(b)(2)(i) and (b)(2)(ii), respectively, and the revised paragraph (b) reads as follows:

§ 4231.9 Request for compliance determination.

* * * * *

(b) *Contents of request*—

(1) *General.* A request for a compliance determination concerning a merger or transfer that is not de minimis shall contain —

(i) A copy of the merger or transfer agreement;

(ii) A summary of the required calculations, including a complete description of assumptions and methods, on which the enrolled actuary based each certification that a plan involved in the merger or transfer satisfied a plan solvency test described in § 4231.6; and

(iii) For each significantly affected plan, copies of all actuarial valuations performed within the 5 years preceding the date of filing the notice required under § 4231.8.

(2) De minimis *merger or transfer.* A request for a compliance determination concerning a de minimis merger or transfer shall contain one of the following statements for each plan that exists after the transaction, certified by an enrolled actuary:

(i) A statement that the plan satisfies one of the plan solvency tests set forth in § 4231.6(a), indicating which test is satisfied.

(ii) A statement of the basis on which the actuary has determined that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA, including supporting data or calculations, assumptions and methods.

§ 4231.9 [Amended]

16. At the end of § 4231.9, the words ''(Approved by the Office of Management and Budget under control number 1212–0022)'' are removed.

§ 4231.10 [Amended]

17. At the end of § 4231.10, the words ''(Approved by the Office of Management and Budget under control number 1212–0022)'' are removed.

Issued in Washington DC, this 25th day of April, 1997.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–11352 Filed 4–30–97; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 251

RIN 1010–AC10

Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Reopening of comment period for proposed rule.

SUMMARY: This notice reopens to May 30, 1997, the deadline for the submission of comments on the proposed revision of requirements governing Geological and Geophysical Explorations of the Outer Continental Shelf, that were published February 11, 1997.

DATES: We will consider all comments received by May 30, 1997. We will begin reviewing comments at that time and may not fully consider comments received after May 30, 1997.

ADDRESSES: Mail or hand-carry written comments to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4700; Herndon, Virginia 20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT:

Kumkum Ray, Engineering and Operations Division, at (703) 787–1600.

SUPPLEMENTARY INFORMATION: MMS has been asked to extend the deadline for respondents to submit comments on the proposed revisions of MMS's requirements governing geological and geophysical explorations of the Outer Continental Shelf that were published February 11, 1997 (62 FR 6149). The request explains that more time is needed to allow respondents time to prepare detailed and comprehensive comments.

Dated: April 22, 1997.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–11276 Filed 4–30–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 96

46 CFR Parts 2, 31, 71, 91, 107, 115, 126, 175, 176, and 189

[CGD 95–073]

RIN 2115–AF44

International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code)

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to develop regulations which parallel the international requirements for safety management systems required of companies and their U.S. vessels that are engaged on foreign voyages. This action is mandated by the Coast Guard Authorization Act of 1996. These proposed regulations will allow responsible persons and their U.S. vessel(s) to develop safety management systems to enhance vessel operating safety and reduce pollution incidents in compliance with internationally and nationally mandated deadlines. The proposed regulations will also permit recognized organizations to receive authorization from the U.S. to audit safety management systems and issue international convention certificates.

DATES: Comments must reach the Coast Guard on or before July 30, 1997. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before June 30, 1997.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–073), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between

9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The material proposed for incorporation by reference is available for inspection at room 1210, U.S. Coast Guard Headquarters.

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:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, and arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 95–073) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

This is the Coast Guard's first ''plain English'' regulation. Clear, more readable regulations are essential for the success of our government's reinvention initiative. We encourage your comments on this new way of writing regulations.

Background and Purpose

This proposed rule is necessary to fulfill the mandates of 46 U.S.C. 3203, as added by section 602 of the Coast Guard Authorization Act of 1996, Pub. L. 104–324, 110 Stat. 3901. The purpose of this rule is to establish a national safety management system and requirements for the development, documentation, auditing, certification and enforcement of responsible persons and vessel safety management systems consistent with the U.S. adopted international regulations of Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) 1974, as amended. Chapter IX of SOLAS, ''Management for the Safe Operation of Ships,'' requires that all vessels to which SOLAS is applicable, and their companies, have effective safety management systems developed to meet the performance elements of the International Safety Management (ISM) Code (International Maritime Organization (IMO) Resolution A.741(18)).

Safety management systems for vessel transportation operations were first formalized in November 1987, in response to the HERALD OF FREE ENTERPRISE disaster, when the IMO adopted Resolution A.596(15), ''Safety of Passenger Ro-Ro Ferries.'' This resolution concluded that vessel safety could be greatly enhanced by establishing improved vessel operating practices. It further requested that the IMO Maritime Safety Committee (MSC) and Marine Environmental Protection Committee (MEPC) develop guidelines for shipboard and shore-based management procedures for safer vessels and pollution prevention.

On October 19, 1989, the MSC and MEPC guidelines for development of enhanced safety management practices were adopted by the IMO as Resolution A.647(16), ''Guidelines on Management for the Safe Operation of Ships and for Pollution Prevention.'' This first set of recommendations provided performance standards for the maritime industry on vessel safety management systems and encouraged continuous improvement in safety management skills within the maritime industry worldwide. It noted that vessel safety could be increased and environmental pollution decreased for all vessels which used documented company and vessel operating management practices. Safe operating practices, implemented through documented procedures and company policies, would provide better results in vessel safety than governments' attempts to regulate operating practices.

IMO Resolution A.647(16) was endorsed by the U.S. and published as an enclosure to Navigation and Vessel Inspection Circular (NVIC) No. 1–90, ''Recommendation Concerning Management Practices for Safe Ship Operation and Pollution Prevention,'' published August 17, 1990. NVIC 1–90 recommendations were intended as guidelines for industry use. These guidelines were intended to document management procedures that increased the levels of safety aboard vessels and reduced pollution incidents. The Coast Guard concluded that operating efficiency and profitability is increased for a vessel, if the owner or managing operator provides effective supervision and plans a safety strategy which anticipates problems and provides direction to manage important day-to-day vessel and shore-based operations. It was also found that the effective use of a safety management system specifically enhances the ability of a company's shore-based personnel to respond to vessel operational needs or emergencies.

Since the adoption of IMO Resolution A.647(16) in 1989, the MSC and MEPC have continued to refine and amend the performance standards and elements required for enhancement of safety management systems. This was because significant marine casualties continued to occur despite engineering and technological innovations. The Coast Guard's analysis of marine casualties over the past 30 years illustrated that the national and international maritime community applied engineering and technological solutions to promote safety and minimize the consequences of marine casualties. In an effort to further reduce casualties, the role of the ''human element'' in the maritime safety equation was evaluated.

Recent casualty studies concluded that in excess of 80 percent of all high consequence marine casualties may be directly or indirectly attributable to the ''human element.''

Consequently, the international maritime community saw the need to emphasize shipboard safety management practices to minimize human errors or omissions. These types of errors play a part in virtually every casualty, including those where structural or equipment failure may be the direct cause.

During the last eight years, two subsequent IMO resolutions were adopted due to work by the MSC and MEPC that incorporated the earlier recommendations and guidelines. These IMO resolutions are:

- IMO Resolution A.681(17), adopted November 6, 1991, ''Procedures for the Control and Operational Requirements Related to the Safety of Ships and Pollution Prevention''; and
- IMO Resolution A.741(18), adopted November 4, 1993, ''The International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code).''

Adoption of these resolutions increased the performance elements required to enhance the marine management skill practices documented as part of the safety management

system. These new performance elements included:

- Written management procedures that document relevant national and international regulations which are applicable to vessel operations;
- Designation of a person within the company who is responsible to oversee and maintain the safety management system. This person has complete communication authority from the lowest employee level to the top management of the company to ensure that vessel operation problems reach all levels of management unobstructed; and
- Internal company auditing and reporting procedures to ensure continuous improvement to the safety management system by owner and managers.

The U.S. has been at the forefront providing input, analysis and direction for MSC and MEPC development of these resolutions. The U.S. recognized that the human element needed to be addressed and initiated the Prevention Through People (PTP) program which examines and defines the critical role that the human element plays in maritime safety. The PTP concept asserts that safe and profitable operations require a systematic approach toward the constant and balanced interaction between the elements of management, the work environment, individual behavior, and appropriate technology. The ISM Code provides this systematic approach to the mariner with the policy and procedures needed to understand their duties and address the human element issues and risks that can prevent casualties from occurring. The voluntary certification of safety management systems by U.S. vessels in domestic trade supports the PTP strategies to bring government and industry together in making cultural change and partnerships to address the human element in maritime operations and pollution prevention.

Accordingly, the Coast Guard endorsed the guidance provided by the ISM Code in IMO Resolution A.741(18), and provided it as a reference in NVIC No. 2–94 published March 15, 1994, ''Guidance Regarding Voluntary Compliance with the International Management Code for the Safe Operation of Ships and for Pollution Prevention.'' NVIC 2–94 canceled the earlier NVIC 1–90.

In May 1994, Chapter IX of SOLAS, ''Management for the Safe Operation of Ships,'' was adopted at the IMO's Conference of Contracting Governments to SOLAS, 1974. Chapter IX of SOLAS mandates that all vessels subject to SOLAS, and their companies, have effective safety management systems developed and in use that conform to the performance elements of the ISM Code (IMO Resolution A.741(18)). Companies whose U.S. flag vessels trade internationally (engaged on a foreign voyage) and are subject to SOLAS, must have their safety management system externally audited and must receive the appropriate international certificates from the U.S. or from a recognized organization authorized to act on behalf of the U.S.

The adoption of Chapter IX of SOLAS will become effective for companies whose vessels are subject to the provisions of SOLAS and are engaged in international trade as follows:

- Beginning July 1, 1998, for vessels transporting more than 12 passengers; and tankers, bulk freight vessels, or high speed freight vessels of at least 500 gross tons; and
- Beginning July 1, 2002, for freight vessels and self-propelled mobile offshore drilling units of at least 500 gross tons.

The ISM Code marks a significant philosophical shift in the maritime community's approach by recognizing the human element's role in preventing marine casualties and ensuring vessels are operated responsibly in accordance with domestic and international standards. The ISM Code is seen as a major contributor to industry's self-evaluation and action to address the human element concerns. It is intended to change the current approach of regulatory compliance from industry's passive defect notification and correction response mode to an aggressive approach to safety. Under this proactive approach, potential discrepancies are resolved by the companies themselves before casualties can occur.

The ISM Code performance elements require the development of safety management systems which document and communicate the owner's policy, chain of authority, and operational and emergency procedures. It also requires management reviews, internal audits and corrections of non-conformities in a company's management procedures. The documentation of a safety management system provides the basis for auditing the employee's knowledge, ashore and afloat, of the company's procedures and policies. It illustrates owner, manager and master responsibilities specifically and ensures that all national and international standards are documented in the system's procedures.

To ensure that the U.S. public and maritime industry understood the mandatory requirements of the ISM Code, the Coast Guard published a notice in the **Federal Register** on October 5, 1995 (60 FR 52143). This notice explained the adoption of the ISM Code by the Contracting Parties of SOLAS, and scheduled four public meetings held at the following times and locations:

- October 30, 1995,—Federal Building, Seattle, Washington;
- November 1, 1995,—Port Authority Building, Long Beach, California;
- November 13, 1995,—Holiday Inn Downtown, New Orleans, Louisiana; and
- November 16, 1995,—Port Authority Building, New York City, New York.

At these public meetings, the Coast Guard received comments on implementation of the international requirements and provided a presentation on the U.S.'s voluntary safety management system guidelines in NVIC 2–94. Comments received at these meetings were audio taped and are a part of this docket.

On January 26, 1996, RADM James C. Card, the Assistant Commandant for Marine Safety and Environmental Protection (G–M), sent a personal letter to each owner of a U.S. vessel required to be certificated by the international requirements of the ISM Code. This was done to ensure that the U.S. flag vessel owners understood that the U.S. had adopted Chapter IX of SOLAS, and the ISM Code would be mandatory for their companies and U.S. vessels.

Discussion of Proposed Rules

The incorporation of the ISM Code's tenets into U.S. regulations is required by section 602 of the Coast Guard Authorization Act of 1996. This section added Chapter 32 ''Management of Vessels'' to Title 46 U.S. Code. The Secretary of Transportation is required by 46 U.S.C. 3203 to prescribe regulations that establish a safety management system for the responsible persons and vessels to which Subtitle II of 46 applies. The safety management system must be consistent with the ISM Code and must include:

- A safety and environmental protection policy;
- Instructions and procedures to ensure safe operation of vessels and protection of the environment in compliance with international and U.S. law;
- Defined levels of authority and lines of communication between, and among, personnel onshore and on the vessel;
- Procedures to report accidents and nonconformities with 46 U.S.C. chapter 32;

- Procedures to prepare for and respond to emergency situations; and
- Procedures for internal audits and management reviews of the system.

The Secretary of Transportation's authority under 46 U.S.C. Chapter 32 and 46 U.S.C. 3103 was delegated to the Commandant of the Coast Guard in title 49, Code of Federal Regulations (CFR), § 1.46 (fff) and (ggg), published as a final rule in the **Federal Register** on April 24, 1997 (62 FR 19935).

Safety Management System

The Coast Guard is implementing the requirements for safety management systems and related requirements to implement the provisions of Chapter IX of SOLAS, in new 33 CFR part 96. To establish safety management system requirements, the Coast Guard is proposing to use existing industry based standards or previously adopted international standards to the greatest extent possible. Under the proposed rules, responsible persons and their U.S. vessels subject to Chapter IX of SOLAS and IMO Resolution A.741(18) will be able to meet these international requirements at the same time they comply with parallel U.S. statutory requirements and regulations. For those vessels or companies that are not subject to the SOLAS requirements and not required to meet these regulations, the proposed § 96.210(c) permits them to voluntarily meet the standards of part 96 and Chapter IX of SOLAS. Proposed §§ 96.220, 96.230, 96.240, and 96.250 establish the safety management system, and detail the specific objectives, functional requirements, documentation and reporting required for consistency with the ISM Code and to comply with Federal law.

46 U.S.C. 3204 requires that responsible persons submit a safety management plan to the Secretary describing how they will comply with the regulations pertaining to the safety management system. The Secretary must review this plan to determine if it is consistent with and will assist in implementing the safety management system. Once compliance is assured, then the Secretary issues a Safety Management Certificate and a Document of Compliance certificate.

Responsible persons are owners of vessels or other persons, organizations or companies who have assumed responsibility for the operation of a vessel from the owner. Responsible persons who are not owners have agreed to take over the duties and responsibilities imposed by the safety management system and the requirements of these proposed rules. To be consistent with these proposed regulations and the elements of the ISM Code, and for ease of understanding by the user of the regulations, the term ''company(nies)'' will be used in the place of responsible person(s) where needed for grammatical correctness and readability of the proposed regulations.

Chapter IX of SOLAS does not contain requirements for, or a definition of, a ''safety management plan.'' SOLAS does require, however, specific documentation as part of an individual vessel's or company's safety management system. The nature of this documentation describes how the vessel or company will comply with the requirements of the ISM Code. Proposed §§ 96.240 and 96.250 adopt SOLAS documentation and reporting requirements, which require the vessel or company to demonstrate how it complies with the ISM Code. As proposed here, the documentation and reporting requirements of proposed §§ 96.240 and 96.250 will suffice as the ''safety management plan'' required by 46 U.S.C. 3204.

Proposed §§ 96.330 and 96.340 set forth requirements for a responsible person or company to obtain a Document of Compliance certificate or Safety Management Certificate. Proposed §§ 96.350 and 96.360 provide criteria for Interim Document of Compliance certificates and Interim Safety Management Certificates. These sections parallel IMO Resolution A.788(19), ''Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations,'' adopted November 23, 1995.

Organizations Acting on Behalf of the U.S.

Section 603 of the Coast Guard Authorization Act of 1996 (46 U.S.C. 3103) permits the Secretary, and the Commandant through authority delegated from the Secretary as noted above, to rely on reports, documents and records of other reliable persons as evidence of compliance with Subtitle II of Title 46, U.S. Code. Under the authority of 46 U.S.C. 3103, this rulemaking will allow organizations previously recognized by the Coast Guard under 46 CFR part 8, to obtain authorization under proposed 33 CFR part 96, subpart D to audit safety management systems and issue Document of Compliance certificates and Safety Management Certificates on behalf of the U.S.

The Coast Guard will only authorize organizations that are recognized in accordance with 46 CFR part 8, subpart B, ''Recognition of a Classification Society.'' Experience within other industries has shown that subject matter expertise is essential for proper functioning of a quality or safety management certification scheme. Use of the criteria in 46 CFR part 8, subpart B, will ensure that the organizations selected to be authorized by these proposed rules will have the expertise and capabilities to properly carry out this function for the U.S.

Because the Coast Guard proposes to authorize recognized organizations to issue safety management system certificates, certification will not be completed directly by the Coast Guard. Coast Guard personnel would require extensive training and resources which already exists in the commercial industry. Commercial organizations recognized under 46 CFR part 8, and authorized under these proposed rules, already have the training and resources available to carry out the auditing requirements consistent with the international guidelines of the ISM Code. By permitting organizations to carry out this function, the Coast Guard will be able to effectively oversee the proper execution of regulatory implementation and certification. The implementation of these proposed regulations will better utilize Coast Guard resources to oversee these and other marine functions carried out by others on behalf of the U.S.

Proposed 33 CFR part 96, subpart D sets the standard for organizations that will be authorized to act on behalf of the Coast Guard for the Flag Administration. This parallels the standards of IMO Resolution A.739(18), ''Guidelines for the Authorization of Organizations Acting on Behalf of the Administration,'' adopted November 4, 1993, and is incorporated by reference into the proposed rules. These international guidelines establish the minimum standards that each organization is reviewed for and must meet in order to complete safety management audits, marine surveys or inspections, and certifications on behalf of a Flag Administration.

The authorization of foreign based classification societies under these proposed rules in subpart D will be subject to the reciprocity requirements of § 96.430(a)(5). This section is based on 46 U.S.C. 3316 as amended by the Coast Guard Authorization Act of 1996. This statute requires reciprocity to the American Bureau of Shipping for certain delegations of authority to foreign based classification societies.

Proposed § 96.440 establishes requirements, consistent with the guidelines in IMO Resolution A.739(18), for organizations seeking authorization to act on behalf of the U.S. Proposed

§§ 96.430, 96.440, and 96.450 establish requirements for authorization requests and agreements of authorization between recognized organizations and the Coast Guard. Following the international guidelines incorporated into these proposed sections will ensure that organizations selected by the Coast Guard to act on behalf of the U.S. have the qualifications acceptable by all parties to SOLAS worldwide.

In order to ensure that authorized organizations maintain the high standards necessary to perform audits and issue certificates on behalf of the U.S., proposed § 96.470 provides for an annual Coast Guard evaluation of an organization's audit procedures. If the organization fails to maintain the standards established in part 96, subpart D, the Coast Guard can terminate the organization's authorization under proposed § 96.470. Certificates issued by that organization will remain valid until the certificate expiration date or the next periodic safety management audit date, whichever occurs first. An organization which has its authorization terminated is required under proposed § 96.490 to provide a written explanation of its loss of authorization and a list of organizations authorized to act on behalf of the U.S. to the responsible persons for companies and vessels certificated by that organization. The organization must explain the status of the companies and vessels, and how certificates can be transferred to another U.S. authorized organization.

Proposed § 96.495 establishes the appeal procedures for a responsible person who does not agree with actions taken by the authorized organizations for their company's or vessel's safety management system. By permitting responsible persons to appeal directly to the Commandant, Coast Guard oversight of actions by authorized organizations is ensured.

Safety Management Audits for U.S. Companies

In order to verify that a vessel or the company represented by a responsible person is in compliance with the requirements of the safety management system established under proposed §§ 96.220, 96.230, 96.240, and 96.250, safety management audits will be performed by the authorized organizations under proposed § 96.320. This requires that audits be performed consistent with IMO Resolution A.788(19).

In addition to safety management audits performed initially to verify compliance with the safety management system, 46 U.S.C. 3205(c) requires periodic reviews to determine continued compliance with the safety management system. The proposed rules require a responsible person to request periodic safety management audits, to be performed in accordance with proposed § 96.320. Periodic audits are defined in proposed §§ 96.330(f) and 96.340(e)(2).

In the event that a responsible person fails to request a periodic audit, or if a major non-conformity is found within a company's or vessel's safety management system during a safety management audit, the Coast Guard may revoke the company's Document of Compliance certificate or a vessel's Safety Management Certificate. If a Document of Compliance certificate is revoked, all Safety Management Certificates issued to the vessel(s) owned and operated by that responsible person, will become invalid under proposed § 96.340(e)(3). This is because, without a valid Document of Compliance certificate, all such vessels are operating under a non-conforming safety management system. After a company resumes operations under a valid Document of Compliance certificate, the responsible person for the company's vessel(s) must request and complete a satisfactory safety management audit prior to receiving a valid Safety Management Certificate.

Compliance and Enforcement

To ensure compliance with the ISM Code requirements by vessels in U.S. waters, proposed § 96.380 permits the Coast Guard to board U.S. and foreign vessels to determine if the safety management system is being observed and practiced during vessel operations. During this process, the Coast Guard will also verify that a valid copy of the company's Document of Compliance certificate and a valid vessel Safety Management Certificate are on board. A vessel may be detained under authority of this proposed section, if its personnel are not following its safety management system or if the vessel is not carrying the appropriate certificates. Proposed § 96.390 authorizes the Coast Guard to deny entry of a vessel into a port or terminal under the authority of 46 U.S.C. 3204(c).

For vessels from a country not a party to Chapter IX of SOLAS, proposed § 96.370 requires those vessels to have evidence of a safety management system consistent with the ISM Code. Failure to comply will subject these vessels to the compliance and enforcement procedures of proposed § 96.380.

Amendments to Existing Regulations

A second category of proposed rules will amend existing general SOLAS certification regulations to incorporate the requirements for safety management systems in various parts of 46 CFR for specific vessel types. These regulatory amendments will expand upon current applicability of SOLAS certification and the safety management certification for each U.S. vessel type engaged in international trade, and are referenced to 33 CFR part 96 as follows:

- Vessel Inspections, International Convention for the Safety of Life at Sea, 1974. (46 CFR 2.01–25);
- Tank vessel, Safety Management Certificate (46 CFR 31.40–30);
- Passenger vessel, Safety Management Certificate (46 CFR 71.75–13);
- Freight vessel, Safety Management Certificate (46 CFR 91.60–30);
- Self-propelled mobile offshore drilling unit, Safety Management Certificate (46 CFR 107.415);
- Small passenger vessel, Safety Management Certificate (46 CFR 115.925);
- Offshore supply vessel, Safety Management Certificate (46 CFR 126.480);
- Small passenger vessel, Safety Management Certificate (46 CFR 176.925); and
- Oceanographic research vessel, Safety Management Certificate (46 CFR 189.60–30).

The third category of proposed rules specifically involves safety management system certification for approximately 72 U.S. small passenger vessels and their responsible persons. These U.S. small passenger vessels involved in international trade are divided into two categories:

- Small passenger vessels which must meet 46 CFR, subchapter T, parts 175 through 185 (known in the U.S. marine industry as ''T boats''); and
- Small passenger vessels which must meet 46 CFR, subchapter K, parts 114 through 122 (known in the U.S. marine industry as ''K vessels'').

The Coast Guard reviewed the management strategies used by U.S. small passenger vessels (less than 100 gross tons) certificated under SOLAS for international trade. The Coast Guard's G–M Business Plan requires that there be a recognition between different types of passenger vessels to determine the types of risks and management strategies affecting their operations. Of the 72 U.S. small passenger vessels potentially affected by this proposed rulemaking, approximately 54 vessels fall into the ''T boat'' category. This review showed that T boats which carry less than 49 passengers overnight and not more than 150 passengers, and operate on routes less than 20 miles

from shore in international trade, are typically manned and operated by small companies made up of one to five employees. In these cases, the responsible person for the vessel is usually the vessel's operator or master, who is involved in every decision and action related to the management and operation of that vessel. In light of the nature of these vessels' operations, and the fact that the owner oversees the vessels everyday, a safety management system meeting the requirements of these proposed rules could be seen as overwhelming for a small company with limited resources.

Historical vessel casualty information on these small passenger vessels was reviewed to determine any basis of risk. The review did not indicate a larger than normal risk when compared to other T boats in operation within U.S. domestic waters only. This review of historical casualty information included only vessel incidents involving groundings, allisions, collisions, propulsion equipment failures, pollution incidents, fires and navigational errors. This review of casualty information did not include incidents which occurred on these vessels that were reported as marine casualties, which included only personal injuries, such as: Diving accidents; slips and falls; passenger medical ailments; passenger illnesses; or other such non-vessel related mishaps to passengers.

Other factors determined from this review support the concept of hands-on, responsible person management of T boats. They include: Vessel employees with long tenures of employment (a number of these vessels are family owned and operated); vessels operate on short routes, close to shore on protected waters; a low number of passengers are carried; and a short amount of time is spent underway from shore or from the vessel's home dock.

This review reinforced our belief that the existing oversight management strategies and hands-on operation of T boats by their responsible persons, can be considered equivalent to providing safety management systems for these specific 54 small passenger vessels.

Small passenger vessels subject to the requirements of 46 CFR subchapter T have traditionally been allowed equivalencies to SOLAS requirements in accordance with Chapter I, Regulation 5 of SOLAS. This is allowed, if the equivalence is at least as effective as that required by the regulations. The existing SOLAS equivalency provision for these small passenger vessels is found at 46 CFR 176.930. Because equivalencies for ''T boats'' are currently allowed, the Coast Guard proposes to amend 46 CFR 176.930 to allow ''T boat'' owners to apply for an equivalence to the requirements of 33 CFR part 96, at their option. The Coast Guard plans on partnering with the responsible persons of this limited number of T boats to develop safety management systems that are equivalent to manage the risks these vessels see in their limited operations. Specific actions for equivalence applications will be provided by the Coast Guard as a separate directive from this rulemaking action, if the proposed revision to § 176.930 is incorporated in the final rule.

The remaining 18 small passenger vessels applicable to these proposed rules are regulated under subchapter K. ''K vessels'' are normally owned and operated by larger companies with similar management issues associated to those of deep draft fleets, such as: large number of passengers carried; large number of persons employed, onshore and onboard the vessels; unrestricted international routes with overnight underway capability; day to weekly underway operations from shore; and the responsible persons reliance on a management company to oversee and manage the day to day operation of the vessel. Furthermore, due to the complexity of the operation of these vessels, the crews require a higher level of training and management by the company.

A historical vessel casualty review showed that K vessels in international trade had a higher risk of casualties than vessels of similar size in operation within U.S. domestic waters. The casualties reviewed for this determination were also vessel related casualties and did not include passenger injury or illness related incidents.

Small passenger vessel owners not wishing to apply for an equivalence allowed for T boats or, whose vessels must comply with 46 CFR subchapter K, must meet the safety management system requirements of the proposed regulations in 33 CFR part 96. Comments on this proposal are specifically requested.

Incorporation by Reference

Material that would be incorporated by reference is listed in § 96.130. The material is available for inspection where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in § 96.130.

Before publishing a binding rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost 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).

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket for inspection or copying where indicated under **ADDRESSES**. A summary of the Evaluation follows:

The Coast Guard estimates that the proposed regulations will affect approximately 370 U.S. vessels registered for international trade, which are owned by approximately 153 different owners. Of these owners, approximately 96 own 190 U.S. vessels which will be required to comply with these proposed rules by July 1, 1998. Of the remaining 180 U.S. vessels, 57 owners must comply by July 1, 2002. The proposed regulations will also affect any owners or vessels that voluntarily opt to meet the requirements of proposed 33 CFR part 96.

The Coast Guard expects that the total costs for ISM Code implementation falls into two categories for each company affected. The first category involves costs incurred by the responsible persons to have their company and vessel(s) safety management system externally audited and certificated. The second category involves the development and training costs for safety management systems.

Audit and Certification Costs

The Coast Guard surveyed a small representative group of companies that operate U.S. vessels and the three organizations (American Bureau of Shipping (ABS), Det Norske Veritas (DNV), and Lloyd's Register of Shipping (LRS)), that had been accepted to complete the voluntary auditing and certification of safety management systems in accordance with NVIC 2–94. Because actual audit and certification costs are internal to the company's profit and loss determinations, and therefore proprietary, the companies surveyed provided cost estimates only. The three organizations provided cost estimates for services involving initial audits and certification for companies and their vessel(s). All cost data provided varied widely due to the size of the company, number of personnel, type of vessels and the number of

vessels owned and engaged in international trade.

To clearly describe the costs of audit and certification, companies have been separated into three categories of large, medium and small sized companies, based on the number of personnel required to operate a company and the number of vessels a company operates.

Large size companies. Included here are 71 companies which own approximately 275 U.S. vessels that must meet the requirements of these proposed rules. These companies operate deep draft tankers (liquid and gas carriers), freight vessels (container, roll-on/roll-off (RO-RO), combination, break bulk carriers), bulk vessels (ore and grain carriers), and self-propelled mobile offshore drilling units.

It is estimated that the external audit and certification cost for these companies are:

- Initial audit and certification of company=$7,000.
- Company periodic certificate audit (4)=approx. $7,000 per audit.
- Initial audit and certification of vessel=$5,000.
- Vessel intermediate certificate audit (1)=approx. $5,000.

The costs for initial audit and certification of 71 large companies, plus 4 yearly periodic audits during the life of each certificate, is estimated at $497,000 annually. [(number of companies) × 5 (certification + audits) × cost / 5 (years) = $ total cost per year] The costs for audit and certification of 275 vessels owned by large companies, plus one intermediate audit during the life of each certificate, is estimated at $550,000 annually. [(number of vessels) × 2 (certification + audit) × cost / 5 (years) = $ total cost per year] The total cost per year for the certification of large size companies and their vessels is estimated at $1,047,000 per year after July 1, 2002.

Between July 1, 1998, and July 1, 2002, 40 of these large size companies and 157 of their vessels will not be required to be certificated due to the later effective date of the proposed rules for freight vessels and self-propelled mobile drilling units. Between July 1, 1998, and July 1, 2002, cost estimates for certification of safety management systems per year would be reduced to $217,000 for companies and $236,000 for vessels. A total cost is estimated at $453,000 annually from July 1, 1998, to July 1, 2002.

Medium size companies. These include 17 companies with 23 U.S. vessels. These companies operate oceangoing tugs, industrial support vessels (offshore supply service vessels, cable laying vessels, etc.), and research vessels.

It is estimated that the audit and certification cost for these companies are:

- Initial audit and certification of company=$5,000.
- Company periodic certificate audit (4)=approx. $5,000 per audit.
- Initial audit and certification of vessel=$3,000.
- Vessel intermediate certificate audit (1)=approx. $3,000.

Therefore, the cost for audit and certification of 17 medium size companies, plus four yearly periodic audits per the life of each certificate, is estimated at $85,000 annually. The cost for audit and certification of 23 vessels owned by medium size companies, plus one intermediate audit per life of certificate, is estimated at $27,600 annually. A total cost per year for certification actions of all medium size companies owning U.S. vessels is estimated at $112,600 per year. It must be remembered that due to the type of vessels that fall into this size company category, the effective date for implementation of safety management systems for all medium size companies would be July 1, 2002.

Small size companies. These include 65 companies, which own 72 U.S. vessels. These companies own U.S. passenger vessels engaged in a foreign voyage while carrying 12 or more passengers. The proposed rules will become effective for all passenger vessels on July 1, 1998. Small size companies include T boats and K vessels.

It is estimated that the average audit and certification costs for these companies are:

- Initial audit and certification of company=$1,000.
- Company periodic certificate audit (4)=$500 per audit.
- Initial audit and certification of vessel=$800.
- Vessel intermediate certificate audit (1)=$500.

The cost for initial audit and certification of 65 small size companies, plus 4 yearly periodic audits per the life of each certificate, is estimated at $39,000 annually. The cost for initial audit and certification of 72 vessels owned by small size companies, plus 1 intermediate audit per the life of each certificate, is estimated at $18,720 annually. The total estimated cost per year for certification actions of all small size companies owning U.S. vessels equals $57,720.

However, this proposed rule provides an alternative to alleviate the costs imposed on some of these small companies. It is proposed that T boats, be provided with an equivalence to Chapter IX of SOLAS under their inspection for certification by the U.S. This equivalence would cover the 53 owners of the 54 U.S. small passenger vessels (1 owner owns 2 vessels). If that occurs, no further cost for certification would be incurred by these small passenger vessels, as this examination of the vessel and company's safety management systems would be completed as part of the Coast Guard's examination for issuance of the Certificate of Inspection (COI). This is already covered under the vessel's user fee.

Of the K vessels not covered by the SOLAS equivalence proposed in this rulemaking, the 12 owners of the 18 U.S. vessels would be required to develop and have their company and vessel(s) safety management systems audited and certificated by July 1, 1998.

Total audit and certification cost. The total cost for audit and certification is estimated at $514,780 annually for the period July 1, 1998, through June 30, 2002. On July 1, 2002, the cost will increase to an estimated $1,217,280 annually. This is because additional U.S. vessels and companies will be required to comply with Chapter IX of SOLAS and 46 U.S.C. 3203(a). This cost may increase or decrease after that time due to the fluctuation in the number of companies and U.S. vessels which are registered to be engaged in international trade. The Coast Guard encourages the maritime industry and the general public to submit comments on these estimated costs.

Safety Management System Development and Employee Training Costs

To ascertain the costs to develop safety management systems and to train employees to use these systems, the Coast Guard surveyed a small representative group of U.S. vessel owners and operators that developed safety management systems consistent with IMO resolutions. Some of those surveyed voluntarily certificated their company and vessel(s) safety management systems in accordance with Coast Guard NVIC 2–94.

When surveyed on the specific costs required to develop a safety management system, the general response was that the companies could not provide a detailed or accurate cost assessment until they had seen the proposed regulations. Some indicated that their company had already developed and certificated quality assurance programs as part of, or prior to, development of a safety management

system, and could not provide data on initial development costs. In those cases, their internal costs were marginal to meet the ISM Code requirements, as compared to the companies who must develop safety management systems under these proposed rules. Others indicated that the development of quality assurance and safety management systems are a component of the cost of doing business because these systems are required by contractual agreements. Consequently, they were unable to attribute specific costs to safety management system development.

Overall, it is difficult to determine the incremental costs incurred by these companies to develop safety management systems. This is because these systems are developed for companies that can range in size from the operation of one small passenger vessel by its owner, who is the vessel's master, to a U.S. oceangoing container vessel company with thousands of employees and 37 deep draft vessels. Development costs will also depend on whether a company internally develops its safety management system or hires an outside consultant to do it. The various types of vessels, companies, and the requirements necessary to run any one of them, will affect development costs. Therefore, it is requested that comments, data, and documentation on the costs to develop a safety management system be submitted by vessel owners, operators, the maritime industry and the general public.

Training costs include the instruction of personnel in the new safety management systems, both ashore and aboard vessels, and the documentation of training in the company's safety management systems to meet the ISM Code. These costs can include on-the-job reading, classroom training provided by the company to its employees, consultant training programs completed in house, and on-the-job demonstration and training drills.

Training costs will also vary due to the wide range of companies required to comply with these regulations. For example, training costs for a company that has 5,000 employees will be much higher than the training costs of a company with 5 employees.

Training costs are also effected by the fact that many shipboard personnel of U.S. vessels engaged in international trade have received training regarding the performance elements of the ISM Code through the implementation of the 1995 Amendments to the International Convention of Training, Certification, and Watchkeeping for Seafarers (STCW), 1978. Thus, a substantial portion of these training costs may be related to STCW implementation, and not to ISM Code implementation.

When surveyed on the costs involved to train employees on the use of safety management systems, cost estimates ranged from $10,000 for larger companies with deep draft vessels, to $0 for companies who had integrated their training costs into their normal safety training budget. So little information was received and the differences in estimates was such, that a valid estimate of training costs could not be made. It is believed that different factors, including those training costs of the STCW requirements, were combined into these cost statements. Due to the variation of the types of companies and vessels that will be subject to these proposed rules, the Coast Guard is requesting that the maritime industry and general public submit comments, data, and documentation on training costs expected to be incurred by companies and vessels of all sizes and varied organizational structure.

Benefits

The Coast Guard expects that the proposed rule will have economic benefits and the potential to reduce marine casualties. With the development of safety management systems, a reduction in costs attributable to shipboard personnel injuries and liability is likely. A reduction of risk due to fewer vessel casualties and liabilities is also expected. Because safety management systems include pollution prevention procedures, the Coast Guard expects a reduction in pollution incidents which could result in environmental damage. It also expects reduced company and vessel liability and regulatory fines due to these incidents. Delays in vessel operation and scheduling can be eliminated or significantly reduced because the lines of authority and communication will be defined between personnel onshore and on the vessel. With fewer marine casualties, costs associated with insurance claims and vessel insurance premiums should also decrease.

As with other industries, it is anticipated that preventive actions provided by clear and communicated procedures and policies will allow for proactive management styles. Over time, the maritime industry should realize substantial savings in cost that far outweigh start up and maintenance fees for safety management systems. These savings include reduction of: lost worker's hours due to injury, loss of vessel operation due to repairs, and costs due to fines and judicial actions against the company and its vessel(s). The Coast Guard specifically solicits comments on the benefits of this proposed action.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will 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 rulemaking will affect U.S. oceangoing vessels of specific categories of more than 500 gross tons, or passenger vessels of any size carrying more than 12 passengers in international trade. The greatest impact will fall on large U.S. oceangoing shipping companies, which have 1 to 37 deep draft vessels over 500 gross tons and are not considered as small business concerns or small business entities.

Today, there are approximately 5,600 small and large passenger vessels certificated for operation under the U.S. flag. Approximately 370 of those U.S. flag vessels will be affected by this proposed rule and the mandatory requirements of the ISM Code. Out of those 370 U.S. vessels, approximately 72 are small passenger vessels on limited international routes in the sportfishing, tourism and cruising trade. Only the small passenger vessel companies appear to have less than 500 employees within their firms or claim gross revenues far below the defined base of a small entity. Thus, for the purposes of this rulemaking, the 72 small passenger vessels are the only companies that appear to meet the definition of a small entity under this section.

Costs for these small passenger vessels to develop a safety management system, provide training and document procedures will be considerably less than larger companies due to the limited number of employees, routes, and passengers. Most of these companies operate with less than 5 employees. In some cases, the owner is the master of the vessel, and the crew are close relatives of the owner. There is long term tenure of the employees in these small companies, and since most positions aboard are unlicensed or undocumented, training consists of basic operations which are required to be documented by the existing

regulations for small passenger vessels in 46 CFR.

Furthermore, the Coast Guard proposes to permit vessels in the ''T boat'' category to comply with the ISM Code through an equivalence under 46 CFR part 176.930, at their option. This would eliminate the $860.00 certification cost for each vessel, per year, as discussed in the preceding cost/benefit analysis. All 54 of the ''T boats'' may opt to satisfy these requirements by that equivalence.

An initial evaluation showed that the cost of this rulemaking would not have a significant economic impact on a substantial number of small business entities as described above. Therefore, the Coast Guard certifies that under 5 U.S.C. 605(b), this proposal, if adopted, will not have a significant impact on a substantial number of small entities. If however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically effect it.

Assistance 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 wants to help small entities understand this proposed rule so they can better evaluate its effects on them and participate in the rulemaking process. If your small business is affected by this rule and you have questions concerning its provisions or options for compliance, please 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.

Collection of Information

The proposed rule provided for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As defined in 5 CFR 1320.361, ''collection of information'' includes reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Summary of the Collection of Information

This proposal contains collection-of-information requirements in the following sections: 33 CFR 96.250, 96.320, 96.330, 96.340, 96.350, 96.360, and 46 CFR 2.01–25, 31.40–30, 71.75–13, 71.75–20, 91.60–30, 91.60–40, 107.417, 115.925, 126.480, 175.540, 176.925, 176.930,189.60–30, 189.60–40.

DOT No.: 2115–0056; 2115–0626, and 2115.

Administration: U.S. Coast Guard.

Title: International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code).

Need for Information: 46 U.S.C. Chapter 32 and Chapter IX of SOLAS require that U.S. companies and their vessels comply with the ISM Code. The ISM Code is a mandatory international convention requirement paralleled in U.S. law which will come into effect:

- On July 1, 1998, for passenger vessels, and tankers, bulk freight and high speed freight vessels over 500 gross tons engaged in foreign trade; and
- On July 1, 2002, for freight vessels and self-propelled mobile offshore drilling units over 500 gross tons engaged in foreign trade.

Information showing the compliance status of responsible persons and their U.S. vessels must be provided to the Coast Guard by recognized organizations authorized by the Coast Guard to act on behalf of the U.S. To comply, a responsible person, company and vessel(s) owned and operated by that person, must establish a safety management system and prepare internal audit reports for the responsible person's company and vessel(s) which demonstrate compliance with the ISM Code. Preparation of these reports requires a new information collection.

Title 46, chapter 32 also requires that a responsible person's company and U.S. vessel(s) possess Document of Compliance certificates and Safety Management Certificates, respectively, as evidence of compliance with the ISM Code. Recognized organizations authorized to act on behalf of the U.S. and the Coast Guard will issue these certificates. To prepare and issue these certificates, an amendment to existing 2115–0056 is required.

Safety management systems will be externally audited and reported on by the authorized, recognized organizations through a review of the internal audit reports prepared by a company. Since the Coast Guard reviews this information that documents the ISM Code compliance, 2115–0626 requires amendment.

Proposed use of Information: The information will be used by the Coast Guard or recognized organizations authorized to act on behalf of the U.S. to determine if responsible persons and their vessels are complying with the ISM Code. If in compliance, Document of Compliance certificates and Safety Management Certificates will be issued.

Frequency of Response: Initially, all responsible persons who own or operate U.S. vessels subject to these proposed rules will develop their internal auditing system and recordkeeping requirements. Once established, these procedures will state when internal audits and reports of the audits will be completed and reviewed, at the discretion of the responsible person. These reports will be reviewed by authorized recognized organizations during safety management audits of both the company and its vessel(s) safety management systems. It is expected that, at a minimum, an internal audit report will be prepared prior to each safety management audit.

Company safety management systems will be externally audited once to verify compliance with the ISM Code and to issue a company its Document of Compliance certificate. The Document of Compliance certificate is valid for five years and requires that an annual verification audit be completed. After five years, one renewal safety management audit will be conducted and a new certificate will be issued.

Once a company receives its Document of Compliance certificate, its U.S. flag vessel(s) will undergo an initial safety management audit, to verify compliance with the ISM Code and to issue a Safety Management Certificate. The Safety Management Certificate is valid for five years and requires one intermediate verification audit during that time. After five years, one renewal safety management audit will be conducted and a new certificate will be issued.

Recognized organizations authorized to complete certification actions on safety management systems for the U.S. will complete external audit reports which will be reviewed by the Coast Guard at a minimum of once a year.

Burden of Response: Companies of various sizes will be required to maintain internal audit reports in order to comply with the ISM Code. The burden of compliance is expected to be lower for those U.S. companies with few employees and/or vessels because less documentation will be required, and thus, preparation time is shorter. Preparation of these internal reports will allow companies and vessels to continuously be certificated to

international safety management system requirements. Additionally, recognized organizations, acting on behalf of the U.S., will review these internal reports during safety management audits, and will then prepare external audit reports which document a company or vessel's compliance or non-compliance with the ISM Code. If in compliance, Document of Compliance certificates and Safety Management Certificates will be issued by the organizations. External audit reports and certificates will be reviewed by the Coast Guard.

The burden estimate for the companies and their vessels is as follows:

- Small passenger vessels (T boats); 54 × .5 hours (per report)=27.0 annually.
- Other vessels; 316 (vessels) × 1 hour (audit report) × .4 (report frequency)=126.4 hours.
- Company review of audits; [316 (vessels) × 2 hour (audit report) × .4 (frequency of report)] + [100 (companies) × 2 hours (audit review)]=452.8 hours.

It is estimated that the recognized organizations will expend the following personnel hours to review internal audit reports, prepare external audit reports, and issue certificates to companies and U.S. vessels:

- Review of internal audit reports: [2 (audits/year/company) × 4 hours (complete report + review report) × 100 (companies)] + [2 (audits/year/vessels) × 5 hours (complete report + review report) × 316 (vessels)]=3,960 hours.
- Review of external audit reports; [316 + 100 (U.S. vessels and companies)/5 years] × .5 hours=41.6 hours.
- Endorsement of Document of Compliance certificates; 100 (companies) × .25 hours=25 hours.
- Endorsement of Safety Management Certificates; 316 (vessels) × .25 hours/5 years=15.8 hours.
- Vessel and company handling of certificates; 416 (certificates) × .25 hours/5 years=20.8 hours.

It is expected that the Coast Guard will review audits and certificates and expend the following estimated personnel hours:

- For small passenger vessels; 54 (vessels) × .5 (hours)=27.0 hours.
- For other vessels; 316 (vessels) × .5 (hours) × .4 (frequency)=63.2 hours.
- Review of recognized organization actions and reports on vessels; 316 (vessels) × 3 (hour)=948 hours.

Number of Respondents: Companies and their U.S. vessels which are over 500 gross tons or carry more than 12 passengers, engaged in international trade. Recognized organizations who opt to apply for authorization to act on behalf of the U.S. to review and certificate the safety management systems of companies and their U.S. vessels.

Estimated Total Annual Burden: The Coast Guard is submitting the required information to OMB for review under section 3504 (h) of the Paperwork Reduction Act. It is estimated that the following annual hours are required to complete the record and reportkeeping required by this proposal:

- Companies and U.S. vessels—3,981 hours for internal audit reports.
- Recognized Organizations—1,168 hours for external audit reports and certification requirements.
- Coast Guard—559 hours for review of audit reports, certificates, and company data.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

The Coast Guard solicits public comment on the proposed 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 would 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, as by allowing the submittal of responses by electronic means or the use of other forms of information technology.

Persons submitting comments on the collection of information should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES** by the date under **DATES.**

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. Before the requirements for this collection of information become effective, the Coast Guard will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

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

Environment

The Coast Guard considered the environment impact of this proposed rule and concluded that under paragraph 2.B.2.e(34) of Commandant Instruction M16475.1B, this proposed rule is categorically excluded from further environmental documentation. Paragraph 2.B.2.e(34)(d) categorically excludes regulations concerning manning, documentation, measurement, inspection and equipping of vessels. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 96

Administrative practice and procedure, Incorporation by reference, Marine Safety, Reporting and recordkeeping requirements, Safety management systems, Vessels.

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Safety management systems, Vessels.

46 CFR Part 115

Marine safety, Passenger vessels, Report and recordkeeping requirements, Safety management systems.

46 CFR Part 126

Marine safety, Offshore supply vessels, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 175

Marine safety, Passenger vessels, Report and recordkeeping requirements, Safety management systems.

46 CFR Part 176

Marine safety, Passenger vessels, Report and recordkeeping requirements, Safety management systems.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements, Safety management systems.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Ch. I and 46 CFR Ch. I as follows:

1. Add part 96 to read as follows:

33 CFR PART 96—RULES FOR THE SAFE OPERATION OF VESSELS AND SAFETY MANAGEMENT SYSTEMS

Subpart A—General

Sec.
96.100 Purpose.
96.110 Who does this subpart apply to?
96.120 Definitions.
96.130 Incorporation by reference.

Subpart B—Company and Vessel Safety Management Systems

96.200 Purpose.
96.210 Who does this subpart apply to?
96.220 What makes up a safety management system?
96.230 What objectives must a safety management system meet?
96.240 What functional requirements must a safety management system meet?
96.250 What documents and reports must a safety management system have?

Subpart C—How Will Safety Management Systems be Certificated and Enforced?

96.300 Purpose.
96.310 Who does this subpart apply to?
96.320 What is involved to complete a safety management audit and when is it required to be completed?
96.330 Document of Compliance certificate: What is it and when is it needed?
96.340 Safety Management Certificate: What is it and when is it needed?
96.350 Interim Document of Compliance certificate: What is it and when can it be used?
96.360 Interim Safety Management Certificate: What is it and when can it be used?
96.370 What are the requirements for vessels of countries not party to Chapter IX of SOLAS?
96.380 How will the Coast Guard handle compliance and enforcement of these regulations?
96.390 When will the Coast Guard deny entry into a U.S. port?

Subpart D—Authorization of Recognized Organizations to Act on Behalf of the U.S.

96.400 Purpose.
96.410 Who does this subpart apply to?
96.420 What authority may an organization ask for under this subpart?
96.430 How does an organization submit a request to be authorized?
96.440 How will the Coast Guard decide whether to approve an organization's request to be authorized?
96.450 What happens if the Coast Guard disapproves an organization's request to be authorized?
96.460 How will I know what the Coast Guard requires of my organization if my organization receives authorization?
96.470 How does the Coast Guard terminate an organization's authorization?
96.480 What is the status of a certificate if the issuing organization has its authority terminated?
96.490 What further obligations exist for my organization if the Coast Guard terminates its authorization?
96.495 How can I appeal a decision made by an authorized organization?

Authority: 46 U.S.C. 3201 et. seq.; 46 U.S.C. 3103; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; 49 CFR 1.45, 49 CFR 1.46.

Subpart A—General

§ 96.100 Purpose.

This subpart implements Section 602, ''Safety Management'' (46 U.S.C. 3201–3205) of the Coast Guard Authorization Act of 1996 (Pub. L. 104–324, 110 Stat. 3901), which requires responsible persons and their vessels to comply with the requirements of Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS), 1974, International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code), adopted in London on May 24, 1994.

Note: Chapter IX of SOLAS is available from the International Maritime Organization, Publication Section, 4 Albert Embankment, London, SE1 75R, United Kingdom, Telex 23588. Please include document reference number ''IMO–190E'' in your request.

§ 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) that trades in U.S. waters, 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.

§ 96.120 Definitions.

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 subpart 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.

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 a national or international organization which has applied and been recognized by the Commandant of the Coast Guard to meet the minimum standards of 46 CFR part 8.

Responsible person means—

(a) The owner of a vessel to whom this part applies, or

(b) Any other person that—

(1) Has assumed the responsibility from the owner for operation of the vessel to which this part applies; and

(2) Agreed to assume, with respect to the vessel, responsibility for complying with all the requirements of this part.

(c) 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—

(a) Arriving at a place under the jurisdiction of the United States from a place in a foreign country;

(b) Making a voyage between places outside the United States; or

(c) Departing from a place under the jurisdiction of the United States for a place in a foreign country.

§ 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 Office of the **Federal Register**, 800 North Capitol St., NW., Suite 700, Washington, DC 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

Subpart B—Company and Vessel Safety Management Systems.

§ 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, 974. 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.

§ 96.210 Who does this subpart apply to?

(a) This subpart applies—

(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;

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

(i) A passenger vessel transporting 12 passengers or more; or

(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

(3) To all foreign vessels engaged on voyages operating in U.S. waters and subject to Chapter IX of SOLAS.

(b) This subpart does not apply to—

(1) A barge;

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

(3) A fishing vessel;

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

(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) of this section, may voluntarily meet the standards of this part and Chapter IX of SOLAS and have their safety management systems certificated.

(d) The effective date for the requirements of this part are—

(1) On or after July 1, 1998, for—

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

(ii) Tankers, bulk freight vessels, or high speed freight vessel of at least 500 gross tons or more.

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

§ 96.220 What makes up a safety management system?

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

(1) Safety and pollution prevention policy;

(2) Functional safety and operational requirements;

(3) Recordkeeping responsibilities; and

(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).

§ 96.230 What objectives must a safety management system meet?

The safety management system must:

(a) Provide written safe practices for vessel operation and a safe working environment for the type of vessel the system is developed for;

(b) List safeguards against all identified risks;

(c) List expected 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, and take into account all national, international, and industry guidelines, standards and codes when developing written procedures for the safety management system.

§ 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 Titles 33 and 46 of the U.S. Code, 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 nonconformities with provisions of the company's and vessel's safety management system;

(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 nonconformities that are reported by these or other reports.

§ 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
(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 oversee 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 which are available ashore and aboard ship.	(1) Masters of vessels are properly qualified for command;
	(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 know 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.

TABLE 96.250 SAFETY MANAGEMENT SYSTEM DOCUMENTS AND REPORTS—Continued

Type of documents and reports	Specific requirements
(g) Vessel safety and pollution prevention operation plans and instructions for key shipboard operations.	(1) Define tasks; and
	(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 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 a 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 destroyed.
(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 deficiencies found.

Subpart C—How Will Safety Management Systems be Certificated and Enforced?

§ 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.

§ 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 foreign 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 in foreign trade operating in U.S. waters 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.

§ 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:

(1) An initial audit which is carried out before a Document of Compliance certificate or a Safety Management Certificate is issued;

(2) A renewal audit which is carried out before the renewal of a Document of Compliance certificate or a Safety Management Certificate;

(3) Periodic audits including—

(i) An annual verification audit, as described in § 96.330(f) of this part, and

(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—

(1) Review and verify the procedures and documents that make up a safety management system, as defined in subpart B of this part.

(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.

(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—

(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.

(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—

(1) By a responsible person directly to a recognized organization authorized by the U.S.

(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 the safety management system is found during the audit, it must be reported in writing to the company's owner or vessel's master by the auditor as described in IMO Resolution A.788(19).

§ 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 in foreign voyages, carrying 12 or more 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 12 or more 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. It must be verified annually 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—

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

(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.

(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.

§ 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 12 or more 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 company's valid Document of Compliance certificate must be on board all U.S. and foreign vessels which carry 12 or more passengers, and must be onboard 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—

(1) A satisfactory initial safety management audit;

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

(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 of 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—

(1) The vessel's responsible person does not ask for and complete a satisfactory intermediate safety management audit required by paragraph (e)(2) of this section; or

(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.

§ 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—

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

(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—

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

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

§ 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—

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

(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—

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

(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;

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

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

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

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

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

§ 96.370 What are the requirements for vessels of countries not party to Chapter IX of SOLAS?

(a) Each foreign vessel which carries 12 or more 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—

(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);

(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

(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—

(1) Document of Compliance certificate; and

(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.

§ 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—

(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

(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.

§ 96.390 When will the Coast Guard deny entry into a U.S. port?

(a) Unless a foreign vessel is 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 if—

(1) It is engaged in foreign trade; and

(2) It is carrying 12 or more 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.

§ 96.400 Purpose.

(a) This subpart establishes criteria and procedures for organizations recognized under 46 CFR part 8, 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 to 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.

§ 96.410 Who does this subpart apply to?

This subpart applies to all organizations seeking authorization to conduct safety management audits and issue international safety management certificates on behalf of the U.S. that are recognized under 46 U.S.C. part 8.

§ 96.420 What authority may an organization ask for under this subpart?

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

(1) Safety Management Certificate;

(2) Document of Compliance certificate;

(3) Interim Safety Management Certificate; and

(4) Interim Document of Compliance certificate.

(b) [Reserved]

§ 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:

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

(1) Documents showing that—

(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

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

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

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

(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; and

(5) If the organization is a foreign classification society that has been recognized under 46 CFR part 8 and wishes to apply for authorization under this part, it must demonstrate the reciprocity required by 46 U.S.C. 3316, by providing 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.

(b) 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.

§ 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—

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

(2) Ethical standards for managers and auditors;

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

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

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

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

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

(8) Methods for certifying safety management systems;

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

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

(11) Methods for handling appeals; and

(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.

§ 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.

§ 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—

(1) How long the authorization is valid;

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

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

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

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

(b) [Reserved]

§ 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, and further evaluate the organization's recognition under 46 CFR part 8.

§ 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) of this section occurs first.

§ 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.

§ 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.

PART 2—VESSEL INSPECTIONS

2. Revise the authority citation for part 2 to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3103, 3205, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act of Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat 1120 (see 46 U.S.C. App. note prec.1).

3. In § 2.01–25, add paragraph (a)(1)(ix) and revise paragraph (a)(2) to read as follows:

§ 2.01–25 International Convention for Safety of Life at Sea, 1974.

(a) * * *

(1) * * *

(ix) Safety Management Certificate.

(2) The U.S. Coast Guard will issue through the Officer In Charge, Marine Inspection, the following certificates after performing an inspection or safety management audit of the vessel's systems and determining the vessel meets the applicable requirements:

(i) Passenger Ship Safety Certificate.

(ii) Cargo Ship Safety Construction Certificate except when issued to cargo ships by a Coast Guard recognized classification society at the option of the owner or agent.

(iii) Cargo Ships Safety Equipment Certificate.

(iv) Exemption Certificate

(v) Nuclear Passenger Ship Safety Certificate.

(vi) Nuclear Cargo Ship Safety Certificate.

(vii) Safety Management Certificate, except when issued by a recognized organization authorized by the Coast Guard.

* * * * *

PART 31—INSPECTION AND CERTIFICATION

4. Revise the authority citation for part 31 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46. Section 31.10–21 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

5. Add § 31.40–30 to read as follows:

§ 31.40–30 Safety Management Certificate—T/ALL.

(a) All tankships on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such tankships must meet the applicable requirements of 33 CFR part 96.

6. In § 31.40–40, revise paragraph (b) to read as follows:

§ 31.40–40 Duration of Convention certificates—-T/ALL.

* * * * *

(b) A Cargo Ship Safety Construction Certificate and a Safety Management Certificate shall be issued for a period of not more than 60 months.

* * * * *

PART 71—INSPECTION AND CERTIFICATION

7. Revise the authority citation for part 71 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3205, 3306; E.O. 12234, 45 FR 58801; 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

8. Add § 71.75–13 to read as follows:

§ 71.75–13 Safety Management Certificate.

(a) All vessels on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

9. In § 71.75–20, revise paragraph (a) to read as follows:

§ 71.75–20 Duration of certificates.

(a) The certificates are issued for a period of not more than 12 months, with exception to a Safety Management Certificate which is issued for a period of not more than 60 months.

* * * * *

PART 91—-INSPECTION AND CERTIFICATION

10. Revise the authority citation for part 91 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3205, 3306; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

11. Add § 91.60–30 to read as follows:

§ 91.60–30 Safety Management Certificate.

(a) All vessels on an international voyage must have a valid Safety

Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

12. In § 91.60–40, revise paragraph (b) to read as follows:

§ 91.60–40 Duration of certificates.

* * * * *

(b) A Cargo Ship Safety Construction Certificate and a Safety Management Certificate are issued for a period of not more than 60 months.

* * * * *

PART 107—INSPECTION AND CERTIFICATION

13. Revise the authority citation for part 107 to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3205, 3306, 5115; 49 CFR 1.45, 1.46; § 107.05 also issued under the authority of 44 U.S.C. 3507.

14. Add § 107.415 to read as follows:

§ 107.415 Safety Management Certificate.

(a) All self-propelled mobile offshore drilling units of 500 gross tons or over on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

(c) A Safety Management Certificate is issued for a period of not more than 60 months.

PART 115—INSPECTION AND CERTIFICATION

15. Revise the authority citation for part 115 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

16. Add § 115.925 to read as follows:

§ 115.925 Safety Management Certificate.

(a) All vessels that carry more than 12 passengers on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

(c) A Safety Management Certificate is issued for a period of not more than 60 months.

PART 126—INSPECTION AND CERTIFICATION

17. Revise the authority citation for part 126 to read as follows:

Authority: 46 U.S.C. 3205, 3306; 33 U.S.C. 1321(j); E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

18. Add § 126.480 to read as follows:

§ 126.480 Safety Management Certificate.

(a) All offshore supply vessels of 500 gross tons or over on international voyages must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

(c) A Safety Management Certificate is issued for a period of not more than 60 months.

PART 175—GENERAL PROVISIONS

19. Revise the authority citation for part 175 to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; 175.900 also issued under authority of 44 U.S.C. 3507.

20. In § 175.540, add paragraph (d) to read as follows:

§ 175.540 Equivalents

* * * * *

(d) The Commandant may accept alternative compliance arrangements in lieu of specific provisions of the International Safety Management (ISM) Code (IMO Resolution A.741(18)) for the purpose of determining that an equivalent safety management system is in place on board a vessel. The Commandant will consider the size and corporate structure of a vessel's company when determining the acceptability of an equivalent system. Requests for determination of equivalency must be submitted to Commandant (G–MOC) via the cognizant OCMI.

PART 176—INSPECTION AND CERTIFICATION

21. Revise the authority citation for part 176 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

22. Add § 176.925 to read as follows:

§ 176.925 Safety Management Certificate.

(a) All vessels that carry more than 12 passengers on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

(c) A Safety Management Certificate is issued for a period of not more than 60 months.

23. Revised § 176.930 to read as follows:

§ 176.930 Equivalents.

As outlined in Chapter I (General Provisions) Regulation 5, of SOLAS, the Commandant may accept an equivalent to a particular fitting, material, apparatus, or any particular provision required by SOLAS regulations if satisfied that such equivalent is at least as effective as that required by the regulations. An owner or managing operator of a vessel may submit a request for the acceptance of an equivalent following the procedures in § 175.540 of this chapter. The Commandant will indicate the acceptance of an equivalent on the vessel's SOLAS Passenger Ship Safety Certificate or Safety Management Certificate, as appropriate.

PART 189—INSPECTION FOR CERTIFICATION

24. Revise the authority citation for part 189 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3205, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

25. Add § 189.60–30 to read as follows:

§ 189.60–30 Safety Management Certificate.

(a) All vessels on an international voyage must have a valid Safety Management Certificate and a copy of their company's valid Document of Compliance certificate on board.

(b) All such vessels must meet the applicable requirements of 33 CFR part 96.

26. In § 189.60–40, revise paragraph (b) to read as follows:

§ 189.60–40 Duration of certificates.

* * * * *

(b) A Cargo Ship Safety Construction Certificate and a Safety Management Certificate are issued for a period of not more than 60 months.

* * * * *

Dated: April 23, 1997.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97–11189 Filed 4–30–97; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AI70

Monetary Allowance Under 38 U.S.C. 1805 for a Child Born with Spina Bifida Who Is a Child of a Vietnam Veteran

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) adjudication regulations to provide for payment of a monetary allowance to a child born with spina bifida who is a child of a Vietnam veteran. The intended effect of this amendment is to implement legislation authorizing VA to provide such benefits. A companion document (RIN: 2900-AI65) concerning a proposal for the provision of health care for such children is set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Comments must be received by VA on or before June 30, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900-AI70.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7230.

SUPPLEMENTARY INFORMATION: Section 3 of the Agent Orange Act of 1991, Public Law 102–4, 105 Stat. 11, directed the Secretary of Veterans Affairs to seek to enter into an agreement with the National Academy of Sciences (NAS) for a series of reports to review and summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era, and each disease suspected to be associated with such exposure. In its most recent report, entitled ''Veterans and Agent Orange: Update 1996,'' which was released on March 14, 1996, NAS noted what it considered ''limited/suggestive evidence of an association'' between herbicide exposure and spina bifida in the offspring of Vietnam veterans.

Since VA did not have the statutory authority to provide benefits to children of veterans based on birth defects, the Secretary announced on May 28, 1996, that he would seek legislation to provide an appropriate remedy and submitted proposed legislation to Congress in July of that year. Section 421 of Public Law 104–204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits, including a monthly monetary allowance, to children born with spina bifida who are the natural children of veterans who served in the Republic of Vietnam during the Vietnam era. This document amends existing VA adjudication regulations and adds a new section to title 38, Code of Federal Regulations, to implement this new authority.

Section 1805(c) of title 38, United States Code, specifies that receipt of this allowance shall not affect the right of the child, or the right of any individual, based on the child's relationship to that individual, to receive any other benefit to which the child, or that individual, may be entitled under any law administered by VA, nor will the allowance be considered income or resources in determining eligibility for, or the amount of, benefits under any Federal or federally assisted program. We propose to amend 38 CFR 3.261, 3.262, 3.263, 3.272, and 3.275 to reflect this statutory provision as it applies to VA's income-based benefit programs.

Section 1806 of title 38, United States Code, provides that the effective date of the monetary allowance to a child under new chapter 18 will be fixed in accordance with the facts found, but will not be earlier than the date of receipt of application. The effective date of section 421 of Public Law 104–204 will be October 1, 1997, unless other legislation is enacted to provide for an earlier effective date. VA is proposing to amend 38 CFR 3.403 to reflect these statutory provisions.

VA is also proposing to amend 38 CFR 3.503 to specify that this monetary allowance will terminate the last day of the month before the month in which the death of a child occurs. This date is consistent with the termination provisions of 38 U.S.C. 5112(b) applicable to compensation, pension, and dependency and indemnity compensation benefits administered by VA, and there is no indication in the statute that Congress intended that VA administer this benefit in any different manner. Due to the amendments to 38 CFR 3.403 and 3.503, we are proposing technical amendments to each cross-reference following 38 CFR 3.57, 3.659, 3.703, 3.707, and 3.807.

VA is also proposing to amend 38 CFR 3.105 to specify that, where there is a change in disability status warranting a reduction of the monetary allowance, such reduction in evaluation will be effective the last day of the month following sixty days from the date of notice to the recipient (at the recipient's last address of record) of the contemplated reduction. This is the date stipulated by 38 U.S.C. 5112(b)(6) for reduction of disability compensation benefits under the same circumstances. We are not, however, proposing to incorporate an additional 60-day notice such as that provided before reductions of compensation awards under the provisions of 38 CFR 3.105(e). Since reduction of this monetary allowance would generally be based on private medical evidence that the claimant had authorized to be released to VA, and since the rating criteria for this benefit are generally less complex than those for rating compensation claims, in our judgment, 60 days is enough time for claimants to submit evidence showing that the monthly allowance should not be reduced. We are proposing to apply the provisions of 38 CFR 3.105(h) concerning the opportunity for a predetermination hearing to reductions of this monetary allowance.

Section 3.158 of title 38, Code of Federal Regulations, describes the circumstances under which VA will consider a claim abandoned. Where evidence requested in connection with a claim is not furnished within one year after the date of request, the claim will be considered abandoned and further action will not be taken unless a new claim is received. Should entitlement be established on the basis of this new claim, benefits are awarded effective not earlier than the date of the filing of the new claim. Where benefit payments have been discontinued because a payee's present whereabouts are unknown, payments will be resumed effective the day following the date of last payment if entitlement is otherwise established, upon receipt of a valid current address. In view of the similarity between this benefit and other monetary benefits which VA