U.S. Department of Homeland Security

United States Coast Guard

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NVIC 04-05

NAVIGATION AND VESSEL INSPECTION CIRCULAR NO. 04-05

Subj: PORT STATE CONTROL GUIDELINES FOR THE ENFORCEMENT OF MANAGEMENT FOR THE SAFE OPERATION OF SHIPS (ISM CODE)

Ref:
(a) Chapter IX, Management for the Safe Operation of Ships, International Convention for the Safety of Life at Sea, 1974 (SOLAS)
(b) International Maritime Organization Assembly Resolution A.741(18), International Safety Management (ISM) Code
(c) International Maritime Organization Assembly Resolution A.913(22), Guidelines on the Implementation of the International Safety Management (ISM) Code by Administrations
(d) International Maritime Organization Assembly Resolution A.882(21), Amendments to the Procedures for Port State Control
(e) International Maritime Organization Assembly Resolution A.787(19), Procedures for Port State Control
(f) Marine Safety Manual, Volume II, Materiel Inspection, Chapter 1, COMDTINST M16000.7 (series)
(g) Title 46, United States Code, Chapter 32, "Management of Vessels"
(h) Title 33 Code of Federal Regulations (CFR) Part 96, "Rules for the Safe Operation of Vessels and Safety Management Systems"

1. PURPOSE. This Navigation and Vessel Inspection Circular (NVIC) provides guidance for U.S. Coast Guard Sector Commanders, Captains of the Port (COTPs), Officers in Charge, Marine Inspection (OCMIs), and Port State Control Officers (PSCOs), and for vessel owners, operators, flag States, and Recognized Organizations (ROs) concerning enforcement of and compliance with the requirements of Chapter IX of the International Convention for the Safety of Life at Sea, 1974 (SOLAS), under the U.S. Coast Guard's Port State Control (PSC) Program.

DISTRIBUTION SDL No. 143

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2. ACTION.

   a. U.S. Coast Guard Sector Commanders[1], COTPs[2] and OCMIs[3] should refer to the enclosed guidance to ensure foreign vessel compliance with the requirements of SOLAS Chapter IX. A copy of the Addendum to the Foreign Vessel Examination Books for the ISM Code (enclosure 2) contains a check-list that PSCOs should use as the supplement to the inspection books.

   b. Because of the general and non-prescriptive nature of these requirements, PSCOs should use discretion when evaluating compliance and considering enforcement action. The COTP should not delay a ship and/or take civil penalty actions unless she/he identifies major non-conformities. Requirements for corrective action should offer adequate time to allow for full compliance.

   c. The Circular will be distributed by electronic means only. It's available on the World Wide Web at http://www.uscg.mil/hq/g-m/index.

3. DIRECTIVES AFFECTED. This NVIC cancels NVIC 4-98, "Port State Control Guidelines for the Enforcement of and Compliance with Chapter IX of the International Convention for the Safety of Life at Sea 1974 (SOLAS), Management for the Safe Operations of Ships", COMDTPUB P16700.4 and G-MOC Policy Letter No. 1-99.

4. BACKGROUND. On November 4, 1993, the International Maritime Organization (IMO) adopted Resolution A.741(18), entitled *"International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management [ISM] Code)."* In 1995, the IMO Assembly adopted *"Guidelines on the Implementation of the ISM Code by Administrations"* Resolution A.788(19). In 1997, the Coast Guard published regulations to enforce these ISM requirements. On July 1, 2002, Resolution A788(19) was then replaced by Resolution A.913(22), expanding the requirements in ISM to all cargo ships and mobile offshore drilling units propelled by mechanical means of 500 gross tons or more. To further enhance the safety of ships and pollution prevention, the IMO amended the Convention for the Safety of Life at Sea (SOLAS) 1974, by adopting Chapter IX, *Management for the Safe Operation of Ships,* which established that a company and ship should comply with the requirements of the ISM Code. SOLAS Chapter IX was amended by IMO resolution MSC.99(73) which was accepted on January 1, 2002 and entered

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[1] Sector Commander - Serves as the principal agent and representative of the District Commander, responsible for the command of all staff and Sector units and accomplishment of all Coast Guard mission objectives within the Sector Area of Responsibility (AOR). Serves as the designated Captain of the Port (COTP) and Federal Maritime Security Coordinator (FMSC), Officer In Charge Marine Inspections (OCMI) and Federal On-Scene Coordinator (FOSC) unless otherwise delegated or assigned.

[2] COTP - Exercises control of vessel's movement and operation through the issuance of a COTP Order pursuant to two authorities, the PWSA and the Magnuson Act. The COTP authority may be (and often is) a necessary adjunct to the OCMI's exercise of his traditional port state control (PSC) role, as described below. However, if the PSC measure that is sought to be imposed involves an order to the vessel to move or operate in a particular fashion for the safety or security of the vessel, the port, or the navigable waters of the United States, because that authority is based upon the PWSA or Magnuson Act, it is exercised by the COTP, not the OCMI.

[3] OCMI - Has the technical and process expertise to carry out PSC examinations and measures as authorized by 46 U.S. Code Section 3303 and SOLAS Regulation I/19. This includes necessary flag state notifications and official documentation of detention and/or intervention actions. When the OCMI makes a judgment about compliance with SOLAS safety, equipment, construction, or manning requirements, and appropriate control measures that are necessary to achieve compliance and these do not involve an order requiring the ship to move, or not to move, the OCMI may exercise such control without using the authority of the COTP.

into force on July 1, 2002. References (d) and (e) provide guidelines and procedures for Port State Control.

5. DISCLAIMER. While the guidance contained in this document may assist the industry, the public, the United States Coast Guard and other Federal and State regulators in applying statutory and regulatory requirements, this guidance is not a substitute for applicable legal requirements, nor is it in itself a rule. Thus, this policy does not impose legally binding requirements on any party including the United States Coast Guard, other Federal agencies, the States, or the regulated community.

6. CHANGES. Commandant (G-MOC) has posted this NVIC on the web at www.uscg.mil/hq/g-m/nvic/index00.htm. G-MOC will issue changes to this circular as necessary. For time sensitive amendments, G-MOC will issue "urgent change" messages by ALCOAST and post these changes on the website for the benefit of industry. These urgent changes will be included in the next revision of this circular.

7. DISCUSSION.

   a. The objectives of SOLAS Chapter IX and the ISM Code are to ensure safety at sea, prevent the occurrence of human injury or loss of life, and avoid environmental and property damage. ISM Code requirements outline processes of communication, training, and actions to continuously maintain the ship in a state of compliance with safety and environmental protection regulations. Specifically, the ISM Code seeks to develop a "safety culture" which addresses the issues of human error and human omissions. To accomplish its objectives, the ISM Code requires owners of ships, or other organizations such as the managers or bareboat charterers who have assumed responsibility for ship operations, to implement Safety Management Systems (SMS) for their companies and ships.

   b. SOLAS Chapter IX, the ISM Code and the requirements of a SMS apply to vessels engaged on a foreign voyage that call in U.S. ports and which:

      (1) transport more than 12 passengers; or are
      (2) 500 gross tons or more and are a tanker; bulk freight vessel; high-speed freight vessels, or other freight vessel; high speed craft; or self-propelled mobile offshore drilling units (MODU)s.

   c. A foreign voyage involves a vessel:

      (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 of the United States;
      (3) departing from a place under the jurisdiction of the United States for a place in a foreign country; or
      (4) making a voyage between a place within a territory or possession of the United States and another place under the jurisdiction of the United States not within that territory or possession.

d. Key elements of the SMS include documented company guidelines establishing:

(1) a company safety and environmental protection policy;
(2) instructions and procedures to ensure companies operate ships in accordance with relevant Flag State and international regulations;
(3) defined levels of authority and lines of communication between, and amongst, shore and shipboard personnel;
(4) procedures for reporting accidents and non-conformities with the provisions of the ISM Code;
(5) procedures for preparing for and responding to emergencies; and
(6) procedures for internal audits and management reviews.

e. To implement a SMS, a company should document its management procedures to ensure that conditions, activities, and tasks, both ashore and on board, affecting safety and environmental protection are planned, organized, executed, and checked in accordance with statutory and company requirements.

f. The management documentation describes and implements the SMS. Companies are not required to put the SMS into a manual form but may instead choose to maintain the documentation in some other form considered more effective. Companies should establish and maintain procedures for the control of their SMS documentation. These controls should ensure that:

(1) valid documents are available at all relevant locations (including the ships);
(2) changes to documents are reviewed and approved by authorized personnel; and
(3) obsolete documents are promptly removed.

g. To clarify the SMS for a ship, the Administration or RO's should determine that the company responsible for the ship has implemented a SMS that complies with the requirements of the ISM Code and that the company operates the ship in accordance with the approved SMS. Upon approval, the Administration or RO issues the company a Document of Compliance (DOC) and to each of its ships a Safety Management Certificate (SMC) covered by the DOC. With respect to documentation, a ship complies with SOLAS Chapter IX and the ISM Code when its operator holds a valid DOC covering that ship, and it holds a valid SMC.

(1) Document of Compliance (DOC). The Administration or RO issues a DOC to an owner, manager, or bareboat charterer following an audit of their company's SMS. The audit verifies whether the SMS complies with the requirements of the ISM Code and that the company effectively implements SMS procedures and policies. The DOC is valid for the types of ships on which the company's initial verification was based and addressed by that SMS. The Administration or RO should issue the DOC for no more than five years and perform annual verifications of the company's DOC. Upon satisfactory annual verification, the Administration or RO should endorse the company's DOC.

(2) Safety Management Certificate (SMC). The Administration or RO issues a SMC to a ship for a period which should not exceed five years. The Administration or RO issues the SMC after verifying that the company and its shipboard management operate in accordance with the approved SMS. The Administration or RO should perform at least one intermediate-verification of ship's SMS. If the Administration or RO conducts only one intermediate-verification, it should take place between the second and third anniversary dates of the SMC.

(3) Interim Certificates.

(a) An interim DOC is valid for no more than twelve months (ISM Code 14). The Administration or RO may issue a DOC to facilitate implementation of the ISM Code when a company is newly established or when the company adds new ship types to an existing DOC. The Administration or RO should issue an interim DOC certificate only after the company has demonstrated that it has an SMS that, at a minimum, meets the objectives for an SMS provided in Section 1.2.3 of the ISM Code. The Administration or RO should also ensure that the company plans to implement an SMS meeting the full requirements of the ISM Code within the period of validity of the interim DOC certificate.

(b) An interim SMC is valid for no more than six months (ISM Code 14.2). The Administration or RO may issue an interim SMC to new ships on delivery, when a company takes responsibility for an existing ship which is new to the company, or when the ship changes flag. In special cases, the flag Administration may extend the validity of an interim SMC for an additional six months. The flag Administration issues the interim SMC after verifying the following:

1. The responsible company's DOC or interim DOC is relevant to that ship;

2. The SMS includes all key elements of the ISM Code;

3. The master and relevant senior officers are familiar with the SMS and the plans for its implementation;

4. The company provides essential instructions or training to the ship's crew identified by the SMS prior to sailing;

5. The responsible company plans an internal audit of the ship within three months; and

6. The relevant information of the SMS is in a working language or languages understood by the ship's crew.

8. PROCEDURES.

a. Compliance with SOLAS Chapter IX and ISM Code Requirements.

(1) Pre-Arrival Screening. Foreign ships must provide the date of issuance of their DOC/SMC and the name of the Flag Administration or the RO acting on its behalf, who issued those certificates prior to entry into the U.S. on the ship's Advance Notice of Arrival (ANOA) (33 CFR 160.206). If the COTP/OCMI cannot confirm that the ship holds a valid SMC/DOC by verifying its ANOA, the COTP/OCMI should assign the ship Priority I boarding status and deny the vessel entry into port.

(2) Including ISM Code Compliance in the PSC Examination. As part of all PSC examinations conducted in accordance with reference (d), PSCOs should check to verify compliance with SOLAS Chapter IX and the ISM Code. PSCOs should be alert for any indications that **major non-conformities** exist with the ship's SMS (i.e. the SMS not implemented or not used by the ship's personnel). The identification of a major SMS non-conformity by the PSCO is sufficient grounds for the COTP/OCMI to take appropriate enforcement actions. **Be advised that a major non-conformity is a key indicator of an invalid SMS.**

(a) Substantial non-compliance of a ship's SMS to the requirements of the ISM Code is indicative of a major non-conformity (ISM Code 1.1.10). By definition, a major non-conformity is a deviation from SMS requirements that poses a serious threat to personnel or ship safety, or a serious risk to the environment and requires an immediate corrective action.

(b) Also considered a major non-conformity is the lack of an effective and systematic implementation of a requirement of the ISM Code. It may take several boardings to identify a poor SMS. Accordingly, PSCO's should review the ship's history in order to track repeated deficiencies. For example, an inoperable fire pump repaired prior to departure is not usually grounds to question effective implementation of the ship's SMS. However, the deficiency taken with other material deficiencies from this and previous PSC examinations, and evidence that the ship and/or company is not meeting SMS requirements for reporting and correcting deficiencies may lead to the determination that major SMS non-conformities exist. The PSCO should to be able to distinguish between deficiencies that result from normal vessel operations (e.g. wear-and-tear, weather, operational environment) and those deficiencies that exist due to systemic failure of the ship to implement its SMS. It is possible for wear-and-tear in the extreme (i.e. long-standing deficient conditions), or in multiple systems, to be indicators of a failure of the SMS. Examples of such indicators are as follows.

1. Evidence that the ship was not taking corrective action for long-standing non-conformities in accordance with the company's established preventative maintenance system, and

2. Evidence that the company failed to address outstanding non-conformities reported by the ship to the company in accordance with the ship's SMS.

(3) Clear Grounds and the Expanded Examination. PSCOs should conduct an expanded examination when clear grounds lead the PSCO to believe that the ship has not effectively implemented its SMS. Examples of conditions that result in clear grounds for an expanded exam include, but are not limited to:

(a) improperly endorsed or expired ISM certificates;

(b) lack of SMS documentation;

(c) crewmembers having insufficient knowledge of their required duties under the SMS; and/or

(d) serious, long-standing material deficiencies or systemic lack of maintenance of critical equipment/systems as identified in the ship's SMS.

(4) Conducting an Expanded Examination of the SMS. During the expanded SMS examination, the PSCO verifies the basic components of a SMS related to the observed non-conformities. The PSCO also confirms that the Master and crew have a basic understanding of the SMS and their responsibilities. The PSCO should verify relevant items from the list below using Part B of the Addendum to the Foreign Vessel Examination Book:

(a) SMS documentation (may be in the form of a "Safety Management Manual") written in the working language of the ship, is on board and includes or identifies:

1. controlled documents with revision and/or issue dates or other means of control (ISM Code 11.1);

2. safety and environmental protection policy (ISM Code 2);

3. the authority of the master (ISM Code 5);

4. essential or critical equipment (ISM Code 10.3);

5. the name(s) or title(s) of the company's designated person(s) (ISM Code 4) ; and

6. procedures for reporting and analyzing non-conformities, accidents and hazardous occurrences (ISM Code 9).

(b) The Master is familiar with the SMS (ISM Code 6.1.2)

(c) Shipboard personnel involved with the SMS have an adequate understanding of the process. The ship's officers should:

1. have knowledge of documented procedures to be followed;

2. be familiar with documented preventative procedures for essential equipment; and

3. have knowledge of reporting requirements of a non-conformity.

(d) The company's training program is in place for all personnel, including newly assigned or transferred persons, to enable all personnel to be familiar with their duties.

(e) The Master and Chief Engineer are familiar with the company's internal audit procedures.

(f) The ship has an established maintenance system in which:

1. procedures are documented in writing;

2. procedures are readily available, in a working language(s) understood by those who must use them; and

3. procedures are followed and records of maintenance are maintained.

(g) The ship follows established procedures for shipboard operations covering the following areas as appropriate.

1. Preventative Maintenance;

2. Navigation Procedures;

3. Bunkering Operations;

4. Emergency Preparedness;

5. Pollution Prevention Procedures;

6. Technical Systems Operations; and

7. Communications Procedures.

(h) Audits conducted as required by the ISM Code.

1. Internal Audit. The company conducts internal audits to verify safety and pollution prevention activities comply with the SMS. These audits demonstrate the level of implementation in assessing if the SMS is effective. The PSCO should only seek evidence that the company is conducting internal audits at intervals specified in the company's SMS documentation. The PSCO should **not** examine the records which result from the audits for specific non-conformities. Evidence of a properly used SMS should show that the company or the ship's crew have identified these non-conformities and evaluated each for corrective action. These records are objective evidence that the company is complying with the ISM Code and is finding, correcting, and preventing the reoccurrence of any deficiencies. The PSCO may ask the master if identified non-conformities were SOLAS-related.

2. External Audit. Although the ISM Code does not define external audits, they are literally the extensive undertakings involved with the initial, renewal, intermediate, or follow-up verifications completed by the Administration or RO. If possible, the PSCO should review the results of such external audits during an expanded examination only. The goal of this audit is to provide a systematic and independent examination to determine whether the ship effectively implements arrangements suitable to achieve the objectives of the company's SMS. ***When working with Flag Administrations or RO's to rectify ISM related non-conformities, the COTP/OCMI can only***

***recommend, but not require** an external audit. Although the Flag Administration or RO auditor makes the final disposition for the external audit, the Coast Guard (as a representative of the Port State administration) reserves the right of the COTP/OCMI to either accept or reject the audit findings and to take independent action with regard to any restrictions placed on the ship.*

b. Enforcement Actions for Non-Conformities with the ISM Code.

(1) IMO-Related Detentions. An IMO related detention consistent with SOLAS Chapter I, Regulation 19 should be the primary course of action when there are clear grounds that a vessel subject to SOLAS is substandard and corrective measures are necessary. In such cases, an OCMI should consider revoking or placing conditions on the vessel's Certificate of Compliance (COC) relevant to the substandard conditions identified.

(2) COTP Orders. A COTP Order is an important tool used when it is necessary to control or restrict the vessel's movement or operations for safety or security reasons. Only the COTP may use such an order to implement a variety of control actions, including controlling the vessel's movement as it enters or departs a port. The COTP may also use such an order to expel a vessel from port. The COTP may initiate enforcement action if a ship fails to comply with a COTP Order. A COTP Order may be used in addition to or in lieu of revocation of a vessel's COC. Although, it is not a substitute for pursuing and processing a detention and completing the associated notifications and administrative requirements under the applicable provisions of SOLAS, the ISPS Code, MARPOL, STCW, or the Load Line Convention.

(3) IMO Notification Requirements. Whenever a foreign vessel is denied entry into a port or offshore terminal, or is detained, the unit taking that action must notify the vessel's flag State as soon as possible. The unit must also notify the local office of the classification societies or Recognized Organization that issued the relevant certificates of the related detention. The table entitled "IMO Detention Notification Responsibility Chart," located in section C of NVIC 06-03, summarizes unit notification responsibilities and can be accessed at http://www.uscg.mil/hq/g-m/pscweb/Publication.htm. The G-MOC PSC Website at http://www.uscg.mil/hq/g-m/pscweb/index.htm provides point of contact information.

(4) Ship Discovered in Port without valid ISM Code Certificates. The COTP/OCMI should take the following enforcement actions if the COTP/OCMI discovers ships in port without the certificates required by SOLAS Chapter IX and the ISM Code.

(a) Ships Detained (IMO-related Detention) due to Missing ISM Certificates.

1. If the ship cannot transit safely to sea the COTP/OCMI should detain the ship and carefully control the ship's movement commensurate with the identified risks.

2. The COTP/OCMI should detain the ship under SOLAS Regulation I/19 for non-compliance with SOLAS Chapter IX and work with the Flag Administration forthwith to rectify the situation. Violation of SOLAS

Chapter IX subjects ships to control measures by the COTP/OCMI, in accordance with the provisions of SOLAS Chapter I, Regulation 19 and associated guidelines for port state control related to the ISM Code contained in section 3.7 of IMO Resolution A.882(21).

3. The COTP/OCMI should issue *USCG Port State Control Report of Inspection, Form A* (CG-5437A) and *USCG Port State Control Report of Inspection, Form B* (CG-5437B) to the ship's master, citing the ship for not having a SMC and/or copy of the DOC per SOLAS Regulation IX/4. COTP/OCMIs should scan and then e-mail both Forms A and B and any related COTP Orders or documents to G-MOC-2 at fldr-g-moc@comdt.uscg.mil via the chain-of-command.

4. Ships found in substantial non-compliance with the ISM Code may pose a serious threat to passengers and crew, be unable to conduct safe cargo operations, or pose an unreasonable risk to the marine environment or ship safety. The COTP/OCMI must evaluate these risks and make a determination as to the appropriateness of the ship retaining its Coast Guard issued COC until the ship corrects the unsafe conditions.

5. If the COTP/OCMI finds that the ship does not possess an original of the SMC or a copy of the DOC, then the COTP/OCMI may commence civil penalty action (See 33 CFR 96.380(c) and 46 USC 3205(d)). The COTP/OCMI can release the ship once the company has addressed all deficiencies and non-conformities and has posted a bond or other surety to cover the amount equal to the maximum civil penalty.

(b) Ships Expelled from Port (IMO-related Detention) due to Invalid or No ISM Certificates.

1. If the ship can transit safely to sea, the COTP may only expel the ship from port under the authorities in the Ports and Waterways Safety Act (PWSA), 33 U.S. Code 1221-1236. The PWSA provides authority for the COTP to order a ship from port when the ship poses a hazard to navigation or the marine environment, or when a ship in port is in violation of any regulation, law, or treaty (See 33 USC 1223 (b)(1) and 33 CFR 160.111(a)).

2. The COTP should **not** expel a ship if the ISM violations do **not** constitute a hazard to navigation in the port of such a nature and severity that poses a serious threat to personnel or ship safety, or a serious risk to the environment.

3. If the COTP expels the ship from port, the written COTP Order should indicate that the COTP will deny entry of the ship until the ship possesses a valid SMC and a copy of the company's DOC and has implemented an effective SMS. COTP/OCMIs should enter a Special Note in MISLE indicating that the COTP/OCMI discovered the ship without certification and has targeted the vessel as non-compliant with ISM and the vessel must

provide evidence of compliance with the ISM Code prior to entering U.S. waters. COTP authority only applies to the COTP AOR and does not extend to all U.S. waters.

4. The COTP/OCMI may allow the ship to leave port if the conditions established in 33 CFR 96.380 (b) are satisfied.

(5) Ship Discovered With Major Non-Conformities During Expanded Examination. The COTP/OCMI should take the following enforcement actions if the PSCO identifies major non-conformities during an expanded examination of a ship's SMS.

(a) Ships Detained (IMO-related Detention) due to ISM Major Non-Conformities.

1. If the PSCO identifies major non-conformities during an expanded examination of a ship's SMS that indicate that the company has not implemented the SMS, the COTP/OCMI should detain the ship and notify the flag immediately.

2. The COTP/OCMI should notify the ship's Flag State or RO noting that the implementation of the ship's SMS is in question and should request that the Flag Administration or RO attend the ship to determine if the ship is operating in compliance with the ISM Code.

3. The COTP/OCMI should issue a *USCG Port State Control Report of Inspection, Form A* (CG-5437A) and the *USCG Port State Control Report of Inspection, Form B* (CG-5437B), citing specific ISM non-conformities. Note that Form A and Form B are sufficient documentation authorizing an IMO detention; however, the COTP may execute a COTP Order under the authority of PWSA, referring to SOLAS Regulation I/19 to outline specific instructions related to the detention and conditions for lifting the detention. COTP/OCMIs should scan and then e-mail both Forms A and B and related COTP Orders or documents to G-MOC-2 at fldr-g-moc@comdt.uscg.mil via the chain-of-command.

4. The COTP/OCMI may prohibit/suspend/restrict ship operations, as appropriate. The COTP/OCMI may place restrictions on cargo/passenger operations only if the non-conformities make these operations hazardous. If the COTP/OCMI detains a passenger ship due to major ISM non-conformities, the COTP/OCMI should permit passengers to disembark.

5. The COTP/OCMI may release the ship after receiving a report from the Flag State, or its RO, indicating that the ship complies with the ISM Code. Furthermore, the COTP/OCMI may release the ship from detention after the company has addressed all deficiencies and non-conformities. In addition, the responsible company should establish a set course of action for updating or correcting the ship's SMS in accordance with its documented procedures. The company, not the Port State, sets corrective action deadlines for non-conformities.

6. If the COTP/OCMI verifies that the ship has a valid SMS, but has detained the ship due to deficiencies associated with other international requirements (i.e. STCW, MARPOL, ICLL, or SOLAS), the PSCO should ensure that the ship used the procedures as outlined in the SMS to correct the material deficiencies. Prior to releasing the ship from detention, the COTP/OCMI should require the ship to correct the material deficiencies that led to detention. If the PSCO identifies any non-conformity in the ship's SMS, the COTP/OCMI should require the ship to initiate steps to correct these deficiencies.

(b) Ships Expelled from Port due to ISM Major Non-conformities.

1. The COTP may **not** expel a ship from port solely for non-compliance with the ISM Code. The law does not give the Coast Guard the authority to expel a ship solely for a violation of the ISM Code. When there are instances where a non-compliant ship poses a danger to the port and its infrastructure (33 USC 1223), then the Coast Guard may expel the ship under the PWSA authority. Additionally, the ship's company should sufficiently address any existing conditions that pose a threat to the ship, crew, or environment before the COTP expels the ship from port.

2. Expulsion orders must cite the appropriate PWSA authority articulating the reasons the ship's operation poses an unreasonable threat to the safety of the port, ship or the marine environment.

(c) Ships Denied Entry due to ISM Major Non-conformities.

1. When ships arriving are in substantial non-compliance with the ISM Code, the COTP should notify the master and require adequate proof of compliance with the ISM Code and deny the ship entry into the port. Upon acceptable verification of the ship's compliance with the ISM Code, the COTP should allow the vessel entry. Documents for consideration may include providing copies of the ships SMC, DOC, or evidence that the company downgraded major non-conformities to non-conformities or conducted additional audits/reviews indicating a process of continued improvement of the ship's SMS.

2. Should the ship's management not be able to provide acceptable verification of ISM Code compliance, the local COTP should issue an order denying the ship entry and with all appropriate notifications made in accordance with NVIC 06-03 (series). The COTP/OCMI should make the earliest notification of denied entry to G-MOC-2 to facilitate consistency of the enforcement policy, ensure all information is available for internal and outside agency briefings, and document appropriate MISLE entries.

3. COTP/OCMIs should enter a Special Note in MISLE describing the ship's non-compliance with the ISM Code. The COTP/OCMI should ensure the ship has taken acceptable measures to correct the ship's non-compliance with the ISM Code prior to the ship entering U.S. waters.

4. COTPs may allow a foreign vessel entry into U.S. waters if the vessel is under force majeure as contained in 33 CFR 96.390.

(6) Vessel Targeting Related to IMO related Detentions due to ISM Major Non-Conformities.

(a) If the COTP denies a vessel entry, expels a vessel from port (when permitted), or detains a vessel due to non-compliance with the ISM Code, the COTP/OCMI should document these vessel operational controls into MISLE to ensure accurate targeting and evaluation of individual ships.

(b) Whenever a foreign vessel has an intervention leading to IMO-related detention, the COTP/OCMI must conduct several notifications. The table entitled "IMO Detention Notification Responsibility Chart," located in section C of NVIC 06-03, summarizes unit notification responsibilities and can be accessed at http://www.uscg.mil/hq/g-m/pscweb/Publication.htm. The G-MOC PSC Website at http://www.uscg.mil/hq/g-m/pscweb/index.htm provides point of contact information.

(c) G-MOC reports all detentions of ships due to ISM Code deficiencies to the IMO in accordance with SOLAS Chapter I, Regulation 19.

9. FORM AVAILABILITY. CG-840 inspection books can be retrieved at http://www.uscg.mil/tcyorktown/mSchools/MII/CG840.shtm and reproduced locally. The ISM Compliance Assessment Tool (CG-840G addendum) can be retrieved at http://www.uscg.mil/hq/g-m/pscweb/Publication.htm and reproduced locally.

T. H. Gilmour

T. H. GILMOUR
REAR ADMIRAL, U.S. COAST GUARD
ASSISTANT COMMANDANT FOR MARINE SAFETY, SECURITY
AND ENVIRONMENTAL PROTECTION

Encl: (1) Sample COTP Order
(2) ISM Compliance Assessment Tool (CG-840G addendum)

[Insert appropriate letterhead]

16711

Master/Owners M/V:
IMO #: _____

Dear Sir or Madam:

1. The owners, or other companies responsible for the ship's operation, are required to implement a safety management system on board their ships certified by their Administration or Recognized Organization acting on the Administration's behalf. Evidence of compliance with the ISM Code should be in the form of a Document of Compliance (DOC) issued to the company responsible for the ship's operation and a Safety Management Certificate (SMC) certifying that the company has properly implemented the safety management system on board.

2. On (date), your ship was subject to a Port State Control (PSC) examination which included a check for compliance with the ISM Code. At that time, the ship had not yet achieved the necessary certification to indicate compliance with the ISM Code.

3. If your ship attempts to enter a U.S. port without being in compliance with the ISM Code, the Coast Guard will deny the ship entry to all U.S. ports. If the ship is found in port without being in compliance, it will be detained and prohibited from conducting cargo/passenger operations **[For passenger vessels, COTP may allow passenger disembarkation]**. In addition, civil penalty action will be initiated against your ship and your Flag Administration will be notified. Upon completion of a thorough PSC examination to attest to the vessel's material condition, absent evidence of compliance with the ISM Code, the U.S. Coast Guard will order the ship to leave port, without loading or unloading of cargo/passengers, and will prohibit the ship from further U.S. port calls.

4. The U.S. Coast Guard will document your ship's present lack of ISM Code certification into the U.S. Coast Guard's computer database and will share this information with other international PSC authorities. If you have any questions regarding the U.S. Coast Guard's enforcement policy for the ISM Code you may contact the U.S. Coast Guard's Office of Compliance (G-MOC) at:

Commandant (G-MOC)
2100 Second Street, SW
Washington, DC 20593

Sincerely,

[Insert Signature]

ISM COMPLIANCE ASSESSMENT TOOL
(CG-840G addendum)

When elevating a PSC Exam to an Expanded Examination of the Safety Management System, the PSCO may use this ISM Compliance Assessment Tool.

ISM Compliance Assessment Tool			
ISM Code Reference	**Description of Non-Conformity (NC)**	**Problem Apparent**	
		Yes	**No**
ISM Guidelines 1.1.11	Are deficiencies present that pose a serious threat to personnel, the ship, or serious risk to the environment, and require immediate corrective action?	O	O
ISM Guidelines 1.1.11	Is there an apparent lack of effective and systematic implementation of a requirement of the ISM Code? If so, does such apparent failure apply to:	O	O
ISM Code 1.4	• The adherence to the ship's approved, self-developed Safety Management System?	O	O
ISM Code 4	• The responsiveness of the Company's Designated Person(s) to the ship's non-conformity reporting and requests for assistance/corrective action?	O	O
ISM Code 5	• The Master's defined responsibilities, authority, and his performance of those responsibilities?	O	O
ISM Code 6	• Critical crewmember's knowledge and familiarity with the ship-specific SMS?	O	O
ISM Code 1.4, 7, 8, 9, 10, 11, 12	Are the SMS-specified reporting and documentation procedures being followed? *(Note: This is a broad, catch-all topic. Use judiciously when hard documentation of NCs posing serious threat are apparent due to the lack of adherence to the reporting and documentation requirements throughout the Code. Cite the specific Code ref. for the evidence discovered.)*	O	O
ISM Code 10	• Do the maintenance procedures for the ship systems identified in the SMS; include frequency, scope, and documentation for the maintenance and necessary corrective action(s)?	O	O
ISM Code 6	• Does the overall performance of the crew indicate that they have been trained to perform their assigned tasks in accordance with the training needs identified in the SMS?	O	O
Familiarity with the Code is critical to the identification of specific SMS breakdowns. The PSCO must document on the boarding report (Form B) those items suspected to be ISM-related deficiencies, citing the ISM Code element(s) associated with the non-conformity (deficiency). The thoroughness of the explained non-conformity will play an essential role in the external audit, enabling the Auditor for the RO to focus on the non-conformities identified by the PSCO as the impetus for the external audit.			

Conducting the Expanded Exam

The purpose of the expanded exam is to identify the weak or neglected areas of the ship's SMS. The PSCO can take a clear snapshot of the system by focusing on six key elements of the SMS:

- Designated Person, Section 4, ISM Code
- Master's Responsibilities, Section 5, ISM Code
- Resources and Personnel, Section 6, ISM Code
- Non-Conformities, Accidents and Hazardous Occurrences, Section 9, ISM Code
- Maintenance, Section 10, ISM Code
- Documentation, Section 11, ISM Code

The following tables list a series of questions the PSCO may ask during an Expanded Exam:

ISM Element	Question	Remarks
Designated Person, Section 4, ISM Code	• Captain, who is your Designated Person Ashore (DPA)? • Are you in regular contact with this person? • How do you contact this person?	Caution, do not make this an interrogation process. Use common sense and a non-judgmental attitude.
Master's Responsibilities, Section 5, ISM Code	• Captain, may I please see your SMS manual? • Can you explain the company's Quality and Safety Policy in your own words? • Did you receive training for your SMS duties prior to taking command? • May I see the documentation for that training? • Do you feel that you can take all necessary action to protect the ship, crew, and environment in the case of emergency without approval from the company? • How often are you required to conduct a Master's review of the SMS? • Can you show me the procedures for this review and documentation of your last review? • How often is the company required to conduct an internal audit? • Can you show me the procedures for internal audits and documentation for the last internal audit?	Review the SMS manual and any documentation presented. If it appears the Captain has a good grasp of the program move along and do not belabor the process.

Resources and Personnel, Section 6, ISM Code	• Captain, can you show me the procedures for change of command? Do you have documentation of this activity? • Captain, are you required to familiarize new joining crew with there duties when they join the ship? Can you show me the procedures and documentation of this activity? • Captain, may I interview your crew? **<u>Questions for the Chief Officer</u>** • Did you receive training in your SMS duties by the company prior to reporting onboard the ship? Do you have documentation of this activity? • What certificate indicates the types of cargo this ship may load? • What publication would assist you in knowing the proper handling procedures for these cargos? • Can you show me the procedures for drafting a stowage plan? • Can you explain the ship's stability calculations? What shipboard manual would assist you in developing these calculations? • Can you show me the procedures in your SMS for making a tank safe for entry? Can I see the documentation for the last such tank entry? • What are the requirements for the use of personal protective equipment in your SMS? Can you show me the procedures in your manual? **<u>Questions for the Second Mate</u>** • Second, did you receive training in your SMS duties prior to assuming them onboard the ship? • Are you responsible for voyage planning? • Can you show me the procedures in your SMS for drafting a voyage plan? Can you show me the most recent voyage plan?	As above Ask the following question to key crewmembers. IOPP, Certificate of Fitness, Sub O Endorsement BCH Code, ISGOTT, etc. Stability Book

	• Are you responsible for chart corrections? Can you show me documentation of this activity? • Can you show me the procedures for making the ship ready to get underway? Can you show me documentation of this activity? • What nautical publications are you required to maintain onboard the ship? **<u>Questions for the Chief Engineer</u>** • Chief, did you receive training in your SMS duties from the company prior to assuming them onboard? Do you have documentation of that training? • Can you show me the procedures for bunkering the ship? Do you have documentation of this activity? • Can you show me the procedures for reporting damage to machinery and associated systems in your SMS? Can you show me your last damage reports? • What equipment onboard is critical equipment in your SMS? • Can you show me the procedures for performing preventive maintenance in your SMS? Can you show me when the last PM was done to the OWS (or any other identified critical piece of equipment)? • Chief, does your SMS require you to issue night orders? May I see your last set of night orders?	

NOTE: At this point in the expanded exam, the PSCO should have a clear idea of the senior officer's knowledge and complicity with SMS requirements.

The following line of questioning deals more specifically with the deficiencies identified during the boarding.

ISM Element	Question	Remarks
Non-conformities, Accidents and Hazardous Occurrences, Section 9, ISM Code	• Captain, what is the definition of a non-conformity in your SMS? • Can you give me some examples of issues you would raise a non-conformity? • Are damages to equipment and ship structure considered non-conformities in your system? • Who is authorized to raise a non-conformity in your SMS? • Can you show me the procedures for reporting non-conformities to the company? • I see here in your procedures that several of the deficiencies I have noted are considered non-conformities in your SMS. Can you show me documentation on reporting these deficiencies to your company in accordance with your SMS procedures?	The PSCO should determine through this line of questioning if any of the deficiencies noted are considered non-conformities in the ship's SMS. Deficiencies with critical equipment will always be non-conformities.
Maintenance, Section 10, ISM Code:	• Captain, may I interview your Chief (Mate/Engineer based on the department with deficiencies)? • Chief Mate, could you show me your maintenance procedures related to maintaining compliance with your Load Line certificate? • Chief Mate, I see here your maintenance procedure requires inspection of the cargo hold hatch covers, coamings and holds prior to loading, do you have documentation of this activity?	

NOTE:
(1) Inspection routines carried out and documented in the SMS should reflect the true condition of the equipment or ship structure.
Continued on next page

NOTE (continued):
(2) Non-conformity may exist if:
- The documented inspection activity identifies the equipment or structure as "OK" and the PSCO finds it damaged
- The maintenance procedures exist but are not carried out,
- Maintenance procedures do not exist for the equipment or Structure found damaged and damage was sufficient enough to render the ship non-compliant with the related certificate.

The PSCO should continue questioning the individual responsible for the related maintenance of deficient equipment or structure until he/she has a clear understanding of why deficiencies exists.

In general, maintenance problems will fit into four categories:
- Lack of training in proper inspection and maintenance routines.
- Lack of procedures on specific items or areas requiring inspection and maintenance.
- Lack of implementation of company maintenance procedures.
- Lack of support from the company

One or all of these categories may contribute to the conditions found onboard.

ISM Element	Question	Remarks
Documentation, Section 11, ISM Code	• Captain, can you explain to me how your company maintains control of SMS documents? • Can you show me the list of controlled documents (May also be called a forms list)? • I see here on your control list a Damage Report Form No.xxxxx, can you show this form in your SMS? • How are obsolete documents disposed of?	All procedures, forms, schedules and checklists identified in the SMS must be controlled. This means they should have a control number and revision date on the document and be registered on a control list. Verify proper form identification number and revision date, matching the control list. Check several other forms. Typically the company wants them sent back so they know they have been removed.