



NOVEMBER 2010

Coast Guard Announces Procedure for Denying Entry of Foreign Vessels

On November 2, 2010, the U.S. Coast Guard announced the release of policy letter 10-03, entitled the "Banning of Foreign Vessels." This policy outlines the Coast Guard's procedures for "denying entry of certain foreign flagged commercial vessels into any port or place in the United States as a result of the vessel's history of operating in a continuous substandard condition in waters subject to United States jurisdiction." The policy provides the Coast Guard with a clear methodology for preventing substandard vessels from entering U.S. ports.

These new procedures only apply when a vessel has been detained at least three times within a twelve-month period and the detentions resulted, at least in part, from the vessel's failure to effectively implement a Safety Management System (SMS) pursuant to the International Safety Management (ISM) code. To identify such a trend, upon notification of entry, the Coast Guard will scrutinize the vessel's Marine Information for Safety and Law Enforcement (MISLE) database history for deficiencies, detentions, and marine casualties. This MISLE review is not limited to Coast Guard inspections but may also include Port State Control (PSC) examination results from other flag states.

If a substandard condition is identified, the Coast Guard will evaluate whether that condition is a result of a poorly implemented SMS. If the Coast Guard determines that the vessel is substantially noncompliant, the vessel may be detained. When a vessel is detained, the Coast Guard will review the reasons for the detention and determine if it indicates a failure of the company, the senior crew or the flag administration to correct substandard conditions and implement an effective SMS. If the Coast Guard determines that the detentions during the previous twelve months do not meet the intent of the policy, no further action will be taken. If, however, a determination is made that adequate measures have not been taken to prevent future noncompliance, the Coast Guard will issue a Letter of Denial to the vessel's owner and company, informing them that the vessel will be denied entry into any port or place in the United States unless specific actions are completed to the satisfaction of the Coast Guard. Such a denial is associated with the vessel's IMO number and, therefore, follows the vessel even if it changes ownership or is renamed.

To remove the denial, all requirements listed in the Letter of Denial must be satisfied. Once the requirements are satisfied, the Coast Guard will issue a Letter of Acceptance, allowing the vessel to enter U.S. waters. After the Letter of Acceptance is issued, the vessel must undergo a priority

PSC prior to entering a U.S. port. If the vessel still has deficiencies or major nonconformities, the vessel will be detained again. If the vessel passes the PSC, it may enter the U.S. port. The Coast Guard will monitor the vessel and review any detentions or deficiencies for 12 months after the issuance of the Letter of Acceptance.

FOR MORE INFORMATION

You can access the Notice of Policy at 75 Fed. Reg. 67386 (Nov. 2, 2010) and the Coast Guard Policy 10-03 at www.uscg.mil/nmc/marpers/pag/03-10.pdf.

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