of the ISM Code is also considered a major non-conformity.

Objective Evidence means quantitative or qualitative information, records or statements of fact pertaining to safety or to the existence and implementation of a safety management system element, which is based on observation, measurement or test and which can be verified.

Officer In Charge, Marine Inspection (OCMI) means the U.S. Coast Guard officer as described in 46 CFR 1.01-15(b), in charge of an inspection zone described in 33 CFR part 3, or that person's authorized representative.

Recognized organization means an organization which has applied and been recognized by the Commandant of the Coast Guard to meet the minimum standards of 46 CFR part 8, subparts A and B.

Responsible person means--

- (1) The owner of a vessel to whom this part applies, or
- (2) Any other person that--
  - (i) has assumed the responsibility from the owner for operation of the vessel to which this part applies; and
  - (ii) agreed to assume, with respect to the vessel, responsibility for complying with all the requirements of this part.
- (3) A responsible person may be a company, firm, corporation, association, partnership or individual.

Safety management audit means a systematic and independent examination to determine whether the safety management system activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objectives.

Safety Management Certificate means a document issued to a vessel which signifies that the responsible person or its company, and the vessel's shipboard management operate in accordance with the approved safety management system.

Safety Management System means a structured and documented system enabling Company and vessel personnel to effectively implement the responsible person's safety and environmental protection policies.

SOLAS means the International Convention for the Safety of Life at Sea, 1974, as amended.

Vessel engaged on a foreign voyage means a vessel to which this part applies that is--

- (1) Arriving at a place under the jurisdiction of the United States from a place in a foreign country;
- (2) Making a voyage between places outside the United States; or
- (3) Departing from a place under the jurisdiction of the United States for a place in a foreign country.

### **33 CFR §96.130 Incorporation By Reference.**

(a) The Director of the Federal Register approves certain material that is incorporated by reference into this subpart under 5 U.S.C. 552(a) and 1 CFR Part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of the change in the FEDERAL REGISTER and the material must be available to the public. You may inspect all material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

<http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>

and at the U.S. Coast Guard, Office of Design and Engineering Standards (G-MSE), 2100 Second St., SW., Washington, DC 20593-0001, and receive it from the source listed in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this subpart and the sections affected are as follows:

American National Standards Institute (ANSI)--11 West 42nd St., New York, NY 10036.

ANSI/ASQC Q9001-1994, Quality Systems-Model for Quality Assurance in Design, Development, Production, Installation, and Servicing, 1994--96.430

International Maritime Organization IMO--4 Albert Embankment, London, SE1 7SR, United Kingdom.

Resolution A.741(18), International Management Code for the Safe Operation of Ships and for Pollution Prevention, November 4, 1993--96.220, 96.370

Resolution A.788 (19), Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations, November 23, 1995--96.320, 96.440

Resolution A.739(18), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, November 4, 1993--96.440  
*[69 FR 18801, Apr. 9, 2004]*

<p style="text-align: center;"><b>Subpart B – Company and Vessel Safety Management Systems</b></p>
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### **33 CFR §96.200 Purpose.**

This subpart establishes the minimum standards that the safety management system of a company and its U.S. flag vessel(s) must meet for certification to comply with the requirements of 46 U.S.C. 3201-3205 and Chapter IX of SOLAS, 1974. It also permits companies with U.S. flag vessels that are not required to comply with this part to voluntarily develop safety management systems which can be certificated to standards consistent with Chapter IX of SOLAS.

### **33 CFR §96.210 Who Does This Subpart Apply To?**

(a) This subpart applies--

(a)(1) To a responsible person who owns or operates a U.S. vessel(s) engaged on a foreign voyage which meet the conditions of paragraph (a)(2) of this section;

(a)(2) To all U.S. vessels engaged on a foreign voyage that are--

(a)(2)(i) A vessel transporting more than 12 passengers; or

(a)(2)(ii) A tanker, a bulk freight vessel, a freight vessel or a self-propelled mobile offshore drilling unit (MODU) of 500 gross tons or more; and

(a)(3) To all foreign vessels engaged on a foreign voyage, bound for ports or places under the jurisdiction of the U.S., and subject to Chapter IX of SOLAS.

(b) This subpart does not apply to--

(b)(1) A barge;

(b)(2) A recreational vessel not engaged in commercial service;

(b)(3) A fishing vessel;

(b)(4) A vessel operating only on the Great Lakes or its tributary and connecting waters; or

(b)(5) A public vessel, which includes a U.S. vessel of the National Defense Reserve Fleet owned by the U.S. Maritime Administration and operated in non-commercial service.

(c) Any responsible person and their company who owns and operates a U.S. flag vessel(s) which does not meet the conditions of paragraph (a), may voluntarily meet the standards of this part and Chapter IX of SOLAS and have their safety management systems certificated.

(d) The compliance date for the requirements of this part are--

(d)(1) On or after July 1, 1998, for--

(d)(1)(i) Vessels transporting more than 12 passengers engaged on a foreign voyage; or

(d)(1)(ii) Tankers, bulk freight vessels, or high speed freight vessels of at least 500 gross tons or more, engaged on a foreign voyage.

(d)(2) On or after July 1, 2002, for other freight vessels and self-propelled mobile offshore drilling units (MODUs) of at least 500 gross tons or more, engaged on a foreign voyage.

### **33 CFR §96.220 What Makes Up A Safety Management System?**

(a) The safety management system must document the responsible person's--

(a)(1) Safety and pollution prevention policy;

(a)(2) Functional safety and operational requirements;

(a)(3) Recordkeeping responsibilities; and

(a)(4) Reporting responsibilities.

(b) A safety management system must also be consistent with the functional standards and performance elements of IMO Resolution A.741(18).

**33 CFR §96.230 What Objectives Must A Safety Management System Meet?**

The safety management system must:

- (a) Provide for safe practices in vessel operation and a safe work environment onboard the type of vessel the system is developed for;
- (b) Establish and implement safeguards against all identified risks;
- (c) Establish and implement actions to continuously improve safety management skills of personnel ashore and aboard vessels, including preparation for emergencies related to both safety and environmental protection; and
- (d) Ensure compliance with mandatory rules and regulations, taking into account relevant national and international regulations, standards, codes and maritime industry guidelines, when developing procedures and policies for the safety management system.

**33 CFR §96.240 What Functional Requirements Must A Safety Management System Meet?**

The functional requirements of a safety management system must include--

- (a) A written statement from the responsible person stating the company's safety and environmental protection policy;
- (b) Instructions and procedures to provide direction for the safe operation of the vessel and protection of the environment in compliance with the applicable U.S. Code of Federal Regulations, and international conventions to which the U.S. is a party (SOLAS, MARPOL, etc.);
- (c) Documents showing the levels of authority and lines of communication between shoreside and shipboard personnel;
- (d) Procedures for reporting accidents, near accidents, and non-conformities with provisions of the company's and vessel's safety management system, and the ISM Code;
- (e) Procedures to prepare for and respond to emergency situations by shoreside and shipboard personnel;
- (f) Procedures for internal audits on the operation of the company and vessel(s) safety management system; and
- (g) Procedures and processes for management review of company internal audit reports and correction of non-conformities that are reported by these or other reports.

**33 CFR §96.250 What Documents And Reports Must A Safety Management System Have?**

The documents and reports required for a safety management system under §96.330 or §96.340 must include the written documents and reports itemized in Table 96.250. These documents and reports must be available to the company's shore-based and vessel(s)-based personnel:

TABLE 96.250.

Safety Management System Documents and Reports

Type of Documents and Reports & Specific Requirements
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- (a) Safety and environmental policy statements:
  - (1) Meet the objectives of §96.230 and

- (2) Are carried out and kept current at all levels of the company;
- (b) Company responsibilities and authority statements
  - (1) The owners name and details of responsibility for operation of the company and vessel(s);
  - (2) Name of the person responsible for operation of the company and vessel(s), if not the owner;
  - (3) Responsibility, authority and interrelations of all personnel who manage, perform, and verify work relating to and affecting the safety and pollution prevention operations of the company and vessel(s); and
  - (4) A statement describing the company's responsibility to ensure adequate resources and shore-based support are provided to enable the designated person or persons to carry out the responsibilities of this subpart.
- (c) Designation in writing of a person or persons to monitor the safety management system for the company and vessel(s)
  - (1) Have direct access to communicate with the highest levels of the company and with all management levels ashore and aboard the company's vessel(s);
  - (2) Have the written responsibility to monitor the safety and environmental aspects of the operation of each vessel; and
  - (3) Have the written responsibility to ensure there are adequate support and shore-based resources for vessel(s) operations.
- (d) Written statements that define the Master's responsibilities and authorities
  - (1) Carry out the company's safety and environmental policies;
  - (2) Motivate the vessel's crew to observe the safety management system policies;
  - (3) Issue orders and instructions in a clear and simple manner;
  - (4) Make sure that specific requirements are carried out by the vessel's crew and shore-based resources; and
  - (5) Review the safety management system and report non-conformities to shore-based management.
- (e) Written statements that the Master has overriding responsibility and authority to make vessel decisions.
  - (1) Ability to make decisions about safety and environmental pollution; and
  - (2) Ability to request the company's help when necessary.
- (f) Personnel procedures and resources authority to make vessel decisions,
  - (1) Masters of vessels are properly qualified for command; authority to make vessel decisions, which are available ashore and aboard ship.
  - (2) Masters of vessels know the company's safety management system;
  - (3) Owners or companies provide the necessary support so that the Master's duties can be safely performed;
  - (4) Each vessel is properly crewed with qualified, certificated and medically fit seafarers complying with national and international requirements;
  - (5) New personnel and personnel transferred to new assignments involving safety and protection of the environment are properly introduced to their duties;
  - (6) Personnel involved with the company's safety management system have an adequate understanding of the relevant rules, regulations, codes and guidelines;

- (7) Needed training is identified to support the safety management system and ensure that the training is provided for all personnel concerned;
- (8) Communication of relevant procedures for the vessel's personnel involved with the safety management system is in the language(s) understood by them; and
- (9) Personnel are able to communicate effectively when carrying out their duties as related to the safety management system.
- (g) Vessel safety and pollution and prevention operation plans and instructions for key shipboard operations.
  - (1) Define tasks;
  - (2) Assign qualified personnel to specific tasks
  - (h) Emergency preparedness procedures.
    - (1) Identify, describe and direct response to potential emergency shipboard situations;
    - (2) Set up programs for drills and exercises to prepare for emergency actions; and
    - (3) Make sure that the company's organization can respond at anytime, to hazards, accidents and emergency situations involving their vessel(s).
    - (i) Reporting procedures on required actions.
      - (1) Report non-conformities of the safety management system;
      - (2) Report accidents;
      - (3) Report hazardous situations to the owner or company; and
      - (4) Make sure reported items are investigated and analyzed with the objective of improving safety and pollution prevention.
    - (j) Vessel maintenance procedures. (These procedures verify that a company's vessel(s) is maintained in conformity with the provisions of relevant rules and regulations, with any additional requirements which may be established by the company.).
      - (1) Inspect vessel's equipment, hull, and machinery at appropriate intervals;
      - (2) Report any non-conformity or deficiency with its possible cause, if known;
      - (3) Take appropriate corrective actions;
      - (4) Keep records of these activities;
      - (5) Identify specific equipment and technical systems that may result in hazardous situation if a sudden operational failure occurs;
      - (6) Identify measures that promote the reliability of the equipment and technical systems identified in paragraph (j)(5), and regularly test standby arrangements and equipment or technical systems not in continuous use; and
      - (7) Include the inspections required by this section into the vessel's operational maintenance routine.
    - (k) Safety management system document and data maintenance.
      - (1) Procedures which establish and maintain control of all documents and data relevant to the safety management system.
      - (2) Documents are available at all relevant locations, i.e., each vessel carries on board all documents relevant to that vessel's operation;
      - (3) Changes to documents are reviewed and approved by authorized personnel; and
      - (4) Outdated documents are promptly removed.
    - (l) Safety management system internal audits which verify the safety and pollution prevention activities.

- (1) Periodic evaluation of the safety management system's efficiency and review of the system in accordance with the established procedures of the company, when needed;
- (2) Types and frequency of internal audits, when they are required, how they are reported, and possible corrective actions, if necessary;
- (3) Determining factors for the selection of personnel, independent of the area being audited, to complete internal company and vessel audits; and
- (4) Communication and reporting of internal audit findings for critical management review and to ensure management personnel of the area audited take timely and corrective action on non-conformities or deficiencies found.

NOTE: The documents and reports required by this part are for the purpose of promoting safety of life and property at sea, as well as protection of the environment. The documents and reports are intended to ensure the communication and understanding of company and vessel safety management systems, which will allow a measure of the systems effectiveness and its responsible person to continuously improve the system and safety the system provides.

<p><b>Subpart C – How Will Safety Management Systems Be Certificated and Enforced?</b></p>
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**33 CFR §96.300 Purpose.**

This subpart establishes the standards for the responsible person of a company and its vessel(s) to obtain the required and voluntary, national and international certification for the company's and vessel's safety management system.

**33 CFR §96.310 Who Does This Subpart Apply To?**

This subpart applies:

- (a) If you are a responsible person who owns a vessel(s) registered in the U.S. and engaged on a foreign voyage(s), or holds certificates or endorsement of such voyages;
- (b) If you are a responsible person who owns a vessel(s) registered in the U.S. and volunteer to meet the standards of this part and Chapter IX of SOLAS;
- (c) To all foreign vessels engaged on a foreign voyage, bound for ports or places under the jurisdiction of the U.S., and subject to Chapter IX of SOLAS; or
- (d) If you are a recognized organization authorized by the U.S. to complete safety management audits and certification required by this part.

**33 CFR §96.320 What Is Involved To Complete A Safety Management Audit And When Is It Required To Be Completed?**

- (a) A safety management audit is any of the following:
  - (a)(1) An initial audit which is carried out before a Document of Compliance certificate or a Safety Management Certificate is issued;
  - (a)(2) A renewal audit which is carried out before the renewal of a Document of Compliance certificate or a Safety Management Certificate;
  - (a)(3) Periodic audits including--

- (a)(3)(i) An annual verification audit, as described in §96.330(f) of this part, and
- (a)(3)(ii) An intermediate verification audit, as described in §96.340(e)(2) of this part.
- (b) A satisfactory audit means that the auditor(s) agrees that the requirements of this part are met, based on review and verification of the procedures and documents that make up the safety management system.
- (c) Actions required during safety management audits for a company and their U.S. vessel(s) are--
- (c)(1) Review and verify the procedures and documents that make up a safety management system, as defined in subpart B of this part.
- (c)(2) Make sure the audit complies with this subpart and is consistent with IMO Resolution A.788(19), Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations.
- (c)(3) Make sure the audit is carried out by a team of Coast Guard auditors or auditors assigned by a recognized organization authorized to complete such actions by subpart D of this part.
- (d) Safety management audits for a company and their U.S. vessel(s) are required--
- (d)(1) Before issuing or renewing a Document of Compliance certificate, and to keep a Document of Compliance certificate valid, as described in §§96.330 and 96.340 of this part.
- (d)(2) Before issuing or renewing a Safety Management Certificate, and to maintain the validity of a Safety Management Certificate, as described in §96.340 of this part. However, any safety management audit for the purpose of verifying a vessel's safety management system will not be scheduled or conducted for a company's U.S. vessel unless the company first has undergone a safety management audit of the company's safety management system, and has received its Document of Compliance certificate.
- (e) Requests for all safety management audits for a company and its U.S. vessel(s) must be communicated--
- (e)(1) By a responsible person directly to a recognized organization authorized by the U.S.
- (e)(2) By a responsible person within the time limits for an annual verification audit, described in §96.330(f) of this part, and for an intermediate verification audit, described in §96.340(e)(2) of this part. If he or she does not make a request for a safety management annual or verification audit for a valid Document of Compliance certificate issued to a company or a valid Safety Management Certificate issued to a vessel, this is cause for the Coast Guard to revoke the certificate as described in §§96.330 and 96.340 of this part.
- (f) If a non-conformity with a safety management system is found during an audit, it must be reported in writing by the auditor:
- (f)(1) For a company's safety management system audit, to the company's owner; and
- (f)(2) For a vessel's safety management system audit, to the company's owner and vessel's Master.

### **33 CFR §96.330 Document of Compliance Certificate: What Is It And When Is It Needed?**

(a) You must hold a valid Document of Compliance certificate if you are the responsible person who, or company which, owns a U.S. vessel engaged on foreign voyages, carrying

more than 12 passengers, or is a tanker, bulk freight vessel, freight vessel, or a self-propelled mobile offshore drilling unit of 500 gross tons or more.

(b) You may voluntarily hold a valid Document of Compliance certificate, if you are a responsible person who, or a company which, owns a U.S. vessel not included in paragraph (a) of this section.

(c) You will be issued a Document of Compliance certificate only after you complete a satisfactory safety management audit as described in §96.320 of this part.

(d) All U.S. and foreign vessels that carry more than 12 passengers or a tanker, bulk freight vessel, freight vessel, or a self-propelled mobile offshore drilling unit of 500 gross tons or more, must carry a valid copy of the company's Document of Compliance certificate onboard when on a foreign voyage.

(e) A valid Document of Compliance certificate covers the type of vessel(s) on which a company's safety management system initial safety management audit was based. The validity of the Document of Compliance certificate may be extended to cover additional types of vessels after a satisfactory safety management audit is completed on the company's safety management system which includes those additional vessel types.

(f) A Document of Compliance certificate is valid for 60 months. The company's safety management system must be verified annually by the Coast Guard or by an authorized organization acting on behalf of the U.S. through a safety management verification audit, within three months before or after the certificate's anniversary date.

(g) Only the Coast Guard may revoke a Document of Compliance certificate from a company which owns a U.S. vessel. The Document of Compliance certificate may be revoked if--

(g)(1) The annual safety management audit and system verification required by paragraph (f) of this section is not completed by the responsible person; or

(g)(2) Major non-conformities are found in the company's safety management system during a safety management audit or other related survey or inspection being completed by the Coast Guard or the recognized organization chosen by the company or responsible person.

(g)(3) The Coast Guard or an authorized organization acting on its behalf is denied, or restricted access to, any vessel, record or personnel of the company, at any time necessary to evaluate the safety management system.

(h) When a company's valid Document of Compliance certificate is revoked by the Coast Guard, a satisfactory safety management audit must be completed before a new Document of Compliance certificate for the company's safety management system can be reissued.

### **33 CFR §96.340 Safety Management Certificate: What Is It And When Is It Needed?**

(a) Your U.S. vessel engaged on a foreign voyage must hold a valid Safety Management Certificate if it carries more than 12 passengers, or if it is a tanker, bulk freight vessel, freight vessel, or a self-propelled mobile offshore drilling unit of 500 gross tons or more.

(b) Your U.S. vessel may voluntarily hold a valid Safety Management Certificate even if your vessel is not required to by paragraph (a) of this section.

(c) Your U.S. vessel may only be issued a Safety Management Certificate or have it renewed when your company holds a valid Document of Compliance certificate issued under §96.330 of this part and the vessel has completed a satisfactory safety management audit of the vessel's safety management system set out in §96.320 of this part.

(d) A copy of your vessel's valid Safety Management Certificate must be on board all U.S. and foreign vessels which carry more than 12 passengers, and must be on board a tanker, bulk freight vessel, freight vessel, or a self-propelled mobile offshore drilling unit of 500 gross tons or more, when engaged on foreign voyages or within U.S. waters.

(e) A Safety Management Certificate is valid for 60 months. The validity of the Safety Management Certificate is based on--

(e)(1) A satisfactory initial safety management audit;

(e)(2) A satisfactory intermediate verification audit requested by the vessel's responsible person, completed between the 24th and 36th month of the certificate's period of validity; and

(e)(3) A vessel's company holding a valid Document of Compliance certificate. When a company's Document of Compliance certificate expires or is revoked, the Safety Management Certificate for the company-owned vessel(s) is invalid.

(f) Renewal of a Safety Management Certificate requires the completion of a satisfactory safety management system audit which meets all of the requirements of subpart B in this part. A renewal of a Safety Management Certificate cannot be started unless the company which owns the vessel holds a valid Document of Compliance certificate.

(g) Only the Coast Guard may revoke a Safety Management Certificate from a U.S. vessel. The Safety Management Certificate will be revoked if--

(g)(1) The vessel's responsible person has not completed an intermediate safety management audit required by paragraph (e)(2) of this section; or

(g)(2) Major non-conformities are found in the vessel's safety management system during a safety management audit or other related survey or inspection being completed by the Coast Guard or the recognized organization chosen by the vessel's responsible person.

[CGD 95-073, 62 FR 67506, Dec. 24, 1997, as amended by USCG-1999-5832, 64 FR 34712, June 29, 1999]

### **33 CFR §96.350 Interim Document of Compliance Certificate: What Is It And When Can It Be Used?**

(a) An Interim Document of Compliance certificate may be issued to help set up a company's safety management system when--

(a)(1) A company is newly set up or in transition from an existing company into a new company; or

(a)(2) A new type of vessel is added to an existing safety management system and Document of Compliance certificate for a company.

(b) A responsible person for a company operating a U.S. vessel(s) that meets the requirements of paragraph (a) of this section, may send a request to a recognized organization authorized to act on behalf of the U.S. to receive an Interim Document of Compliance certificate that is valid for a period up to 12 months. To be issued the Interim Document of Compliance certificate the vessel's company must--

(b)(1) Demonstrate to an auditor that the company has a safety management system that meets §96.230 of this part; and

(b)(2) Provide a plan for full implementation of a safety management system within the period that the Interim Document of Compliance certificate is valid.

### **33 CFR §96.360 Interim Safety Management Certificate: What Is It And When Can It Be Used?**

(a) A responsible person may apply for an Interim Safety Management Certificate when--

(a)(1) A responsible person takes delivery of a new U.S. vessel; or

(a)(2) Takes responsibility for the management of a U.S. vessel which is new to the responsible person or their company.

(b) An Interim Safety Management Certificate is valid for 6 months. It may be issued to a U.S. vessel which meets the conditions of paragraph (a) of this section, when--

(b)(1) The company's valid Document of Compliance certificate or Interim Document of Compliance certificate applies to that vessel type;

(b)(2) The company's safety management system for the vessel includes the key elements of a safety management system, set out in §96.220, applicable to this new type of vessel;

(b)(3) The company's safety management system has been assessed during the safety management audit to issue the Document of Compliance certificate or demonstrated for the issuance of the Interim Document of Compliance certificate;

(b)(4) The Master and senior officers of the vessel are familiar with the safety management system and the planned set up arrangements;

(b)(5) Written documented instructions have been extracted from the safety management system and given to the vessel prior to sailing;

(b)(6) The company plans an internal audit of the vessel within three months; and

(b)(7) The relevant information from the safety management system is written in English, and in any other language understood by the vessel's personnel.

### **33 CFR §96.370 What Are The Requirements For Vessels Of Countries Not Party To Chapter IX Of SOLAS?**

(a) Each foreign vessel which carries more than 12 passengers, or is a tanker, bulk freight vessel, freight vessel, or self-propelled mobile offshore drilling unit of 500 gross tons or more, operated in U.S. waters, under the authority of a country not a party to Chapter IX of SOLAS must--

(a)(1) Have on board valid documentation showing that the vessel's company has a safety management system which was audited and assessed, consistent with the International Safety Management Code of IMO Resolution A.741(18);

(a)(2) Have on board valid documentation from a vessel's Flag Administration showing that the vessel's safety management system was audited and assessed to be consistent with the International Safety Management Code of IMO Resolution A.741(18); or

(a)(3) Show that evidence of compliance was issued by either a government that is party to SOLAS or an organization

recognized to act on behalf of the vessel's Flag Administration.

(b) Evidence of compliance must contain all of the information in, and have substantially the same format as a--

(b)(1) Document of Compliance certificate; and

(b)(2) Safety Management Certificate.

(c) Failure to comply with this section will subject the vessel to the compliance and enforcement procedures of §96.380 of this part.

### **33 CFR §96.380 How Will The Coast Guard Handle Compliance And Enforcement Of These Regulations?**

(a) While operating in waters under the jurisdiction of the United States, the Coast Guard may board a vessel to determine that--

(a)(1) Valid copies of the company's Document of Compliance certificate and Safety Management Certificate are on board, or evidence of the same for vessels from countries not party to Chapter IX of SOLAS; and

(a)(2) The vessel's crew or shore-based personnel are following the procedures and policies of the safety management system while operating the vessel or transferring cargoes.

(b) A foreign vessel that does not comply with these regulations, or one on which the vessel's condition or use of its safety management system do not substantially agree with the particulars of the Document of Compliance certificate, Safety Management Certificate or other required evidence of compliance, may be detained by order of the COTP or OCMI. This may occur at the port or terminal where the violation is found until, in the opinion of the detaining authority, the vessel can go to sea without presenting an unreasonable threat of harm to the port, the marine environment, the vessel or its crew. The detention order may allow the vessel to go to another area of the port, if needed, rather than stay at the place where the violation was found.

(c) If any vessel that must comply with this part or with the ISM Code does not have a Safety Management Certificate and a copy of its company's Document of Compliance certificate on board, a vessel owner, charterer, managing operator, agent, Master, or any other individual in charge of the vessel that is subject to this part, may be liable for a civil penalty under 46 U.S.C. 3318. For foreign vessels, the Coast Guard may request the Secretary of the Treasury to withhold or revoke the clearance required by 46 U.S.C. App. 91. The Coast Guard may ask the Secretary to permit the vessel's departure after the bond or other surety is filed.

### **33 CFR §96.390 When Will The Coast Guard Deny Entry Into A U.S. Port?**

(a) Except for a foreign vessel entering U.S. waters under force majeure, no vessel shall enter any port or terminal of the U.S. without a safety management system that has been properly certificated to this subpart or to the requirements of Chapter IX of SOLAS if--

(a)(1) It is engaged on a foreign voyage; and

(a)(2) It is carrying more than 12 passengers, or a tanker, bulk freight vessel, freight vessel, or self-propelled mobile offshore drilling unit of 500 gross tons or more.

(b) The cognizant COTP will deny entry of a vessel into a port or terminal under the authority of 46 U.S.C. 3204(c), to any vessel that does not meet the requirements of paragraph (a) of this section.

## **Subpart D – Authorization of Recognized Organizations to Act on Behalf of the U.S.**

### **33 CFR §96.400 Purpose.**

(a) This subpart establishes criteria and procedures for organizations recognized under 46 CFR part 8, subparts A and B, to be authorized by the Coast Guard to act on behalf of the U.S. The authorization is necessary in order for a recognized organization to perform safety management audits and certification functions delegated by the Coast Guard as described in this part.

(b) To receive an up-to-date list of recognized organizations authorized to act under this subpart, send a self-addressed, stamped envelope and written request to the Commandant (G-MSE), 2100 Second Street SW., Washington, DC 20593-0001.

### **33 CFR §96.410 Who Does This Regulation Apply To?**

This subpart applies to all organizations recognized by the U.S. under 46 CFR Part 8, subpart A and B, who wish to seek authorization to conduct safety management audits and issue relevant international safety certificates under the provisions of the ISM Code and voluntary certificates on behalf of the U.S.

### **33 CFR §96.420 What Authority May An Organization Ask For Under This Regulation?**

(a) An organization may request authorization to conduct safety management audits and to issue the following certificates:

(a)(1) Safety Management Certificate;

(a)(2) Document of Compliance certificate;

(a)(3) Interim Safety Management Certificate; and

(a)(4) Interim Document of Compliance certificate.

(b) [Reserved]

### **33 CFR §96.430 How Does An Organization Submit A Request To Be Authorized?**

(a) A recognized organization must send a written request for authorization to the Commandant (G-MSE), Office of Design and Engineering Standards, 2100 Second Street SW, Washington, DC 20593-0001. The request must include the following:

(a)(1) A statement describing what type of authorization the organization seeks;

(a)(2) Documents showing that--

(a)(2)(i) The organization has an internal quality system with written policies, procedures and processes that meet the requirements in §96.440 of this part for safety management auditing and certification; or

(a)(2)(ii) The organization has an internal quality system based on ANSI/ASQC C9001 for safety management auditing and certification; or



(a)(2)(iii) The organization has an equivalent internal quality standard system recognized by the Coast Guard to complete safety management audits and certification.

(a)(3) A list of the organization's exclusive auditors qualified to complete safety management audits and their operational area; and

(a)(4) A written statement that the procedures and records of the recognized organization regarding its actions involving safety management system audits and certification are available for review annually and at any time deemed necessary by the Coast Guard.

(b) If the organization is a foreign classification society that has been recognized under 46 CFR Part 8, subparts A and B, and wishes to apply for authorization under this part, it must demonstrate the reciprocity required by 46 U.S.C. 3316 for ISM Code certification. The organization must provide, with its request for authorization an affidavit from the government of the country in which the classification society is headquartered. This affidavit must provide a list of authorized delegations by the flag state of the administration of the foreign classification society's country to the American Bureau of Shipping, and indicate any conditions related to the delegated authority. If this affidavit is not received with a request for authorization from a foreign classification society, the request for authorization will be disapproved and returned by the Coast Guard.

(c) Upon the satisfactory completion of the Coast Guard's evaluation of a request for authorization, the organization will be visited for an evaluation as described in §96.440(b) of this part.

### **33 CFR §96.440 How Will The Coast Guard Decide Whether To Approve An Organization's Request To Be Authorized?**

(a) First, the Coast Guard will evaluate the organization's request for authorization and supporting written materials, looking for evidence of the following--

(a)(1) The organization's clear assignment of management duties;

(a)(2) Ethical standards for managers and auditors;

(a)(3) Procedures for auditor training, qualification, certification, and re-qualification that are consistent with recognized industry standards;

(a)(4) Procedures for auditing safety management systems that are consistent with recognized industry standards and IMO Resolution A.788(19);

(a)(5) Acceptable standards for internal auditing and management review;

(a)(6) Record-keeping standards for safety management auditing and certification;

(a)(7) Methods for reporting non-conformities and recording completion of remedial actions;

(a)(8) Methods for certifying safety management systems;

(a)(9) Methods for periodic and intermediate audits of safety management systems;

(a)(10) Methods for renewal audits of safety management systems;

(a)(11) Methods for handling appeals; and

(a)(12) Overall procedures consistent with IMO Resolution A.739(18), "Guidelines for the Authorization of Organizations Acting on Behalf of the Administration."

(b) After a favorable evaluation of the organization's written request, the Coast Guard will arrange to visit the organization's corporate offices and port offices for an on-site evaluation of operations.

(c) When a request is approved, the recognized organization and the Coast Guard will enter into a written agreement. This agreement will define the scope, terms, conditions and requirements of the authorization. Conditions of this agreement are found in §96.460 of this part.

### **33 CFR §96.450 What Happens If The Coast Guard Disapproves An Organization's Request To Be Authorized?**

(a) The Coast Guard will write to the organization explaining why it did not meet the criteria for authorization.

(b) The organization may then correct the deficiencies and reapply.

### **33 CFR §96.460 How Will I Know What The Coast Guard Requires Of My Organization If My Organization Receives Authorization?**

(a) Your organization will enter into a written agreement with the Coast Guard. This written agreement will specify--

(a)(1) How long the authorization is valid;

(a)(2) Which duties and responsibilities the organization may perform, and which certificates it may issue on behalf of the U.S.;

(a)(3) Reports and information the organization must send to the Commandant (G-MOC);

(a)(4) Actions the organization must take to renew the agreement when it expires; and

(a)(5) Actions the organization must take if the Coast Guard should revoke its authorization or recognition under 46 CFR Part 8.

(b) [Reserved]

### **33 CFR §96.470 How Does The Coast Guard Terminate An Organization's Authorization?**

At least every 12 months, the Coast Guard evaluates organizations authorized under this subpart. If an organization fails to maintain acceptable standards, the Coast Guard may terminate that organization's authorization, remove the organization from the Commandant's list of recognized organizations, and further evaluate the organization's recognition under 46 CFR Part 8.

### **33 CFR §96.480 What Is The Status Of A Certificate If The Issuing Organization Has Its Authority Terminated?**

Any certificate issued by an organization authorized by the Coast Guard whose authorization is later terminated remains valid until--

(a) Its original expiration date,

(b) The date of the next periodic audit required to maintain the certificate's validity, or

(c) Whichever of paragraphs (a) or (b) occurs first.

**33 CFR §96.490 What Further Obligations Exist For An Organization If The Coast Guard Terminates Its Authorization?**

The written agreement by which an organization receives authorization from the Coast Guard places it under certain obligations if the Coast Guard revokes that authorization. The organization agrees to send written notice of its termination to all responsible persons, companies and vessels that have received certificates from the organization. In that notice, the organization must include--

- (a) A written statement explaining why the organization's authorization was terminated by the Coast Guard;
- (b) An explanation of the status of issued certificates;
- (c) A current list of organizations authorized by the Coast Guard to conduct safety management audits; and
- (d) A statement of what the companies and vessels must do to have their safety management systems transferred to another organization authorized to act on behalf of the U.S.

**33 CFR §96.495 How Can I Appeal A Decision Made By An Authorized Organization?**

(a) A responsible person may appeal a decision made by an authorized organization by mailing or delivering to the organization a written request for reconsideration. Within 30 days of receiving your request, the authorized organization must rule on it and send you a written response. They must also send a copy of their response to the Commandant (G-MOC).

(b) If you are not satisfied with the organization's decision, you may appeal directly to the Commandant (G-MOC). You must make your appeal in writing, including any documentation and evidence you wish to be considered. You may ask the Commandant (G-MOC) to stay the effect of the appealed decision while it is under review.

(c) The Commandant (G-MOC) will make a decision on your appeal and send you a response in writing. That decision will be the final Coast Guard action on your request.