

UK P&I CLUB



LP Bulletin

Friday 5th November 2010

Bulletin 724 - 11/10 - Policy for Banning Foreign Vessels from entry - USA

On November 2, 2010, the U. S. Coast Guard announced the release of CG Policy Letter 10-03, Banning of Foreign Vessels. This policy letter outlines U.S. Coast Guard procedures for denying certain foreign flagged commercial vessels into any port or place in the U.S. as a result of the vessel's history of operating in a continuous substandard condition in waters subject to U.S. jurisdiction. This policy became effective on September 1, 2010.

"The U.S. Coast Guard will continue to screen, prioritize, and coordinate all foreign vessel exams in accordance with existing policies. When a vessel has been repeatedly detained (meaning three or more detentions within twelve months) and it is determined by the U.S. Coast Guard's Foreign and Offshore Vessels Division (CG-5432) that failure to effectively implement the SMS was a contributing factor for the substandard condition(s) that led to the detentions, the vessel will be denied entry into any port or place in the United States in compliance with 33 U.S.C. 1228 and 1223 (b) until specified actions are completed to the satisfaction of the Coast Guard."

Once all of the requirements set forth in the Letter of Denial are satisfied, the Coast Guard will issue a Letter of Acceptance allowing the vessel to enter into U.S. waters again. Upon receipt of the Letter of Acceptance, the vessel must still undergo a Priority I port-state exam prior to entering a U.S. port. Should the vessel continue to have deficiencies or major non-conformities the vessel will be detained again. If the vessel passes the port-state control inspection, it may proceed to the U.S. port as planned. Please be advised that the Coast Guard will monitor the vessel and review any detentions or deficiencies occurring within twelve months of the issuance of the Letter of Acceptance.

Members are encouraged to closely review this new policy and continuously ensure that their SMS is being implemented effectively. The Coast Guard encourages owners and operators to contact them with questions or concerns at (202) 372-1235.

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U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
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3500
CG-543 Policy Letter
10-03

SEP - 1 2010

From: 
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COMDT (CG-543)

To: Distribution

Subj: BANNING OF FOREIGN VESSELS

Ref: (a) Navigation and Vessel Inspection Circular (NVIC) No. 04-05
(b) Procedures for Port State Control, Resolution A.787(19) as amended by
resolution A.882.(21)
(c) NVIC No. 06-03 Change 2

1. PURPOSE. All foreign flagged vessels operating in U. S. Waters are required to be maintained in compliance with U. S. regulations, international conventions and other required standards. This policy letter outlines Coast Guard procedures for denying entry of certain foreign flagged commercial vessels into any port or place in the United States* due to their history of operating in waters subject to U. S. jurisdiction in a substandard condition, outside acceptable standards.

*Note: "Port or place in the United States" is defined in 33 CFR part 160 subpart C.

2. ACTION. District and Sector Commanders shall ensure compliance with the provisions of this policy letter. A Port State Control Officer (PSCO) detaining a vessel which has been previously detained; totaling three detentions within a twelve month period shall conduct an ISM expanded exam utilizing reference (a) as a guide when evaluating the vessel's Safety Management System (SMS).

3. DIRECTIVES AFFECTED. None

4. BACKGROUND. The Port State Control program began in the U. S. in 1994 when Congress, through the Department of Transportation Appropriations Bill, required the U.S. Coast Guard to change its approach to foreign vessel examinations. The bill required the U.S. Coast Guard to "hold those most responsible for substandard ships accountable, including owners, classification societies and flag States". In 1997, the Coast Guard published regulations to enforce the International Maritime Organization (IMO) resolution A.741(18), titled "*International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safe Management [ISM] Code)*". The Coast Guard also published reference (a); Navigation and Vessel Inspection Circular 04-05, titled *Port State Control Guidelines for the Enforcement of Management for the Safe Operation of Ships (ISM Code)*, to provide guidance to both Coast Guard and industry personnel concerning compliance with the requirements of SOLAS, Chapter IX and the ISM Code.

5. DISCUSSION. The purpose of the ISM Code is to provide an international standard for the safe management and operation of ships and for pollution prevention. A major goal of the ISM Code is to help companies achieve and maintain high standards of safety and environmental protection for their

fleet. For the most part this goal has been achieved, however, over the past several years there have been cases where foreign flagged vessels have been repeatedly detained by Coast Guard PSCOs for significant safety and security non-compliances and substandard conditions. In each case, the vessel's flag administration was notified and the substandard conditions were corrected; however, the underlying causal factors for the substandard conditions may not have been identified and/or adequately addressed as would be expected if an effective and properly implemented SMS was in place.

The cornerstone for ensuring a vessel is compliant with international standards, laws and regulations is a well written and properly implemented SMS. Commitment by company top level management and continuous improvement are two fundamental objectives of an effective SMS. Companies that do not embrace a safety culture and that repeatedly operate vessels in a substandard condition have failed to recognize the importance of complying with international conventions and standards. This puts their crews, vessels and the marine environment at risk. At times, flag administrations are also at fault as they do not ensure proactive measures are taken to prevent continued non-compliance; this includes appropriate oversight of Recognized Organizations (ROs) that perform statutory surveys as well as other ISM related activities on their behalf.

6. PROCEDURES. The procedures outlined below should be followed when a vessel has been repeatedly detained by the U.S. Coast Guard (*three* detentions w/in *twelve* months) and it is determined that failure to effectively implement the SMS may be a contributing factor for the substandard condition(s) that led to the detentions. These procedures are not intended to limit Officer in Charge, Marine Inspection and/or Captain of the Port authorities.

- a. It may take several examinations to identify a trend that indicates a vessel has significant problems with its SMS. Therefore, prior to conducting a PSC exam on a vessel that has had a history of detentions, the vessel's MISLE history, including deficiencies, detentions, marine casualties, pollution incidents or marine violations, should be closely scrutinized for indications that the vessel's SMS may not be effectively implemented. This review shall not be limited to Coast Guard inspections only, but may include previous PSC exams results from other flag States including detentions and/or banning of said vessel and/or company. This information is deemed important to deter substandard vessels and companies from changing shipping routes without correcting the substandard conditions as an end run to the Port State Control Program.
- b. If during the exam, deficiencies are discovered meeting the "Guidelines for Detention of Ships" as outlined in Appendix 1 to reference (b), the vessel should be detained under the applicable convention. The Port State Control Officer (PSCO) shall also evaluate whether the substandard condition is a result of a poorly implemented SMS. If clear grounds lead the PSCO to believe that the ship has not effectively implemented its SMS then an expanded exam of the SMS shall be completed using reference (a) and the corresponding PSC job aid as a guide. Substantial non-compliance of a ship's SMS to the requirements of the ISM Code is indicative of a major non-conformity which is sufficient grounds for a SOLAS detention. Supporting documentation of the deficiencies (photos, completed enclosure (2) to NVIC 04-05, copies of relevant sections of the vessel's SMS, etc) shall be entered in MISLE. The notification process outlined in reference (c) for Commandant (CG-5432) is applicable with the following text added to the email "This is the vessel's (3rd, 4th etc) IMO detention within the past twelve months". Consistent with existing policy; do not delay the vessel's departure once the detention is

cleared. Pending Commandant (CG-5432) review per paragraph 6.c., the targeting guidance in reference (c) shall be followed for all subsequent port calls.

- c. Commandant (CG-5432) will review the vessel detention and MISLE activities to determine whether the vessel's past and present detentions indicate a failure of the company, vessel's senior crew and/or flag administration to take proactive measures to correct the substandard conditions and improve the ineffective SMS.
 1. If Commandant (CG-5432) determines that the detentions during the previous twelve months do not meet the intent of this policy, no further action by Commandant (CG-5432) will be taken. The Sector/unit and District will be notified accordingly.
 2. If a determination is made that adequate measures have not been taken to prevent future non-compliance, Commandant (CG-543) will issue a Letter of Denial to the vessel's Owner and Company (listed on the Document of Compliance) informing them that the vessel will be denied entry into any port or place in the United States unless specific actions are completed to the satisfaction of the Commandant (CG-5432). A copy of the letter with the IMO report (denied entry) will be provided to the Districts and Sectors involved. Additionally, Commandant (CG-5432) will make notification to the vessel's flag administration and other contracting governments (MOU's Secretariat) explaining the Coast Guard's actions. Commandant (CG-5432) will enter a deficiency, a special note, place a lookout on the vessel and scan appropriate documents in MISLE.
- d. The denial of entry will be associated with the vessel by its IMO number and will remain in effect until removed by Commandant (CG-5432). If the vessel is sold, placed under new management (new DOC/SMC issued), renamed, or re-flagged; all requirements of Commandant (CG-543) letter will remain in effect.
- e. Upon satisfactory review of all the submitted information required in the Letter of Denial, a Letter of Acceptance will be issued by Commandant (CG-543) to the owner and company with a copy forwarded to the involved Districts and Sectors as well as the vessel's flag administration. Commandant (CG-5432) will update the special note, make notification to the contracting governments (MOU's Secretariat), remove the lookout, and scan all correspondence into MISLE.
 1. Upon the vessel's return to any port or place in the United States after a Letter of Acceptance has been issued, a Priority I PSC Exam is required to be conducted prior to entry. Upon satisfactory completion of the PSC exam, the vessel should be authorized to proceed as scheduled at the discretion of the cognizant Captain of the Port. If the vessel fails to satisfactorily complete the Priority I PSC Exam, has major non-conformities or detainable deficiencies are discovered, the vessel should be detained with appropriate control measures applied consistent with existing policies. The guidance outlined in paragraph 6.b should be followed.
 2. Should the submitted information not be accepted by Commandant (CG-5432), a letter will be sent to the company outlining the reason for non-acceptance; MISLE will be updated accordingly.

- f. If the vessel submits an NOA and there is no evidence in MISLE that a Letter of Acceptance (as described in para 6.e above) has been issued, Sectors/units should contact their District (dpi) staff and take the following actions:
1. Notify/contact CG-5432 for an update on the vessel's status. If CG-5432 confirms that a Letter of Acceptance has not been issued or if contact w/CG-5432 cannot be made in a timely manner, a COTP order should be issued by the cognizant COTP denying vessel entry. A sample COTP Order is included as an enclosure.
 2. If the owner or company submits the required documentation in response to the COTP Order (per para 6.f.1.), the information should be forwarded via District (dpi) to Commandant (CG-5432) for review. After completing a review, CG-5432 will notify the COTP via the District if a Letter of Acceptance will be issued. If a Letter of Acceptance is issued, the procedures in paragraph 6.e.1. should be followed. If the submitted information is not accepted, the denial will remain in effect.
 3. The imposed conditions in the Letter of Denial applies to vessels destined for a port or place in the United States, it does not apply during voyages of innocent passage or force majeure.
- g. Commandant (CG-543) will review subsequent detentions that occur within twelve months of the Letter of Acceptance date issued per paragraph 6.e. If Commandant (CG-5432) again determines that the company or flag administration failed to ensure proactive measures were taken to correct the substandard conditions and improve the ineffective SMS to prevent continued non-compliance; a second letter will be issued by Commandant (CG-543), essentially denying entry into any port or place in the United States for a minimum of twelve months and until the SMS is effectively implemented.
- h. If a detained vessel proceeds to sea without complying with the conditions indicated on the Port State Control Report of Inspection/Report of Deficiency Form (CG-5437-A & B), issued by the U. S. Coast Guard or which refuses to comply with the applicable requirements of the relevant instruments by not calling into the indicated repair yard; paragraph c.2 and d. will be applied, until the owner or operator has provided evidence to the satisfaction of Commandant (CG-543) that the ship fully complies with all applicable requirements of the relevant instruments.
- i. Owners may request reconsideration of the Letter of Denial at anytime. The requirements will remain in effect during any request for reconsideration. All correspondence must be submitted to Commandant (CG-5432) at the below address:
- Commandant (CG-5432)
Chief, Foreign & Offshore Vessel Compliance Division
U.S. Coast Guard
2100 Second Street S.W. Stop 7581
Washington, D.C. 20593-7581
- j. Nothing in this policy will restrict Commandant (CG-543) from utilizing the above procedures outlined in paragraph c.2. and d. for a vessel which:

1. Has less than three detentions in twelve months, but in the opinion of the U.S. Coast Guard the condition of such vessel may pose a significant risk to the safety of the vessel, crew or the marine environment, or
2. Is subject to the provision of chapter 37 of Title 46 U.S.C. which:
 - i. Has a history of accidents, pollution incidents, or serious repair problems which creates reason to believe that such a vessel may be unsafe or create a threat to the marine environment (33 U.S.C. § 1228 (1), or
 - ii. Has discharged oil or hazardous material in violation of any law of the United States or in a manner or quantities inconsistent with the provisions of any treaty to which the United States is a party (33 U.S.C. § 1228 (3).
- k. Questions or concerns regarding this policy may be directed to Commandant (CG- 5432) at (202) 372-1235.

#

Enclosure: Example of COTP Order

COTP EXAMPLE

16600

Company
Address
Country

CAPTAIN OF THE PORT ORDER (COTP): (use activity #) XXXXXX

To Whom It May Concern:

The *M/V Vessel Name*, IMO# XXXXXX, Flag State XXXXX; was subject to # of Detention (ex; three, four, etc...) SOLAS detentions in the United States during calendar year 20xx. The substandard conditions identified during each of the # of Detention detentions give me reasonable cause to believe that both company name and the vessel's senior officers have failed to effectively and systematically implement the safety management system as required by the International Safety Management (ISM) Code. On MM/DD/YR (ex; January 28, 2010) U.S. Coast Guard Commandant (CG-543) sent a letter to company name outlining certain requirements that must be completed and submitted for review and approval by the Coast Guard prior to the vessel being authorized to enter U.S. waters. As of this date, our records indicate a submittal has not been received by the Coast Guard. The vessel is therefore considered severely substandard and a significant threat to the safety of the crew and the marine environment.

Under the authority of 33 United States Code 1223, M/V Vessel's Name may not enter the territorial waters of the United States, en route a port or place subject to the jurisdiction of the United States until the items outlined in the CG-543 letter are submitted, reviewed and approved as required.

Failure to comply with this order may under the provision of Title 33 U.S. Code, Section 1232, subject you to a civil penalty of \$32,500 for each day the vessel is in violation and/or a criminal penalty of not more than \$50,000, or imprisonment of not more than five years or both. This order is issued without prejudice as to the initiation of civil penalty proceedings for any violations that may have previously occurred.

Should you be aggrieved by this order, you may, under the procedures prescribed in 33 CFR 160.7, appeal this order. While any request or appeal is pending, all provisions of this order remain in effect.

If you have any questions regarding this order please contact Sector XXXXXX Prevention department at (xxx)xxx-xxxx.

Sincerely,

COTP INFO/SIGNATURE

Enclosure