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: Final rule.

SUMMARY: In a Notice of Proposed Rulemaking (NPRM) published on May 1, 1997, the Coast Guard proposed national regulations for responsible persons and their vessel(s) engaged on international and domestic voyages, to develop safety management systems to enhance vessel operating safety at sea, prevent human injury or loss of life, and avoid damage to the environment, in particular to the marine environment, and to property. Section 602 of the Coast Guard Authorization Act of 1996 (Pub. L. 104–324) requires this action. This final rule completes those standards which will allow U.S. vessels that are certificated to engage on international voyages to meet the mandatory certification requirements, or voluntarily meet these safety standards for domestic voyages. It also provides standards to permit recognized organizations to apply for authorization from the U.S. to complete external audits and issue international convention certificates for U.S. vessels on behalf of the U.S.

DATES: This final rule is effective on January 23, 1998. The incorporation by reference of certain publications listed in the rule are approved by the Director of the Federal Register on January 23, 1998.

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

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Gauvin, Project Manager, Vessel and Facility Operating Standards Division (G–MSO–2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1053, or fax (202) 267–4570.

SUPPLEMENTARY INFORMATION:

Regulatory History

In May of 1994, the ISM Code was adopted as Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) 1974, as amended. The ISM Code's adoption occurred at the International Maritime Organization's (IMO's) Conference of Contracting Governments to SOLAS in London at IMO's Headquarters.

On October 19, 1996, the President signed into law the Coast Guard Authorization Act of 1996 as Pub. L. 104–324, 110 Stat. 3901. Section 602 of the Act added Chapter 32 to Title 46 U.S. Code, ''Management of Vessels.'' 46 U.S.C. 3203 mandated the Secretary of Transportation to develop regulations for the implementation of safety management systems which are consistent with the International Safety Management (ISM) Code, for vessels and their companies which are engaged on foreign voyages.

On April 24, 1997, the Secretary of Transportation delegated to the Commandant of the Coast Guard the responsibilities under 46 U.S.C. Chapter 32 and 46 U.S.C. 3103 for the implementation and enforcement of safety management systems on U.S. vessels engaged on foreign voyages. This delegation was published as a final rule in the **Federal Register** (62 FR 19935) and codified in 49 CFR 1.46 (fff) and (ggg).

On May 1, 1997, the Coast Guard published a NPRM (62 FR 23705) in the **Federal Register** on implementation standards for safety management systems for vessels and their companies that are certificated to engage on international voyages. These proposed regulations provided standards for:

- The development and compliance of safety management systems for U.S. vessels and their companies;
- Mandatory certification of safety management systems to international levels;
- Voluntary certification of safety management systems for U.S. domestic trading vessels; and
- Authorization by the U.S. to organizations to complete external audits and certification of U.S. vessels required to meet the U.S. and international safety management system standards.

The NPRM comment period closed on July 30, 1997. During the 90 day comment period, 51 documents were received that contained 118 comments. Seventeen comments requested public hearings but none were held. Reasons for not holding public hearings before the publishing of this rule are explained in the ''Discussion of Comments and Changes'' section of this rule.

Background and Purpose

This 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 national safety management system standards and requirements for the development, documentation, auditing, and completion of certification by vessel owners or responsible persons. These vessel safety management system regulations are consistent with the international regulations of Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS) 1974, as amended. Chapter IX of SOLAS 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)).

The development of these requirements has been fueled by the continued occurrences of significant marine casualties despite engineering and technological innovations to stop such casualties over the last two decades. In an effort to further reduce these casualties, the Coast Guard evaluated the role of the ''human element'' in the maritime safety equation. 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.

The U.S. has been at the forefront providing input, analysis and direction for the IMO's development of these international regulations. 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 offers a systematic approach to mariners 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 Navigation and Vessel Inspection Circular No. 2–94 (NVIC 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.''

In May 1994, Chapter IX of SOLAS, ''Management for the Safe Operation of Ships,'' was adopted by the U.S. 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 an organization authorized to act on behalf of the U.S.

The ISM Code marks a significant philosophical shift in the maritime community's approach to safety 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 actions 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 and environmental protection. Under this proactive approach, potential discrepancies are resolved by the companies themselves before casualties or incidents that can adversely impact the marine environment can occur.

The ISM Code performance elements require the development of safety management systems which document and communicate the owner's operation policy, chain of authority, and operational and emergency procedures. It also requires management reviews, internal audits and correction(s) of non-conformities as directed by company's management procedures. The documentation of a safety management system provides the basis for auditing an employee's knowledge, ashore and afloat, of the company's procedures and policies. It illustrates owner, manager and Master responsibilities specifically and ensures awareness of national and international standards in the system's procedures.

The ISM Code performance standards are broad based to allow flexibility for the differences that each responsible person has to work with in managing a variety of vessels or just one. A safety management system is seen as a living system that will change and grow as the responsible person, his or her managers and shore-based and vessel-based personnel see the need for change, or as technology and vessel operations change. The best safety management system is one where there is commitment from the top management of the company and its personnel to act safely and in an environmentally responsible manner at all times. The accessibility of senior management throughout the development of the safety management system and throughout the systems life, is also a key factor to its success.

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 provide a presentation on the U.S.'s voluntary safety management system guidelines in NVIC 2–94. Comments received at these meetings were audiotaped and are a part of this docket.

Discussion of Comments and Changes

The Coast Guard received a total of 51 documents containing 118 comments to the public docket. This section of the preamble discusses the comments received and the Coast Guard's responses and changes to the proposed rule. This section is divided into three parts. First, we discuss the comments that request public hearings. Second, we discuss the comments on specific CFR cites. Third, we discuss the general comments concerning other issues relating to this rulemaking and the implementation of safety management system requirements.

Comments Requesting Public Hearings

Sixteen comments requested a public hearing to discuss the requirements in 33 CFR 96.250(f)(4), involving the determination of medical fitness for seafarers. The concern expressed was that this section permitted amendments to the standards that determined the medical fitness of mariners. The Coast Guard is not amending any regulations or standards regarding the determination of medical fitness for mariners as part of this rulemaking. This rulemaking only requires that the responsible person provide procedures or policies in the safety management system on how these existing requirements are managed by the company. We do not intend to hold public hearings due to these requests, as they would require actions on regulations outside the scope of this rulemaking. We understand the importance of these requests and asked the Executive Director of the Merchant Marine Personnel Advisory Committee (MERPAC) to place these comments and concerns on the Committee's working agenda to discuss in its public meetings with the Coast Guard. The Executive Director of MERPAC and the Committee's Chairperson agreed to place it on MERPAC's working agenda.

MERPAC is a federal advisory committee appointed by the Secretary of the Department of Transportation under the Federal Advisory Committee Act (5 U.S.C. App. 2). MERPAC is composed of marine industry personnel appointed to advise the Coast Guard on merchant marine issues. The Committee offers an open forum to hear individuals, groups or industry specific concerns, then works to provide the Coast Guard with recommendations as to what actions may be needed. MERPAC has addressed the issue of mariner's physical fitness

standards in the past and will, when changes are proposed, address it in the future. MERPAC's next meeting is scheduled for May 1, 1998. A notice announcing the Committee's working agenda, schedule and place of meeting will be published in the **Federal Register**.

One comment requested a public hearing if the Coast Guard does not plan to include specific protections for the Northern Right Whale in the final rule. The focus of the proposed rule is to implement safety management systems consistent with the ISM Code. The Coast Guard does not intend to hold a public hearing in response to this request. Comments about protection of the Northern Right Whale and the ISM Code are addressed in detail in the final section of these comment responses.

Comments Relating to Specific CFR Sections

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

1. 33 CFR 96.110, 96.210, and 96.310. Four comments were received on these sections which discussed who these subparts apply to. Two comments found the use of the terminology ''trades in U.S. waters,'' or ''on an international voyage,'' or ''engaged on a foreign voyage'' to be confusing in determining which vessels and persons must comply with the proposed regulations. One comment requested that ''vessel engaged on a foreign voyage,'' be used throughout the rulemaking as it conforms to the statutory requirements of 46 U.S.C. 3201. We agree and amend proposed §§ 96.110, 96.210 and 96.310, to use the phrase, ''vessel engaged on a foreign voyage,'' as defined in § 96.120.

For purposes of clarification regarding foreign vessel voyages that come under U.S. jurisdiction, the Coast Guard amends §§ 96.110(c), 96.210(a)(3) and 96.310(c), by adding the words, ''bound for ports or places under the jurisdiction of the U.S.'' This will ensure that a foreign vessel or self-propelled mobile offshore drilling unit (MODU) are held accountable to the requirements and certification of safety management systems when navigating in U.S. waters. A foreign vessel engaged on a foreign voyage, involving innocent passage through waters subject to the jurisdiction of the U.S. will not be boarded under these regulations.

The second and third of these comments also discussed the use of the phrase, ''on an international voyage'' in 46 CFR 31.40–30(a), 71.75–13(a), 91.60–30(a), 107.415(a), 115.925(a), 126.480(a), 176.925(a), and 189.60–30(a). The Coast Guard does not agree with a need to change this phrase. ''On an international voyage'' is described in 46 CFR 2.01–8, entitled ''Application of regulations to vessels or tankships on an international voyage.'' For consistency throughout title 46 CFR, we have not changed the final rule.

The fourth comment on these sections recommends that a specific subpart be developed for foreign vessel requirements, separate from regulations for U.S. vessels in subparts A, B and C. The comment suggested that this new subpart include requirements for foreign vessels whose countries are parties to SOLAS and those vessels whose countries are not, similar to 33 CFR 96.370. The Coast Guard disagrees that a separate subpart is needed, but has added language in § 96.390(a) to ensure that it is understood that actions for safety management system certification by vessels whose countries are a party to SOLAS are acceptable as an equivalent to the requirements of 33 CFR part 96, subparts B and C. Further discussions of this matter are found in paragraph 27 of this comment reply section of the final rule preamble.

The Coast Guard amended § 96.210(a)(2)(I) by removing the word ''passenger'' in that sentence. Under 46 U.S.C. 3202(a)(1)(A) ''a vessel transporting more than 12 passengers * * *'' must comply with these regulations, not just a passenger vessel. The Coast Guard removed this word to ensure the meaning that all vessels carrying more than 12 passengers, not just passenger vessels, must comply with these regulations.

The Coast Guard amended §§ 96.210(a)(2)(i) and (d)(1)(i), 96.330(a) and (d), 96.340(a) and (d), 96.370(a), and 96.390(a)(2) as the statements were to require that these sections applied to vessels transporting or carrying ''more than 12 passengers'' as stated in 46 U.S.C. 3202(a)(1)(A), and not ''12 or more passengers.''

2. 33 CFR 96.120. Five comments were received on definitions in this section. One comment requested that a definition for ''designated person'' be added to this section to ensure that this person's responsibilities for overseeing the safety management system is not confused with the responsibilities of the ''responsible person.'' It should also be understood that a responsible person with a large fleet of vessels can assign the responsibility of the designated person to more than one employee, or that a designated person could be responsible for more than one vessel. The Coast Guard agrees with the comment and has added a definition for designated person to this section.

One comment requested that the term ''responsible person'' be replaced by the term ''owner'' because of possible confusion with the term ''responsible party,'' which is defined in the Oil Pollution Act of 1990 (OPA 90). The Coast Guard does not agree with this comment and has not changed the definition of the ''responsible person.'' Responsible party is defined in section 1001(32) of OPA 90 to clarify liability of the owners and operators of vessels, onshore facilities, offshore facilities, deepwater ports, and pipelines in the event of an oil spill. The Coast Guard's definition of responsible person in this rulemaking clearly relates to responsbility surrounding the development and use of safety management systems ashore and aboard vessels.

One comment suggested redefining the term ''company'' to include the definition of an ''operator'' as defined in 30 CFR 250.2 of the Mineral and Management Service's regulations for offshore oil and gas exploration. The Coast Guard does not agree. There are times when a lessee or operator of an offshore oil or gas exploration vessel becomes responsible by contract with the owner of the vessel to assume the duties imposed by these rules. When this occurs, a written designation of that responsibility must be provided by the owner to the lessee or operator of the contracted vessel and placed in the documentation of the safety management system as required by the ISM Code. This is part of the safety management system's documents and reports required by § 96.250(b)(2), and there is no need to expand on the definition of ''company''.

One comment requested that the term ''recognized organization'' be changed to a ''member of the International Association of Classification Societies (IACS).'' The Coast Guard does not agree with this comment. Other organizations, outside the membership of IACS, may apply and be recognized if they meet the requirements of 46 CFR part 8. The regulations of that part do not limit the application or recognition of any organization because they are or are not, members of IACS. The Coast Guard has amended the definition of a recognized organization in this section to be clear on which requirements of 46 CFR part 8, an organization must meet to be accepted. As subparts C and D of 46 CFR part 8 provides requirements for other international certificate authorizations and the U.S. Alternate Compliance Program, which have no effect on U.S. ISM Code certification authorization, these subparts are removed from the definition. This

change of definition has also required changes to the language in the definition of an ''Authorized Organization Acting on behalf of the U.S.'' and §§ 96.400(a), 96.410 and 96.430(b) (formerly § 96.430(a)(5)). Also, we have removed the phrase ''national or international'' from the recognized organization definition for consistency with subpart D.

One comment inquired whether the phrase, ''vessel engaged on a foreign voyage'' includes the operation of U.S. flag oilfield crewboats to and from foreign ports during operations supporting oil exploration programs internationally. Such vessels that are offshore supply vessels (OSVs) of 500 gross tons or more, or are carrying more than 12 passengers, would be considered engaged on a foreign voyage under paragraph (b) of the term's definition. This definition states that a vessel is considered to be on a foreign voyage when, ''making a voyage between places outside the United States'' (§ 96.120). These crewboats must meet the requirements of 33 CFR part 96 and the ISM Code for safety management systems, when certificated for such voyages. No changes were made to the final rules in response to this comment.

In November 1997, the SOLAS Conference on the Safety of Bulk Carriers was held at IMO's headquarters in London. During this conference, a new Chapter XII of SOLAS was adopted, entitled ''Additional Safety Measures for Bulk Carriers.'' During deliberations on this new chapter of SOLAS an interpretation was adopted regarding the definition of a bulk carrier. This interpretation is found in Resolution 6 of the resolutions adopted by the conference. This interpretation pertains to the definition of bulk carrier in Regulation 1.6 of Chapter IX of SOLAS on the ISM Code, as well as the new Chapter XII on Bulk Carrier Safety. The definition in Chapter IX is, ''Bulk carrier means a ship which is constructed generally with single deck, top-side tanks and hopper side tanks in cargo spaces, and is intended primarily to carry dry cargo in bulk, and includes such types as ore carriers and combination carriers.'' The interpretation removes the ambiguity of the term ''constructed generally.'' Specifically, the resolution ''Urges SOLAS Contracting Governments to interpret the definition of the term ''bulk carrier'' given in regulation IX/1.6, for the purpose of the application of SOLAS regulation IX/2.1.2 * * * to mean: ships constructed with a single deck, top-side tanks and hopper side tanks in cargo spaces and intended primarily to carry dry cargo in bulk; or ore carriers; or combination carriers.'' Bulk carriers that meet this interpretation are required to meet the first effective date of the ISM Code, July 1, 1998. Other vessels, which carry bulk cargoes, but do not meet this interpretation, must meet the second effective date of the ISM Code (July 1, 2002), as required by § 96.210. The U.S. has decided to accept this IMO interpretation to SOLAS. This rulemaking has not defined bulk carriers, but intends to use all vessel type definitions as provided by Regulation 1 of Chapter IX of SOLAS. For clarity, we added a new paragraph (a) to the definition section to explain that we will use the definitions provided by Chapter IX of SOLAS, and not the definitions in Title 46 of the U.S. Code.

3. 33 CFR 96.230(a). Four comments were received on this paragraph. Two requested clarification whether these practices have to be in writing. One comment noted that requiring written practices would impose requirements on U.S. vessels that are not required on foreign vessels. We agree. Requiring these objectives in writing would extend U.S. vessel requirements beyond requirements for a foreign vessel under the ISM Code. This change would also require a foreign vessel that operates in the U.S. to complete further work on their safety management system that exceeds the requirements of the ISM Code. We amend the rule to remove the term ''written'' and have reworded the paragraph to ensure that the objectives required by this section are consistent with the ISM Code.

The third comment requested clarification of the term ''type'' of vessel, and suggested that this definition would have the same meaning as vessel ''category.'' This terminology is required to be used on the Document of Compliance certificate to illustrate what type of vessel(s) a company's safety management system is developed to manage. If the type of vessel(s) a responsible person owns changes, then the safety management system must be amended to include the specifics of managing the new or different vessel type. Vessel types are: passenger ship; passenger high-speed craft; cargo high-speed craft; bulk carrier; oil tanker; chemical tanker; gas carrier; MODU; and other cargo ship. The term ''cargo ship'' used to describe a vessel type under SOLAS has the same meaning as ''freight vessel'' for these regulations.

The final comment on this paragraph noted that, as drafted, the meaning of this paragraph could be interpreted to require the safety management system to provide a safe work environment ''for'' the vessel. The intent of the ISM Code is to require a safe working environment ''on board'' the vessel. The Coast Guard agrees with the comment and has reworded the paragraph to clarify its meaning and be consistent with the ISM Code.

4. 33 CFR 96.230(b) and 96.230(c). Five comments requested that we amend these paragraphs because the ''listing'' of safeguards and continuous improvement methods is not the same as ''establishing or implementing'' those safeguards. The Coast Guard agrees with the comments and amends paragraphs (b) and (c) accordingly.

5. 33 CFR 96.230(d). One comment requested that this paragraph be struck from the final rule because ensuring compliance with the many international, national, industry standards and codes is unworkable and a second comment requested that the term ''industry guidelines'' be expanded to ''maritime industry guidelines.'' We disagree that this paragraph is unworkable or should be struck, but have amended it to include maritime regulations and standards in the safety management system. It does not require any more actions than those already completed by foreign vessels under their ISM Code compliance responsibilities. The Coast Guard agrees with the comment recommending the use of the phrase, ''maritime industry guidelines'' and amends this paragraph in the final rule. To ensure clarity, we amended this paragraph to use the word ''relevant.''

6. 33 CFR 96.240(b). One comment discussed that this paragraph was unclear, because as drafted, it appeared that foreign vessels would be required to comply with U.S. national standards and U.S. regulations for ship construction and operation not normally applicable to foreign flag vessels. The comment pointed out that this is inconsistent with the ISM Code. This was not the intent of the proposed requirements. We have amended this paragraph to make it clear that foreign vessels need to follow U.S. regulations applicable to them when they operate in U.S. waters.

7. 33 CFR 96.240(c). One comment discussed that the documentation which describes the levels of communication was not a functional requirement of safety management systems. The comment suggests that requiring this documentation would be an arduous task with respect to the operation of a self-propelled MODU, because the organizational makeup of the vessel changes depending on whether the vessel is navigating, or is anchored in oil exploration operations. The Coast

Guard disagrees. The directions and management needed for this type of operation between the responsible person, the navigating crew, whomever manages the operational drilling crew and the supervising staff of the drilling crew aboard the MODU itself, is exactly the situation that this requirement addresses. No change has been made to this requirement in the final rule.

8. 33 CFR 96.240(d). One comment questioned the Coast Guard's authority to require ''near accident reporting'' in this paragraph, arguing that this was inconsistent with the ISM Code. We disagree. Section 9.1 of the ISM Code requires that, ''The safety management system should include procedures ensuring that non-conformities, accidents and hazardous situations are reported to the company, investigated and analyzed with the objective of improving safety and pollution prevention.'' The Coast Guard interprets that near-accident reporting is hazardous situation reporting. The Coast Guard has also reinforced the meaning of this requirement in the standards provided by § 96.250(i).

The comment also suggests amending this paragraph to conform to the ISM Code. Specifically, the comment suggests revising the language to say ''procedures for reporting * * * non-conformities with the ISM Code,'' as opposed to ''non-conformities with the safety management system.'' The Coast Guard disagrees that only non-conformities with the ISM Code should be included here. The functional requirements of a safety management system must ensure the continuous evaluation and appropriate improvement of the safety management system by the company's management. However, to ensure clarity this paragraph is amended.

One comment supported § 96.240(d) as drafted, and emphasized the importance of near-miss reporting and follow-up to establish lessons learned. We agree. The Coast Guard, in partnership with the Federal Maritime Administration (MARAD), is developing a nationwide voluntary near-miss accident reporting program to compile lessons learned for the education of mariners and maritime industry. When completed, the Coast Guard will publish policy on the use of the national near-miss accident reporting program and a responsible person's ability to use the U.S. national program to conform with the requirements of near-accident or hazardous situation reporting required by the ISM Code. The Coast Guard's program manager for this project is the Chief, Office of Investigations and Analysis (G-MOA), at Coast Guard Headquarters.

9. 33 CFR 96.240(e). One comment objected to the use of the word ''procedures'' in this paragraph stating that the functional requirements should define a ''process'' for ensuring an appropriate response to emergency situations. The Coast Guard disagrees because the paragraph, as drafted, is interpreted broadly and will define a process for response as required by the ISM Code. Multiple levels of management, such as on a MODU and third party managed vessel, need to define their ''processes'' in terms of procedures in a safety management system for it to work. Procedures that define these processes can be used as training tools, tracking tools, and action tools. This requirement does not require a new process to be developed if they are already in hand or developed under current regulation or management procedures. No change is made in response to this comment.

10. 33 CFR 96.240(g). Two comments discussed expanding this paragraph to include the use of objective internal safety assessments in place of internal auditing, and stated that safety management systems should be reviewed to evaluate their efficiency against established industry evaluation procedures. Both comments contain merit, and the Coast Guard agrees that the efficiency and measurement of safety management system impacts and their effectiveness should be determined. However, the Coast Guard disagrees with the need for such requirements in the final rule. The suggested requirements would extend managerial responsibility past the minimum requirements of the ISM Code. Therefore, no changes are made in response to this comment.

11. 33 CFR 96.250. Five comments were received on this section. One comment noted that both functional and documentary requirements are included in the table within § 96.250. The comment recommended referencing the documentary requirements of § 96.240 to the table within § 96.250. The Coast Guard does not agree that there is a need to cross reference the requirements of § 96.240, as the requirements for performance objectives documentation are already covered within the requirements of the table in § 96.250.

Four comments suggested that these regulations should contain provisions to protect records that are maintained as part of a safety management system. The comments request that the regulations be amended to prohibit use of these records in civil or administrative proceedings. Specific concerns were that the documentation and reporting requirements will contain sensitive company information that, while essential for purposes of company personnel use, should not be made publicly available for use in civil proceedings. The Coast Guard agrees that for a safety management system to work correctly and to be continuously self-improving, it requires the proactive actions of the responsible person to have reports completed on non-conformities and hazardous situations, no matter how minor or major, so that management reviews can be completed and corrections made to the safety management system accordingly. However, the Coast Guard cannot provide any protection for these records because to do so would exceed its authority granted in 46 U.S.C. Chapter 32. To clarify our intent, a note has been added at the end of the table in § 96.250, in the final rule.

12. 33 CFR 96.250(b). Three comments were received on this paragraph. The first comment requested clarification whether the requirement for the company's responsibility and authority statement should extend to all vessels owned by the responsible person, or just the vessels of the company that must comply with this part. The Coast Guard contends that it would be to the responsible person's benefit to have all vessels that he or she owns meet the safety management system requirements of this part. However, only vessels required to meet 33 CFR part 96, are required to be covered by this requirement.

The second comment discussed the possibility of confusion regarding the determination of the responsible person on a self-propelled MODU, between the owner, operator, lessee, or drilling contractor. The delineation of the relationships of these persons or companies involved in a MODU's operation should be explained by the company's policies and procedures. Proper explanation of these relationships in the safety management system ensures that personnel responsible for specific duties involving safe operation, and the services provided to the vessel by contracted personnel, will understand their responsibilities correctly thereby reducing human element errors which can cause accidents. It will also enhance the vessel's response to casualties and accidents, resulting in mitigation damages to the vessel and the environment, or injury to vessel personnel.

The third comment on this paragraph discussed subparagraph (b)(4), which requires the safety management system

to contain a statement that describes the company's responsibilities to ensure adequate resources. The comment further states that describing this responsibility in the safety management system does not necessarily mean that the company bears responsibility. We understand that vessel resources can be provided by a myriad of contract companies and personnel not under the direct control of the responsible person. Safe management does not point fingers but ensures communications so when problems develop, there are clear policies that employees can follow to make decisions. The reasoning that the performance objectives of these safety management system standards are so general is to allow them to be customized to specific type vessel operation for ease of the user. No changes have been made to the final rule due to these comments.

13. 33 CFR 96.250(c). One comment requested that the term ''oversee'' used in this paragraph, be changed to the word ''monitor'' to describe the actions required of the designated person. The Coast Guard agrees with this comment and amends this paragraph in the final rule.

14. 33 CFR 96.250(d). Three comments were received on this paragraph. One comment stated that not all vessels are certificated or required by the provisions of national regulations to have Masters, but instead may have Persons-In-Charge. The Coast Guard agrees with this comment, but has not amended the regulation. The Coast Guard uses the term Master to be consistent with the ISM Code. Additionally, all U.S. vessels mandatorily required to meet the safety management system requirements of this part are certificated to have Masters on board. The Coast Guard understands that there are vessels which can voluntarily meet these standards, such as non self-propelled MODUs, which are not required to have a Master but a Person-In-Charge as senior manager of the vessel. The Coast Guard is developing a new chapter in Volume II of it's Marine Safety Manual (MSM), on the U.S. safety management system compliance and enforcement policies which will be used by the Coast Guard and organizations authorized, to audit and certificate safety management systems. The Coast Guard has not amended this paragraph because the MSM guidance will clarify that the term ''Master'' includes a Person-In-Charge in this situation.

The other two comments questioned whether a vessel's Master is capable of having responsibility and authority over shore-based resources, and asked that such contentions be deleted from this paragraph. During some duties, the Master of the vessel will be the responsible person's representative contracting and supervising vessel support from shore-based resources, as well as directing resources from the vessel managing company. The safety management system should clearly describe these duties to allow the Master to understand his or her responsibilities and decision-making policies. This will also help shore-based resources understand their duties, their importance to the vessel, and their responsibilities to the vessel Master as a manager. The Coast Guard does not agree with these comments and has not amended this paragraph of the final rule.

15. 33 CFR 96.250(e). Two comments were received on this paragraph. One discussed that the Master of a vessel does not have overall authority for vessel operation because the Master's authority is overridden by flag state, coastal state, and numerous other governmental authorities. We respond that the Master is the responsible person's representative on the vessel and all authorities that can be expected of the Master should be supported by the safety management system. The Master has overriding responsibility and authority to ensure that the vessel is operated safely, and consistently with all applicable laws. When the Master is not specified, it is impossible to expect the individual employed as the Master to provide proper leadership or decision making clarity. Where the Master follows international, national, coastal, or local regulations or directions, regarding management of a vessel, he/she is making decisions on how to use these factors in the efficient and safe operation of the vessel taking into account the policies provided by the safety management system.

The second comment encouraged the Coast Guard to amend this paragraph by adding a subparagraph (3) which states, ''Responsibility with the bridge team and officers on watch to monitor navigation, collision avoidance, and communications while the ship is piloted.'' The Coast Guard does not agree that this statement needs to be added to this paragraph because this requirement for providing procedures for shipboard operations is covered by paragraphs (f) and (g) of the table in § 96.250. The Coast Guard has made no changes to the final rule due to either of these comments.

16. 33 CFR 96.250(f). Four comments were received on this paragraph. One comment discussed that the statement in § 96.250(f)(6) required knowledge of the relevant rules, regulations, codes and guidelines, which was a subtle difference from than ''an adequate understanding'' required by the ISM Code. We agree that this statement may be misinterpreted to require more than what would be consistent with the ISM Code and have changed the language accordingly.

One comment discussed that there should be an understanding that the documentation of training identified and required by other national regulations or international conventions, can be documented under the safety management system in compliance with these requirements and also meet the requirements for training and documentation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 (STCW). The Coast Guard agrees with this comment, and this understanding is stated in NVIC 4–97 (Guidance on Company Rules and Responsibilities under the 1995 Amendments to the STCW). NVIC 4–97 states, ''If you operate your vessel under a safety management system (SMS) in compliance with the International Safety Management (ISM) Code and hold a valid Safety Management Certificate (SMC) and Document of Compliance issued by the Coast Guard under 46 U.S.C. 3205, you are presumed to be in compliance with STCW Regulation I/14.'' On the other hand, NVIC 7–97 (Guidance on the STCW Quality Standard System (QSS) for Merchant Mariner Courses or Training Programs), explains that, ''* * * In order for shipping companies that are ISM Code certified to have their training meet the STCW QSS requirement, their training program must meet the criteria in 46 CFR 10.309.

It should be remembered that documentation and training requirement programs developed by a company can cover a magnitude of different vessel type specific requirements. Each vessel type, under the umbrella of a company's safety management system, may only need to use those portions of the training and documentation program of the total company system that are applicable due to the vessel type, area of operation, or specific requirements under other conventions, laws or regulations. No changes were made to this section in response to this comment.

One comment discussed the need to reevaluate federal manning levels required on U.S. vessels, suggesting that current manning levels do not reflect the additional personnel which will be needed to satisfy the requirements of the

ISM Code. The comment stated that the ISM Code places more duties on vessel personnel than were expected when manning levels were established. The Coast Guard disagrees with this comment. We received comments from companies that have safety management systems in operation. They developed those safety management systems by initially reviewing existing company management policies and procedures. By doing this, they found numerous antiquated, unnecessary or duplicative management procedures and documentation which could be eliminated. Thus, they reduced the management overhead that they had been experiencing before placing the safety management system in operation. If policies are not needed due to changes in the company, management, regulations, policies, or for a number of other different reasons, then they should be removed or amended. By doing this the management system and oversight reporting is reduced in size, which does not increase the personnel needed to operate a vessel safely. No changes have been made to the final rules due to this comment.

The final comment on this paragraph recommends that all personnel should receive general safety management system familiarization when joining a vessel and also six further specific levels of training. These include: three support level training programs; two operational level training programs; and one level of management training programs. The Coast Guard supports a company's use of training, at whatever level necessary to ensure that policies and procedures of the management system are understood by their staffs aboard a vessel or working ashore in support of a vessel. We agree that if a company evaluates its safety management system and finds a need to develop training to ensure the proper understanding and use of the system, then the training should be initiated by that company. In NVIC 4–97, the Coast Guard recommended that ship-specific familiarization include directing a new crew member's attention to the vessel's safety management system. However, the Coast Guard has not made changes to this section of the final rule, as the comment requests additional training which exceeds the requirements of the ISM Code.

17. 33 CFR 96.250(j). Three comments were received on this paragraph. One comment requested that the format of the paragraph and subparagraphs be changed to mirror the ISM Code, and two comments requested that subparagraph (2) have the word ''non-conformity,'' changed to ''deficiency.'' The Coast Guard disagrees with the first comment and has not altered the format of this section or table in the final rule. The Coast Guard agrees that there may be confusion understanding subparagraph (2) and has added the words ''and deficiency'' after ''non-conformity'' to ensure that the requirement is understood.

18. 33 CFR 96.250(k). Two comments were received on the control of documentation required by this paragraph. One comment requested that the word ''destroyed'' be changed to ''removed'' in subparagraph (4). We agree with this request and amend the word in the final rule. The second comment stated that the meaning of data maintenance is unclear and that the complete paragraph does not provide specific direction on data control. The requirements for safety management systems were written in general performance element style to allow different types of companies to tailor their systems to their specific needs. Some companies may use paper based systems, other computer based, a third company a mixture of both. No matter how this data is displayed or communicated, it will be controlled equally and in compliance with these standards. The Coast Guard disagrees that further amendments are needed, because these standards allow flexibility for development of systems documentation. Consequently, we have not made any changes to the final rule due to this comment.

19. 33 CFR 96.250(l). Two comments were received on this paragraph. One comment requested the word ''deficiencies,'' in subparagraph (4) be changed to ''non-conformities,'' to conform with the ISM Code. In this case, the Coast Guard agrees that confusion could occur on what requires timely action for the system and has added the words ''non-conformities or'' before the word ''deficiencies'' in subparagraph (4) in the final rule.

The second comment stated that proposed section § 96.240 of the regulations should include the requirements of section 12 of the ISM Code that require evaluating the efficiency of the system and reviewing the safety management system with established procedures. The Coast Guard agrees and notes that these requirements are already included in § 96.250(l)(1). Critical management review of the system, as well as non-conformity and deficiency reports, are necessary to evaluate whether the system is running properly. No changes to the text of the final regulations were made due to this comment.

20. 33 CFR 96.320(f). Three comments were received on this section regarding the reporting of non-conformities to the company's owner or vessel's Master at completion of a safety management audit. The comments requested that this paragraph be amended to require auditors to issue reports of non-conformities to the company's owner and vessel's Master. It was also recommended that the safety management system's designated person receive copies of this reports as well. The Coast Guard agrees in part and amends this section to require auditors to provide these reports to a company's owner when the company is audited, and to a vessel's owners and Master when a vessel is audited. If a company wants its designated person to receive a copy of this non-conformity report, it is recommended that this request be made to the auditors prior to the audit being completed on behalf of the company.

21. 33 CFR 96.330. One comment expressed concern that this section would require multiple Document of Compliance certificates to be issued by each flag state for a multi-flagged fleet under one responsible person's ownership. Multiple certificates may not be required as the international interpretation for their issuance allows flag states to agree to accept each others certificates for safety management system compliance. Each situation may be different and to verify the U.S. acceptance of other flag state certificates contact Commandant (G–MOC–2), Vessel Compliance Division, 2100 Second Street SW., Washington DC 20593–0001 in writing, by telephone (202) 267–1464, or by facsimile (202) 267–0506. No changes were made to this section of the final rule due to this comment.

22. 33 CFR 96.330(f). One comment requested that this paragraph be amended because it requires the Document of Compliance certificate to be verified annually, instead of the company's safety management system. The Coast Guard agrees and amends this paragraph to ensure the verification of the system and not the certificate in the final rule.

23. 33 CFR 96.330(g)(1), 96.340(g)(1), and 96.340(f). Four comments were received on these paragraphs. Two comments requested that the revocation of a Document of Compliance certificate or Safety Management Certificate not be based on the failure of the responsible person to request an audit, but rather on the failure to complete an audit. The Coast Guard agrees with this comment and amends these paragraphs in the final rule.

The next comment pointed out that when a vessel is laid up or taken out of service for a period of time the Safety Management Certificate may lapse, if the vessel is unmanned for long periods of time. Because there are no personnel working under a safety management system when a vessel is laid up, the certificate cannot be validated or endorsed. When brought back into service, the responsible person can request that an initial audit of the vessel be completed when the vessel is remanned, and a new Safety Management Certificate can be issued. No change to the final rule was made due to this comment.

The last comment stated that § 96.340(f) should be amended as it requires foreign vessels to meet U.S. requirements for safety management system audits. A foreign vessel which is certificated by its flag state or by an organization who acting on behalf of the flag state, completes a safety management system audit following the guidelines of IMO Resolution A.788(19), meeting the same requirements found in these regulations. The Coast Guard will accept such a determination as required by the articles of SOLAS. No changes have been made to this section of the final rule due to this comment.

The Coast Guard has added wording to § 96.330(g), with a new subparagraph (3), to ensure that their personnel and auditors of an authorized organization acting on their behalf, can complete audits and reviews of safety management systems properly and effectively. A Document of Compliance certificate may be revoked if the Coast Guard or an authorized organization is denied or restricted access to the vessel, records, or personnel necessary to ensure compliance with 33 CFR part 96. Neither the Coast Guard, nor an authorized organization acting on its behalf, should be expected to certificate compliance with any international convention regulation, unless all needed information and records for that review are provided by the vessel's or company's personnel.

24. 33 CFR 96.340(e)(2). One comment requested that the wording in this section regarding the ''anniversary date'' of the intermediate verification audit be amended for clarity. The Coast Guard agrees and amended the final rule with the words ''period of validity'' rather than the ''anniversary date.''

25. 33 CFR 96.360(a)(2). One comment was received on this section which requested a determination of ''* * * a U.S. vessel which is new to the responsible person or their company.'' For an interim Safety Management Certificate to be issued, this vessel would be considered an individual vessel that was just purchased by or just brought under the management of a responsible person. No change to the final rule was made due to this comment.

26. 33 CFR 96.380. Two comments were received on this section. One comment stated that the use of a civil penalty under 46 USC 3318 is not consistent with the law for violations of compliance with documentation responsibilities under these regulations. The comment went further to state that a suitable grace period for the production of certificate copies, or a grace period to bring the vessel into compliance, along the line of a formal requirement (CG Form 835) be issued prior to actions to assess a civil penalty. The requirement as written states that the ''* * * 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 * * *.'' The proposed regulations do not say that the Coast Guard must pursue a civil penalty.

Traditionally, the Coast Guard has considered all possible administrative actions in dealing with incidents of non-compliance. The Coast Guard wrote this section to ensure that affected companies and individuals were aware that civil penalties were a possible sanction for violations of these regulations. It is the Coast Guard's opinion that civil penalties authorized under 46 U.S.C. 3318 apply to violations of these regulations because these penalty provisions are applicable to violations of laws and regulations issued under the authority of 46 U.S.C. Part B, which includes 46 U.S.C. Chapter 32.

The second comment discussed concerns surrounding § 96.380(a)(2), which allows the Coast Guard to board a vessel to verify that 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. The comment concluded that this action would go well beyond the authority internationally recognized for port state control examinations found in SOLAS: Chapter I, regulation 19; Chapter IX, regulation 6; Chapter XI, regulation 4; as well as the IMO Procedures for Port State Control. The comment also requested that we modify this subparagraph to conform with internationally recognized port state control guidelines. The comment further requested that we draft Coast Guard policy on these actions and distribute them for comment to the maritime industry prior to their implementation.

The Coast Guard is working to complete policy development which falls into line with this request. A port state control NVIC is being developed which describes the Coast Guard boarding policy for foreign vessels including examination of the vessel safety management system and certificates. This NVIC will discuss normal actions during a port state control examination of a foreign vessel by the U.S., and what clear grounds must be found of observed non-compliance with a safety management system before an expanded Coast Guard examination will be completed. The Coast Guard expects to have this NVIC published in the same time frame as this final rule. However, we disagree that this policy requires review and comment by the maritime industry. These procedures for safety management system evaluation fall in-line with the U.S. port state control program already in existence and meets the port state control regulations of SOLAS and the IMO Procedures for Port State Control. No changes have been made to this section of the final rule due to this comment.

27. 33 CFR 96.390(a). One comment stated that this subparagraph would prohibit Coast Guard acceptance of foreign issued international management certificates which met SOLAS guidelines, unless they would attest to full compliance with U.S. regulations. The Coast Guard agrees that as written, this requirement provides a limitation of acceptance of foreign issued certificates which is not consistent with SOLAS. This subparagraph has been amended in the final rule to ensure that such certificates would be acceptable when issued in accordance with Chapter IX of SOLAS and the IMO Guidelines for Contracting Parties to SOLAS.

28. 33 CFR 96, Part D. Two comments were received regarding organizations who have applied to be recognized and are authorized to complete external audits and certification of safety management systems for U.S. vessels and their companies. One comment questioned the use of the term ''expertise,'' and whether that term encompassed the marine field, quality systems, or both, and whether this authorization should be limited to classification societies. The comment further stated that anyone with an appropriate marine business and academic background is qualified to act on behalf of the U.S. in ISM Code auditing and certification.

These requirements are based in part, on the guidelines provided by IMO Resolution A.739(18), which are

incorporated by reference in § 96.130. These international guidelines provide minimum standards to ensure organizations authorized by any flag state, worldwide, will provide uniform actions and oversight when their personnel complete actions regarding vessel surveying and auditing in the marine field. This is important to the owner of a vessel and the flag state, because as it ensures that the international certificates issued by authorized organizations acting on behalf of a flag state, will be accepted worldwide, on face value, for compliance with international conventions. The Coast Guard disagrees that ''just anyone'' can meet these requirements. Coast Guard requirements for recognition of organizations are rigorous and conform to the IMO guidelines. The Coast Guard expects and will ensure that actions by an organization acting on its behalf are incontestable under any port state scrutiny. Any organization, with a proven history of marine experience working with and making decisions based on maritime industry standards, national standards and regulations, and international guidelines and conventions, may meet these requirements. The organization, due to the auditing expertise needed for ISM Code certification, must also provide a certified level of standards that it can meet for its personnel to complete audits. The requirements are restrictive because the Coast Guard must ensure that the U.S. marine transportation industry is able to operate, uninterrupted, worldwide.

The second comment on this part recommended that organizations already accepted by the Coast Guard to issue voluntary certificates, under NVIC 2–94, should be automatically authorized to issue mandatory ISM Code certificates on behalf of the U.S. without having to reapply under these regulations. The Coast Guard disagrees and expects these organizations will apply under this part. No changes were made to this section of the final rule due to these comments.

29. 33 CFR 96.410. One comment was received on this section which stated that the term ''safety management certificates'' should not be used in this section because it has a specific meaning, and should not be used to refer to these certificates in a general way. The Coast Guard agrees with this comment and has changed this section to eliminate confusion. The Coast Guard has also edited this section to make it easier to read by removing the words ''wish to'' from this section.

30. 33 CFR 96.430. Four comments were received on this section. One comment discussed the reciprocity requirement of 46 U.S.C. 3316 for a foreign classification society to be authorized to act on behalf of the U.S. to complete external audits and certification of safety management systems. The comment stated reciprocity with ABS should not be required because a subsidiary corporate entity of ABS is providing these functions, not ABS, thus there is no need for the documentation of reciprocity by a foreign classification society. The Coast Guard does not agree. Currently, ABS certification comes under the voluntary system of NVIC 2–94 which is not subject to the provisions of 46 U.S.C. 3316. Under these regulations, all future written agreements for authorization to act on behalf of the U.S. regarding the mandatory certification of safety management systems will be made with ABS under the provisions of 46 U.S.C. 3316. Under this agreement, ABS will not be able to use subsidiary group offices to complete these actions for the U.S. No change was made in the final rule due to this comment.

The second comment recommended that the Coast Guard also accept the quality standards of ASQC Q9002 and quality management standards of ASQC C9001 and C9002. The Coast Guard disagrees. Under 46 CFR 8.230(a)(15), an organization must meet ANSI/ASQC Q9001 or an equivalent quality standard to be recognized. No other quality standard is incorporated in 46 CFR part 8. For purposes of consistency, no others will be incorporated here either. Quality management standards (ASQC C9001 and C9002) are not required for recognition of an organization, so none will be required here. No changes have been made to this section of the final rule due to this comment.

The third and fourth comments on this section questioned the terminology used in § 96.430(a)(3), and inquired whether a recognized organization could use subsidiary organizations and their auditors to carry out audits and certification in accordance with the IMO guidelines and the ISM Code. The Coast Guard disagrees and has explicitly written this subparagraph to ensure that only exclusive auditors of organizations authorized to act on behalf of the U.S. are used by these organizations to complete audits under this authorization. When the Coast Guard reviews an organization's application for authorization authority under this subpart, quality standards must: (1) Demonstrate how the organization selected individuals as auditors; (2) explain training and recertification methods; and (3) describe the code of ethics the auditors must follow. An organization's auditor standards will be approved as part of the organization's application package to be authorized to act on behalf of the U.S., and will be part of the U.S. written agreement with the organization as required by § 96.440(c). No change was made to this section of the final rule due to these comments.

As the reciprocity requirement effects only foreign classification societies which can be authorized to act on behalf of the Coast Guard under this section, old paragraph (a)(5) of this section has become a new paragraph (b) for clarity. Old paragraph (b) is now paragraph (c).

31. 33 CFR 96.480. One comment cautioned that the termination of authority from an organization acting on behalf of the U.S. could have extreme consequences on vessel operation for vessels certificated by that organization. Specific concern was expressed for situations in which the vessel's Safety Management Certificate is near expiration when the authorization is terminated. Also, the comment questioned the obligatory notification requirements of companies and vessels certificated by the terminated organization. In all cases, the Coast Guard will request information from the administrative files of the organization being terminated to understand the effect of termination on the companies and vessels certificated by the organization. The Coast Guard will assist any company and vessel to maintain certification while transferring to another authorized organization. The original certificates of the terminated organization will remain valid until expiration or periodic audit which will allow continuity with a new authorized organization. There should be no extra cost for the company or vessel as the audit actions required by the new organization are the same actions that would have been completed by the original certifying organization. This paragraph was also edited to ensure clarity.

The Coast Guard will enter into a written agreement with all organizations receiving authorization under this part, as stated in § 96.460. Failure to notify affected companies or vessels upon termination of authority for safety management system certification, will result in a review by the Coast Guard of the ability of the organization to complete any actions on behalf of the Coast Guard. Additionally, this termination could affect any or all other delegated authorities, in such a

situation. The final rule was not changed due to these comments.

32. 46 CFR 126.480(a). Three comments were received on this section. Two comments discussed the use of the phrase ''offshore supply vessels (OSVs) engaged on foreign voyages'' and questioned the applicability of the 33 CFR part 96 on OSVs and ocean-going towing vessels certificated for international voyages. The applicability of those regulations to OSVs and towing vessels on international voyages is determined by whether these vessels are over 500 gross tons and are ''vessel(s) engaged on a foreign voyage'' as that term is defined in 46 U.S.C. 3201 and this part. No change was made to the final rule due to these comments.

The final comment sought clarification when the ISM Code applied to OSVs and ocean-going towing vessels under the vessel admeasurement system. The ISM Code applies to vessels engaged on a foreign voyage. In the case of OSVs and ocean-going towing vessels, the ISM Code applies only if the vessel is 500 gross tons or greater, as OSVs and towing vessels are considered freight (cargo) vessels for purposes of SOLAS. Because the applicability of the statue implementing the ISM Code provisions is based on tonnage (see 46 U.S.C. 3202) and this statute was enacted after July 18, 1994, its applicability to vessels is based on their international convention tonnage because of 46 U.S.C. 14302(b). However, under 46 U.S.C. 14305, a vessel owner may request that a vessel be measured under the regulatory tonnage system and under those circumstances the applicability of SOLAS, as well as the other enumerated statutes, would be based on the vessel's regulatory tonnage. This means that the owner of an OSV or towing vessel that has a convention tonnage greater than 500 gross tons could elect to have the vessel admeasured under the regulatory tonnage system, and if the vessel had a regulatory tonnage of less than 500 gross tons, these regulations would not apply. However, the applicability of all other laws enumerated in 46 U.S.C. 14305 would also be determined based on the optional regulatory tonnage (see 46 U.S.C. 14305(b)). NVIC 11–93, Change 2, discusses when regulatory tonnages may be used by a vessel owner to determine the applicability of SOLAS requirements. No changes in the final rule have been made as a result of these comments.

33. 46 CFR 175.540(d). Four comments were received on this section. One comment stated that the applicability of the requirements of 33 CFR part 96 are mitigated by the addition of paragraph (d) to this section of the regulations for small passenger vessels. This amendment does not mitigate or soften the applicability. This paragraph provides an equivalent means for these small vessel owners to meet the safety management system requirements. An equivalence is not an exemption. The Coast Guard developed a job aid with the assistance of a marine industry working group. This job aid can be used as an example of what an owner of a small passenger vessel may do to establish an equivalent safety management system. Section 175.540(d) does not reduce the effectiveness of the safety management system, but instead provides direction to these small passenger vessel owners to help them develop their systems so they can be certificated by the cognizant Coast Guard OCMI.

Two comments did not support an exemption for small passenger vessels due to their limited operation or company sizes. The Coast Guard disagrees. These vessels are not being exempted from the requirements, but are offered a cost-effective course of action to implement the regulations due to their size, limitation of operation, and historical low risk with proven safety records. The Coast Guard job aid developed for these vessels provides a customized safety management system program, which will support small passenger vessels with limited international routes. It does not remove any of the requirements of 33 CFR part 96. A small passenger vessel owner can request a job aid at no charge from the local cognizant OCMI.

The final comment requested clarification whether the Coast Guard would allow a small passenger vessel approved and actively using the Streamlined Inspection Program (SIP) to use that program as an equivalent to the safety management system requirements. The SIP program is based on performance elements similar to the safety management system requirements. The Coast Guard may allow this if an owner developed a program that included all the requirements of 33 CFR part 96. This program would be provided to the cognizant OCMI for review and acceptance after discussion and recommendations are received from the authorized organization certificating the safety management system. However, the Coast Guard made no changes or amendments to this section due to these comments.

General Comments (Non-CFR Specific)

34. Four general comments were received which supported the proposed rules as written. One comment also requested confirmation that operation of large passenger vessels around the islands of Hawaii constituted coastal trade and would not require mandatory development and certification of a safety management system. A U.S. vessel certificated to a limited route of coastal operations within the Hawaiian island chain is not required to meet this part. However, if the vessel involved in this operation holds an international registry and a Certificate of Inspection authorizing international voyages, even though the owner of the vessel limits its operations, this vessel would have to meet all SOLAS requirements and be certificated to the ISM Code.

One comment requested that the safety management system requirements be placed in each part of title 46 of the CFR to correspond to each type of vessel required to meet the ISM Code. The Coast Guard does not agree that this should be done as the agency has actively reduced the number of regulations where possible, including elimination of redundant parallel regulations in the CFR. The limited reference in each part of Title 46 affected by the final rules in 33 CFR part 96 will allow ease of reference and continuity of using the regulations for all vessels affected by these requirements. No change to the final rule has been completed due to these comments.

35. Two general comments supported the use of plain English in the development of these regulations by the Coast Guard. Each described the use of the question and answer format as useful, but both felt that the style did not provide enough detail to really answer the questions posed. One comment stated that the questions did not appear to be answered. The other comment felt that the standards of plain English were not followed adequately.

The Coast Guard's authority for developing these regulations required consistency with the ISM Code. The ISM Code's standards are general in nature to allow flexibility for different types of vessel companies to meet them without restricting their creativity or mandating a specific management style. Other international or U.S. quality standards and management standards are written following the same logic. No change to the final rule has been made due to these comments.

36. Two general comments discussed the need to carefully oversee safety management system development and certification programs for U.S. and foreign vessels. The comments pointed out that Coast Guard personnel should

be specifically trained to oversee these new requirements. We agree.

U.S. Coast Guard marine inspectors and program managers have been trained to meet national auditing standards. Since 1995, approximately 120 Coast Guard marine inspectors completed a course which is specifically based on the auditor standards of ANSI ASQC Q 9001 and the ISM Code. The Coast Guard also reviewed its in-house training programs for marine safety responsibilities and included compliance and enforcement of the ISM Code in each basic marine safety training course. No changes have been made to the final rule due to these comments.

37. One general comment stated that there are numerous organizations worldwide, who may be authorized by an Administration to complete ISM Code audits and certification, whose abilities to act on behalf of an Administration may be questionable. Two other general comments alluded to the same problem, and provided suggestions on how these organizations should be rated for performance and how port state targeting schemes could be modified when a specific organization fails to complete its authorized responsibilities.

The Coast Guard agrees. Coast Guard program managers will monitor and compare compliance with the ISM Code for all flag states, authorized organizations, companies and foreign flagged vessels. Because this information will be monitored centrally by Coast Guard Headquarters program managers, compliance infractions will be tailed and may affect the targeting scheme for specific foreign vessels, flag states, and vessel owners or authorized organizations. This information will enable the Coast Guard to modify its targeting scheme, if necessary, to ensure that vessels with continuous noncompliance issues receive a higher level of oversight and boardings when in U.S. ports.

The Coast Guard will use the information collected to provide IMO and flag states with reports on port state interventions, detentions and denials of U.S. port entries required by the port state reporting requirements of SOLAS. If a specific authorized organization continuously fails to complete its assigned duties, such reports will illustrate these failures to all SOLAS Contracting Parties, who can increase their port state control requirements on vessels certificated by this organization on behalf of any flag state. This will help flag states recognize the need for extended oversight when continuous problems are documented, and promote revocation of authorizations by the flag state when necessary. In the event that these actions do not appropriately address non-compliance, the Coast Guard will continue to heighten its oversight and boardings of vessels certificated by these organizations. This may lead to interventions, detentions and denial of entry into U.S. ports and places. No change has been made to the final rule due to these comments.

38. One general comment recommended that a Master's or crew's unfamiliarity with the company's safety management system and training requirements of a safety management system should be clear grounds to perform a more extensive examination of a foreign flag vessel during a routine boarding by the Coast Guard. The Coast Guard agrees with the comment and developed its port state control boarding procedures to allow for an expanded examination of a foreign vessel's safety management system when this situation is found during a routine Coast Guard boarding. As the policy for Coast Guard actions required during port state examinations of foreign vessels are covered in the NVIC on ISM Code compliance for foreign vessels, the final rule has not been changed due to this comment.

39. Two general comments recommended the Coast Guard require foreign vessels to provide information in advance of their U.S. port arrivals to ensure their compliance with the ISM Code. The Coast Guard agrees with these comments and on December 11, 1997, published an Interim Rule in a separate rulemaking (CGD 97–067) to require this advance notice of arrival requirement (62 FR 65203). No change has been made to this rulemaking due to these comments.

40. One general comment requested the Coast Guard review all current regulations that place the responsibility for the safe operation of a vessel on the vessel's Master, and where appropriate, share some of that responsibility with the designated person. The Coast Guard disagrees. As defined in § 96.120, the designated person does not have a responsibility for operation of the vessel. The designated person's responsibility is to monitor the safety management system of the company and the vessel(s), as directed by the responsible person. If problems arise with the policies and procedures for the safe operations of the vessel which the Master does not believe he or she has the right tools to manage, those problems should be communicated to the vessel's owner. The Master can communicate through the safety management system, or directly to the vessel owner, or through the designated person to the vessel's owner. By documenting these circumstances in the safety management system, a critical review by the vessel management will be performed and new or corrected policies or procedures placed into the safety management system to assist the Master. The Coast Guard has made no change to the final rule due to this comment.

41. Two general comments recommended that the final rule provide a list of administrative requirements or detailed guidance on the issues of revocation of a Document of Compliance certificate or a Safety Management Certificate. The Coast Guard will provide guidance for such actions in the new chapter of Volume II of the Coast Guard Marine Safety Manual on the compliance and enforcement of safety management systems for U.S. vessels. The Coast Guard determined that placing this policy in regulations would limit its ability to consider all necessary circumstances and make decisions on a case-by-case basis.

All Coast Guard actions to enforce safety management system requirements on U.S. vessels and their companies can be appealed to the Coast Guard under 46 CFR 1.03, ''Rights to Appeal.'' This section provides time frames and procedures for use by the maritime industry to effectively question actions taken by the Coast Guard in enforcing revocations on these certificates, as needed. No change has been made to the final rule due to these comments.

42. One comment stated that the proposed regulations do not fully anticipate problems and provide direction necessary to manage important day-to-day operations with regard to the endangered Northern Right Whale. In particular, the comment expressed concern that the ISM Code regulations were too narrowly focused and sought various clarifications regarding the application of the regulations to protected species and their critical habitats. It suggested that the language in proposed § 96.250(g) be amended to specifically include operation plans and instructions with respect to protected species in their critical habitats.

The ISM Code does not define specific operating procedures or practices, but instead provides broad, general performance elements as guidelines to be applied by ship owners and their companies to shoreside operations and to their vessels. Shipping is a varied industry with numerous types of companies operating under a large range of different conditions. The ISM Code guidelines

are based on general principles and objectives to promote the development of sound management and operating practices within the industry as a whole. Its purpose is to require companies to establish operating practices and policies so that company management will be in a position to ensure that their vessels comply with all applicable international and U.S. laws for purposes of safety and environmental protection. It does not seek to define or incorporate detailed regulatory requirements, but instead to establish the management structure that will ensure that requirements applicable to vessels are communicated to shoreside and vessel personnel, and complied with. Thus, the requirements in this regulation are expressed in broad terms so they may have widespread application. As expressed in the comment, the suggestions applicable to protected species are too narrow to be addressed in this rulemaking.

This does not mean that these regulations will not beneficially effect endangered species or their critical habitats. Besides the beneficial effect that company policies and management structures promoting safe, environmentally sound vessel operations will have on the marine environment in general, including protected species, the management structure and policies put in place through the ISM Code will promote compliance with all applicable laws, including environmental efforts. Under these regulations, company management would establish an operational and management structure that would ensure that vessel Masters and crews within their fleets would be provided with the applicable safety and environmental requirements for operations in U.S. waters. Additionally, the system would ensure that necessary training would be conducted. The system would then be audited periodically to determine whether the system is working and compliance is occurring.

An example of how this would work involves the Northern Right Whale. The Coast Guard is working closely with the National Marine Fisheries Service and its charter agency, the National Oceanographic and Atmospheric Administration (NOAA), to develop national programs to assist in protection of the Northern Right Whale by providing mariners operating directions for the whale's critical habitat areas on the east coast of the United States. Part of this effort is the publication of navigation warnings for the Northern Right Whale in Coast Guard Notices to Mariners and in the U.S. Coast Pilot publications covering critical habitat areas of the Northern Right Whale. These warnings include the requirements of 50 CFR parts 217 and 222 that establish Northern Right Whale avoidance measures for vessels and reporting criteria for whale strikes. Coast Guard navigation safety requirements for foreign and U.S. vessels are established in 33 CFR part 164. These regulations include requirements for vessels to have aboard the current edition of the U.S. Coast Pilot for the area in which vessels are operating. In addition, other regulations require vessels to have aboard proper operating radiotelephone equipment that will allow vessels to monitor frequencies over which Notices to Mariners are broadcast. Compliance with the ISM Code requirements in this part means that companies that own and operate vessels will have in place the means to ensure that vessel Master are aware of these requirements, that they comply and that corporate officers are aware of, and correct, instances of noncompliance. For these reasons, no change has been made to the final rule due to these comments.

43. One comment focused on the introduction of injurious exotic species into U.S. coastal and riparian waters through ballast water discharges by vessels engaged on foreign voyages to ports or places in the U.S. The Coast Guard is currently developing new regulations to address vessel discharges of ballast water into U.S. waters. The Coast Guard is also monitoring actions at IMO which involve these vessel operations. No change has been made to the final rule due to this comment.

44. One general comment requested that an interim rule be published by the Coast Guard for review and comment on this rulemaking prior to the final rule being published. We disagree. As written comments on the proposed rulemaking did not point to any significant problems nor any problems that have not been addressed in the final rule, the Coast Guard does not expect that publishing an interim rule would markedly improve the regulations nor assist vessel owners in complying with the ISM Code by its first effective date of July 1, 1998. Therefore, the Coast Guard has completed this rulemaking process by publishing this final rule.

45. Two general comments were made by one commentor on: (1) Mandatory requirements for safety management systems on U.S. domestic vessels; and (2) the benefits that would be reaped by these domestic vessels compliance with these regulations.

The Coast Guard contends that the use of safety management systems by all U.S. commercial vessels would result in significant benefits and we will support the development of such programs. 46 U.S.C. 3202 states that U.S. domestic vessels may voluntarily meet the requirements of that Chapter, but does not provide the Coast Guard with the authority to require such safety management systems on these U.S. domestic vessels. Thus, the final rule has not been changed due to these comments.

46. Editorial changes. 46 CFR §§ 33.40–30 (a) & (b), 71.75–13 (a) & (b), 91.60–30 (a) & (b), 107.415 (a) & (b), 126.480 (a) & (b), and 186.60–30 (a) & (b). In these sections, paragraphs (a) and (b) have been combined to make it clear that only those vessels to which 33 CFR part 96 applies must have the ISM certificates.

33 CFR 96.100. The public law cite was removed and replaced with 46 U.S.C. Chapter 32, which is the authority for this subparts purpose.

33 CFR 96.400(a). In the last sentence of this paragraph, the term ''delegated to'' is replaced with the term ''delegated by''. This will correctly reflect that audits and certification functions are not delegated ''to'' the Coast Guard. They are delegated to the recognized organization ''by'' the Coast Guard.

33 CFR 96.470. In this section, the terms ''of recognized organizations'' is added to clarify which Commandant's list the removal may be from.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 96.130 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in that section.

Regulatory Evaluation

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

The basis for the number of vessels effected by this rulemaking was developed from the Coast Guard's Marine Safety Management System (MSMS) database on vessel inspection, documentation and certification files. From this source it was determined that there are 415 vessels with 163-discreet owners that hold Safety of Life at Sea (SOLAS) certificates and are considered to be subject to the mandatory

application of the ISM Code. There are 186 vessels that must comply with this regulation by July 1, 1998, and 229 vessels that must comply by July 1, 2002.

Costs

Three distinct processes were used to derive the costs to implement and maintain the ISM Code. They include developing a safety management system, certification and audit fees, and training Coast Guard and authorized organization personnel to conduct management system audits.

The following cost estimates are a result of one set of choices made by an organization managing relevant U.S. vessels in a normal and prudent manner, but not having a safety management program that meets the ISM Code. This scenario and maintenance of a safety management system assumes the employment of a separate staff person with fleet-wide responsibility for safety, environmental protection, and general quality control. On-going distribution of updated safety and technical documents is a normal company practice. The operator routinely maintains data-processing and communication capability adequate to handle the ship-to-shore information flow required by the ISM Code. It was assumed that the owner or operator is responsible for more than one vessel.

The start-up costs for initiating a safety management system is calculated at approximately $150K per company and $2K per vessel, with recurring expenses estimated to be $10K per vessel for system maintenance.

To clearly describe the effected population and improve the regulatory analysis, shipping concerns were separated into three categories of large, medium and small sized companies. For all companies, the cost is compiled for a 10-year period (1998–2007 inclusive). For large companies, which is estimated to be 71 of the total 163 companies effected, the start-up cost is approximately $38.5 million. The average cost for these 71 companies per year is estimated to be $3.8 million. For medium companies, the total cost for the 27 companies is approximately $7.8 million. The average cost for these medium companies is estimated to be $780,000 per year. Out of a total of 65 small companies, only 12 companies face these costs, and the total cost is approximately $3.2 million. The average cost per year for these 12 small companies is estimated to be $320,000.

Total Costs

- Small Companies: $3.2 million.
- Medium Companies: $7.8 million.
- Large Companies: $38.5 million.
- Total: $49.5 million (1998–2007 inclusive).
- The average cost per year: $5.0 million.

Benefits

A study was conducted to identify the significant types and circumstances of U.S. vessel accidents potentially preventable due to ISM Code compliance. The data used to support the analysis of ISM Code benefits was drawn from the MSMS Marine Investigation Module (MINMOD) and vessel information files. Marine Casualty Investigation Reports (MCIR's) were included in the study if they involved either currently-registered U.S. vessels, that would be subject to the ISM Code or if a Human Factors Supplement was filed in the case. A Human Factors Supplement contains a standardized ''class'' or ''subclass'' designation of a particular human factor or factors considered by the investigating officer to have contributed to the accident. Only MCIR with problems considered by the Coast Guard to be preventable through ISM Code procedures were retained. There were 214 such cases over the three year period (1993–1995). These benefits needed to be quantified. Five factors were used to estimate the cost of the 214 relevant casualties. The five factors are listed below: (The dollar figures below reflect a 1997 dollar value.)

1. Vessel and property damage: The total dollar damage value per casualty has been estimated to be $10,000.
2. Injuries: The total dollar damage value per injury has been estimated to be $424,174.
3. Deaths: The number of deaths or missing persons shown in the MCIR record multiplied by $2,700,000. This factor is currently recommended by DOT for use in regulatory impact estimation.
4. Vessel Downtime: An average vessel downtime cost of $224,337 was arrived at by averaging all vessel damage evaluations shown in the MICR records other than for vessels evaluated as either seaworthy or as a total loss. This is the same factor that was used in the study completed for the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) rulemaking, implementation benefits.
5. Environmental Damage: Any spillage recorded in the MCIR record is converted to 42-gallon barrel terms and multiplied by $15,810. This is the average cost used in the benefit study done for STCW to represent per-barrel costs of natural resource damage, loss of beneficial use of shoreline and cleanup for ''small'' spills.

We identified relevant accidents that occurred between 1993–1995 and developed factors to estimate their cost to society. The following steps were used to estimate the annual reduction in future marine casualty costs that may be expected from ISM Code implementation:

1. The projected costs were divided into three categories depending on the cause of the casualty. The three categories were personnel nature, any primary nature other than pollution, and pollution casualties.
2. Based on the study's findings, a percentage range was created. This range expressed the expectation of future casualties with the implementation of the ISM Code final rule.
3. The STCW rulemaking creates some of the same benefits as implementation of the ISM Code. The average annual cost reduction from the implementation of STCW were taken into account to avoid double counting of benefits.
4. The expected percentage impact of ISM Code implementation was then applied to produce the expected cost reduction.

After all of these procedures were followed an estimated benefit range was determined. The range for the economic benefit of expected avoided costs of all relevant accident types combined was estimated to be $6.9 to $12.8 million per year, dominated by the $6.4 to $12.2 million estimated for reduction in the costs of personnel casualties.

Cost-Benefit

The total average cost for this final rule (1998–2007) has been estimated at $49.5 million. This is approximately $5.0 million per year. The range for the economic benefit of expected avoided costs of all relevant accident types combined was estimated to be $6.9 to $12.8 million per year.

The estimated cost-benefit for this final rule was calculated by dividing the measure's present value cost by the measure's present value benefit. The estimated cost-benefit range for this rule is 0.39 to 0.72. A rule with a cost-benefit factor of less than 1.0 implies that efficient standards have been set by balancing the costs of anticipated abatement against the benefits of expected avoided costs. Therefore, this rulemaking can be deemed as cost effective.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard

considered whether this rule 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.

Our initial evaluation was that this rule would effect approximately 72 small entities, whose U.S. small passenger vessels operate on international voyages. For purposes of the ''small entity'' analysis, the Coast Guard considered the 72 vessels owned by 65 companies as small entities. To ease the burden on small entities 54 of these are allowed to apply for an equivalence to these requirements to significantly reduce their cost to develop and certify their safety management systems, if they opt to do so. No comments or statements were received during the NPRM on the impact of this rulemaking on small entities. No change or amendment to the final rule was completed that would alter the effect already stated in the NPRM on small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

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 offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No written requests were received by the Coast Guard to provided assistance for the development of safety management systems by small entities. One comment stated that the equivalence option provided for small passenger vessels as unnecessary, if the limiting factor is the cost incurred to be certificated by an organization acting on behalf of the U.S. The Coast Guard disagrees.

This final rule offers an option for small entities to develop an equivalent safety management system in concert with the cognizant Coast Guard OCMI. This option will significantly reduce the cost for the safety management system and will allow direct auditing and certification by the Coast Guard. No extra fee will be required for these owners who elect to take advantage of this option.

When developing the small passenger vessel equivalence, the Coast Guard considered cost issues. Cost was not the only reason used by the Coast Guard to determine that small passenger vessel operations could benefit equally by an equivalence to the requirements provided in these regulations. Their historical operational risk was evaluated, the traditional policies that are used to regulate international conventions on these vessels, and the small number of vessels within this type of vessels which would be impacted. The Coast Guard is also required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), to evaluate the impact of new federal regulations and the ability to assist these businesses. Also, what played a factor was verbal comments received from operators of such vessels at the public meetings held at four ports in the October and November 1995 time frame at the initiation of this rulemaking process. The Coast Guard has seen great success with using an equivalence option with these vessel types and agreed that no reduction of safety would be incurred by using this option in the enforcement of these new regulations. No change has been made to the final rule due to this comment.

The Coast Guard is also providing these small entity owners with a job aid on safety management system development which will help them meet these standards and will cut the cost of their having to go to a third party source for support and training. These small passenger vessel owners will be provided with continued support by the local cognizant OCMI to ensure that their vessels have a properly operating safety management system which is certificated prior to the effective date of these requirements.

Collection of Information

This final rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Information is collected to show the compliance status of responsible persons and their U.S. vessels to the Coast Guard by recognized organizations authorized by the Coast Guard to act on behalf of the U.S. A responsible 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 required a new information collection request submittal to OMB.

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 international management certificates, an amendment to existing information collection request 2115–0056 was submitted to OMB.

Safety management systems will be externally audited and reported on by an authorized organization 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, existing collection request 2115–0626 also requires amendment and was submitted to OMB for approval.

As described above, the Coast Guard submitted new and amended information collection requests pursuant to the estimates described in the NPRM. No comments were received to the NPRM docket regarding these estimates. No change was made to the proposed regulatory text which would require new information collection requests. Also, no change was made to the final rule which would affect those estimates.

As required by 5 U.S.C. 3507(d), the Coast Guard submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has approved the collection. The section numbers are: 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; and the corresponding approval numbers from OMB are OMB Control Number(s), 2115–0056; 2115–0057, and 2115–0626, which expire on August 31, 2000.

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

Federalism

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

Federal Preemption

Historically, the Coast Guard has inspected vessels for their compliance with Federal regulations and international standards to which the United States is a party that address the safety of vessels and protection of the marine environment. These regulations implement the provisions of the International Convention for the Safety of Life at Sea, 1974, (SOLAS) as amended, to which the United States is a party. As a party to this Convention, the United States has agreed to implement its provisions for vessels flying the flag of the United States and to apply these provisions to foreign vessels in accordance with the enforcement regime established within the Convention. In addition, actions by state and local governments that seek to impose different standards than those imposed by these regulations would frustrate the desire of Congress to impose uniform, international standards relating to the implementation of safety management systems for vessels when it enacted 46 U.S.C. Chapter 32. It is the Coast Guard's opinion that the Supremacy Clause of the Constitution would preempt state and local regulations that seek to impose different or higher standards than those established in these regulations.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded during the rulemaking stage that under paragraph 2.B.2.e(34) of Commandant Instruction M16475.1B, this 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, Reporting 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, Reporting and recordkeeping requirements, Safety management systems.

46 CFR Part 176

Marine safety, Passenger vessels, Reporting 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 amends 33 CFR Chapter I and 46 CFR Chapter I as follows:

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

1. Add part 96 to read as follows:

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 regulation?
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, 33 U.S.C. 1231; 49 CFR 1.45, 49 CFR 1.46.

Subpart A—General

§ 96.100 Purpose.

This subpart implements 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), as required by 46 U.S.C. Chapter 32.

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) engaged on a foreign voyage, bound for ports or places under the jurisdiction of the U.S., which must comply with Chapter IX of SOLAS; or

(d) You are a recognized organization applying for authorization to act on behalf of the U.S. to conduct safety management audits and issue international convention certificates.

§ 96.120 Definitions.

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

(b) As used in this part—

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

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

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

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

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

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

(1) Direct access to communicate with the highest levels of the company and with all management levels ashore and aboard the company's vessel(s);

(2) Responsibility to monitor the safety and environmental aspects of the operation of each vessel; and

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

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

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

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

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

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

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

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

Responsible person means—

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

(2) Any other person that—

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

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

(3) A responsible person may be a company, firm, corporation, association, partnership or individual.

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

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

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

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

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

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

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

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

§ 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, 1974. It also permits companies with U.S. flag vessels that are not required to comply with this part to voluntarily develop safety management systems which can be certificated to standards consistent with Chapter IX of SOLAS.

§ 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 vessel transporting more than 12 passengers; 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 a foreign voyage, bound for ports or places under the jurisdiction of the U.S., and subject to Chapter IX of SOLAS.

(b) This subpart does not apply to—

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

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

(1) On or after July 1, 1998, for—

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

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

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

§ 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 for safe practices in vessel operation and a safe work environment onboard the type of vessel the system is developed for;

(b) Establish and implement safeguards against all identified risks;

(c) Establish and implement actions to continuously improve safety management skills of personnel ashore and aboard vessels, including preparation for emergencies related to both safety and environmental protection; and

(d) Ensure compliance with mandatory rules and regulations, taking into account relevant national and international regulations, standards, codes and maritime industry guidelines, when developing procedures and policies for the safety management system.

§ 96.240 What functional requirements must a safety management system meet?

The functional requirements of a safety management system must include—

(a) A written statement from the responsible person stating the company's safety and environmental protection policy;

(b) Instructions and procedures to provide direction for the safe operation of the vessel and protection of the environment in compliance with the applicable U.S. Code of Federal Regulations, and international conventions to which the U.S. is a party (SOLAS, MARPOL, etc.);

(c) Documents showing the levels of authority and lines of communication between shoreside and shipboard personnel;

(d) Procedures for reporting accidents, near accidents, and non-conformities with provisions of the company's and vessel's safety management system, and the ISM Code;

(e) Procedures to prepare for and respond to emergency situations by shoreside and shipboard personnel;

(f) Procedures for internal audits on the operation of the company and vessel(s) safety management system; and

(g) Procedures and processes for management review of company internal audit reports and correction of non-conformities that are reported by these or other reports.

§ 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 monitor the safety management system for the company and vessel(s).	(1) Have direct access to communicate with the highest levels of the company and with all management levels ashore and aboard the company's vessel(s); (2) Have the written responsibility to monitor the safety and environmental aspects of the operation of each vessel; and (3) Have the written responsibility to ensure there are adequate support and shore-based resources for vessel(s) operations.
(d) Written statements that define the Master's responsibilities and authorities.	(1) Carry out the company's safety and environmental policies; (2) Motivate the vessel's crew to observe the safety management system policies; (3) Issue orders and instructions in a clear and simple manner; (4) Make sure that specific requirements are carried out by the vessel's crew and shore-based resources; and (5) Review the safety management system and report non-conformities to shore-based management.
(e) Written statements that the Master has overriding responsibility and authority to make vessel decisions.	(1) Ability to make decisions about safety and environmental pollution; and (2) Ability to request the company's help when necessary.
(f) Personnel procedures and resources 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 have an adequate understanding of the relevant rules, regulations, codes and guidelines; (7) Needed training is identified to support the safety management system and ensure that the training is provided for all personnel concerned; (8) Communication of relevant procedures for the vessel's personnel involved with the safety management system is in the language(s) understood by them; and (9) Personnel are able to communicate effectively when carrying out their duties as related to the safety management system.
(g) Vessel safety and pollution 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.

TABLE 96.250.—SAFETY MANAGEMENT SYSTEM DOCUMENTS AND REPORTS—Continued

Type of documents and reports	Specific requirements
(j) Vessel maintenance procedures. (These procedures verify that a company's vessel(s) is maintained in conformity with the provisions of relevant rules and regulations, with any additional requirements which may be established by the company.).	(1) Inspect vessel's equipment, hull, and machinery at appropriate intervals; (2) Report any non-conformity or deficiency with its possible cause, if known; (3) Take appropriate corrective actions; (4) Keep records of these activities; (5) Identify specific equipment and technical systems that may result in 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 vessels operation; (3) Changes to documents are reviewed and approved by authorized personnel; and (4) Outdated documents are promptly removed.
(l) Safety management system internal audits which verify the safety and pollution prevention activities.	(1) Periodic evaluation of the safety management system's efficiency and review of the system in accordance with the established procedures of the company, when needed; (2) Types and frequency of internal audits, when they are required, how they are reported, and possible corrective actions, if necessary; (3) Determining factors for the selection of personnel, independent of the area being audited, to complete internal company and vessel audits; and (4) Communication and reporting of internal audit findings for critical management review and to ensure management personnel of the area audited take timely and corrective action on non-conformities or deficiencies found.

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

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 a foreign voyage(s), or holds certificates or endorsement of such voyages;

(b) If you are a responsible person who owns a vessel(s) registered in the U.S. and volunteer to meet the standards of this part and Chapter IX of SOLAS;

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

(d) If you are a recognized organization authorized by the U.S. to complete safety management audits and certification required by this part.

§ 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 a safety management system is found during an audit, it must be reported in writing by the auditor:

(1) For a company's safety management system audit, to the company's owner; and

(2) For a vessel's safety management system audit, to the company's owner and vessel's Master.

§ 96.330 Document of Compliance certificate: what is it and when is it needed?

(a) You must hold a valid Document of Compliance certificate if you are the responsible person who, or company which, owns a U.S. vessel engaged on foreign voyages, carrying more than 12 passengers, or is a tanker, bulk freight vessel, freight vessel, or a self-propelled mobile offshore drilling unit of 500 gross tons or more.

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

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

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

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

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

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

(1) The annual safety management audit and system verification required by paragraph (f) of this section is not completed 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.

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

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

§ 96.340 Safety Management Certificate: what is it and when is it needed?

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

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

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

(d) A copy of your company's valid Document of Compliance certificate must be on board all U.S. and foreign vessels which carry more than 12 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 certificate's period of validity; 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 in this part. A renewal of a Safety Management Certificate cannot be started unless the company which owns the vessel holds a valid Document of Compliance certificate.

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

(1) The vessel's responsible person has not completed an 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 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 more than 12 passengers, or is a tanker, bulk freight vessel, freight vessel, or self-propelled mobile offshore drilling unit of 500 gross tons or more, operated in U.S. waters, under the authority of a country not a party to Chapter IX of SOLAS must—

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

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

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

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

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

§ 96.400 Purpose.

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

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

§ 96.410 Who does this regulation apply to?

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

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

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

(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;

(2) 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; and

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

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

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

§ 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 of recognized organizations, 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) 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.

TITLE 46—SHIPPING

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 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 Sect. 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.

All tankships to which 33 CFR part 96 applies 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.

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.

All vessels to which 33 CFR part 96 applies 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.

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.

All vessels to which 33 CFR part 96 applies 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.

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 to which 33 CFR part 96 applies, 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) 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 to which 33 CFR part 96 applies, 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) 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. Revise § 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 AND 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.

All vessels to which 33 CFR part 96 applies 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.

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: December 16, 1997.

R.C. North,

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

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