



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 97 and 160, and 46 CFR Part 97

[Docket No. USCG-2000-7080]

RIN 1625-AA25 [formerly RIN 2115-AF97]

Cargo Securing Manuals

AGENCY: Coast Guard, DHS.

ACTION: Interim rule and request for comment.

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**SUMMARY:** The Coast Guard is issuing an interim rule to require U.S. and foreign self-propelled cargo vessels of 500 gross tons or more, traveling on international voyages and carrying cargo that is other than solid or liquid bulk cargo, to have cargo securing manuals (CSMs) on board. The rule also requires those vessels to comply with certain provisions of the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS), authorizes recognized classification societies or other approval authorities to review and approve CSMs on behalf of the Coast Guard; and prescribes when and how the loss or jettisoning of cargo at sea must be reported.

The Coast Guard requests public comment on its intention to extend, in a subsequent final rule, this interim rule's requirement for vessel CSMs to self-propelled cargo vessels under 500 gross tons, if these vessels carry dangerous goods in packaged form on international voyages. This interim rule promotes the Coast Guard's maritime safety and

stewardship (environmental protection) missions, helps fulfill U.S. treaty obligations, and could help prevent or mitigate the consequences of vessel cargo loss.

DATES: This interim rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received by [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.] The incorporation by reference of certain documents in this rule is approved by the Director of the Federal Register as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2000-7080 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or e-mail Mr. Ken Smith, Project Manager, U.S. Coast Guard Headquarters, Vessel and Facility Operating Standards Division, Commandant (CG-OES-2); telephone 202-372-1413, e-mail [Ken.A.Smith@uscg.mil](mailto:Ken.A.Smith@uscg.mil).

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

- I. Public Participation and Comments
- II. Abbreviations
- III. Basis and Purpose
- IV. Background and Regulatory History
- V. Summary of the Rule
- VI. Discussion of Comments on SNPRM and Changes
- VII. Incorporation by Reference
- VIII. Regulatory Analyses
  - A. Regulatory Planning and Review
  - B. Small Entities

- C. Assistance for Small Entities
- D. Collection of Information
- E. Federalism
- F. Unfunded Mandates Reform Act
- G. Taking of Private Property
- H. Civil Justice Reform
- I. Protection of Children
- J. Indian Tribal Governments
- K. Energy Effects
- L. Technical Standards
- M. Environment

I. Public Participation and Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have

provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the *Federal Register* (70 FR 15086).

We are not planning to hold a public meeting but will consider doing so if public comments indicate a meeting would be helpful. We would issue a separate *Federal Register* notice to announce the date, time, and location of such a meeting.

## II. Abbreviations

ABS	American Bureau of Shipping
BLS	U.S. Bureau of Labor Statistics
CFR	Code of Federal Regulations
CSAP	Cargo safe access plan
CSM	Cargo Securing Manual
CSS Code	Code of Safe Practice for Cargo Stowage and Securing
E.O.	Executive Order
FR	<u>Federal Register</u>
FRFA	Final regulatory flexibility analysis
IMO	International Maritime Organization
IRFA	Initial regulatory flexibility analysis
MARAD	U.S. Department of Transportation's Maritime Administration
MBARI	Monterey Bay Aquarium Research Institute
MSC	Maritime Safety Committee
MISLE	Marine Information for Safety and Law Enforcement
NAICS	North American Industry Classification System
NPRM	Notice of proposed rulemaking
NVIC	Navigation and Vessel Inspection Circular
OMB	Office of Management and Budget
RFA	Regulatory Flexibility Act of 1980
§	Section symbol
SANS	Ship Arrival Notification System
SBA	Small Business Administration
SNPRM	Supplemental notice of proposed rulemaking
SOLAS	International Convention for the Safety of Life at Sea, 1974 as amended
U.S.C.	United States Code
WSC	World Shipping Council

## III. Basis and Purpose

Sections 2103 and 3306 of Title 46, United States Code (U.S.C.), provide the statutory basis for this rulemaking. Section 2103 gives the Secretary of the department in which the Coast Guard is operating general regulatory authority to implement Subtitle II (Chapters 21 through 147) of Title 46, which includes statutory requirements in 46 U.S.C. Chapter 33 for inspecting the vessels to which this rulemaking applies. Section 3306 gives the Secretary authority to regulate an inspected vessel's operation, fittings, equipment, appliances, and other items in the interest of safety. The Secretary's authority under both statutes has been delegated to the Coast Guard in DHS Delegation No. 0170.1, para. II (92.a) and (92.b).

The purpose of this rule is to align Coast Guard regulations with the requirements for cargo securing manuals in the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS), and apply those requirements to certain self-propelled U.S. cargo vessels operating anywhere in the world, and to certain foreign-flagged self-propelled cargo vessels operating in U.S. waters. Another purpose of this rule is to specify when and how the loss or jettisoning of cargo at sea must be reported.

#### IV. Background and Regulatory History

This rule aims to help ensure that maritime cargo is properly secured. A recent survey by the World Shipping Council (WSC) estimated that an average of 1,679 containers are lost overboard annually.<sup>1</sup> The number of damaged and lost containers has risen over the years due to the increased traffic in containerized cargo and the increasing size of containerships.

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<sup>1</sup> Survey report is on WSC web site: [http://www.worldshipping.org/industry-issues/safety/Containers\\_Lost\\_at\\_Sea\\_-\\_2014\\_Update\\_Final\\_for\\_Dist.pdf](http://www.worldshipping.org/industry-issues/safety/Containers_Lost_at_Sea_-_2014_Update_Final_for_Dist.pdf).

Several incidents since the early 1990s demonstrated that improperly secured cargo can cause serious injury or death, vessel loss, property damage, and environmental damage. For example, a Coast Guard board of inquiry concluded that the loss of 21 containers—4 of which contained toxic arsenic trioxide—off the coast of New Jersey in 1992 was caused by cargo-securing failures, bad weather, and human error.<sup>2</sup> With the support of other International Maritime Organization (IMO) member governments, the United States led a proposal to include new requirements for cargo securing manuals (CSMs) in SOLAS. In 1994, the IMO amended SOLAS<sup>3</sup> to provide that, after 1997, vessels of 500 gross tons or more engaged in international trade and carrying cargo other than solid or liquid bulk material must carry a flag state-approved CSM; load, stow, and secure cargo in compliance with the CSM; and meet strength requirements for securing devices and arrangements.

The SOLAS CSM requirements are included as an annex to a Coast Guard guidance document issued in 1997,<sup>4</sup> but a vessel owner or operator's compliance with that guidance is only voluntary. This interim rule makes compliance with the SOLAS standards mandatory for self-propelled vessels over 500 gross tons on international voyages that are subject to SOLAS.

Previously in this rulemaking, we issued a notice of proposed rulemaking (NPRM)<sup>5</sup> in 2000 and a supplemental notice of proposed rulemaking (SNPRM)<sup>6</sup> in 2013.

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<sup>2</sup> See NVIC 10-97 (Nov. 7, 1997), "Guidelines for Cargo Securing Manual Approval," available at <http://www.uscg.mil/hq/cg5/nvic/pdf/1997/n10-97.pdf>.

<sup>3</sup> See SOLAS, Ch. VI/5.6 and Ch. VII/5.

<sup>4</sup> NVIC 10-97.

<sup>5</sup> 65 FR 75201 (Dec. 1, 2000).

<sup>6</sup> 78 FR 68784 (Nov. 15, 2013). Although not part of this rulemaking, in 1999 we announced (64 FR 1648; Jan. 11, 1999, docket USCG-1998-4951) and held a public meeting on related topics. Comments received at that meeting were discussed in the SNPRM, 78 FR at 68786, col. 2.

Although it was not part of this rulemaking, in 1999 we held a public meeting on topics related to cargo securing.<sup>7</sup> In the SNPRM, we discussed the comments we received on the 2000 NPRM and public input from the 1999 meeting. We discuss the comments we received on the 2013 SNPRM later in this preamble.

## V. Summary of the Rule

This section summarizes the changes made in this interim rule.

*33 CFR Part 97 – Rules for the Safe Operation of Vessels, Stowage and Securing of Cargoes.* The interim rule adds this part, which is structured to allow for future regulations covering other aspects of vessel operation and cargo stowage and securing. At this time, the part contains only subpart A, which deals with CSMs.

Section 97.100 contains the applicability provisions of subpart A and provides for electronic submission of any documents required by the part. Subpart A applies to self-propelled cargo vessels of 500 gross tons or more traveling on international voyages and carrying any cargo other than solid or liquid bulk cargo. We expect very few vessels to be affected by the new requirements, as most foreign vessels operating in U.S. waters are already subject to their flag state's SOLAS CSM-aligned requirements, and all U.S. vessels already voluntarily comply with those requirements in order to obtain SOLAS certificates that are necessary for entering foreign ports. Subpart A also applies to self-propelled vessels less than 500 gross tons if their owners or operators choose voluntarily to have it apply to them and submit CSMs for approval.

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<sup>7</sup> 64 FR 1648 (Jan. 11, 1999); docket USCG-1998-4951.

We have revised the text of § 97.100 as it appeared in the SNPRM by removing seagoing barges and other non-self propelled vessels from the applicability of subpart A, which were inadvertently included in the proposed regulatory text of the SNPRM. This interim rule applies only to self-propelled cargo vessels that are subject to SOLAS Chapter VI/5.6 or Chapter VII/5.

As we discussed in Part V, Discussion of Comments, in our SNPRM, a commenter suggested extending the applicability of subpart A to self-propelled cargo vessels below 500 gross tons carrying dangerous goods in packaged form on international voyages. We agree with the commenter's assessment that the cargo securing manual requirements of Chapter VII/5 of SOLAS apply to all vessels covered by other SOLAS provisions *and* to vessels below 500 gross tons that carry dangerous goods in packaged form. As previously stated, one of our intentions in this rule is to align our regulations with SOLAS requirements for cargo securing manuals, and therefore we propose modifying the final rule to more accurately align with SOLAS by applying it to self-propelled cargo vessels less than 500 gross tons carrying dangerous goods in packaged form on international voyages, as well as to larger vessels. We specifically request public comment on that proposed change.

Section 97.105 defines terms used in subpart A, and § 97.110 provides for the incorporation in subpart A, by reference, of pertinent IMO circulars describing how vessels may comply with the SOLAS CSM requirements, as well as an IMO resolution providing guidelines for third parties acting on behalf of a government agency like the Coast Guard.



Section 97.115 requires any accidental loss or deliberate jettisoning of a container or other cargo at sea to be reported immediately under 33 CFR 160.215. This is because any such loss or jettisoning creates a “hazardous condition” within the meaning of 33 CFR 160.204. The section also requires the loss or jettisoning of cargo containing hazardous material to be reported as soon as possible in accordance with the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration regulations at 49 CFR 176.48.

Section 97.120 requires each vessel to which subpart A applies to have a flag state-approved CSM that complies with applicable IMO resolutions. Coast Guard personnel may board any vessel in U.S. waters to verify compliance with this section. Note that any container vessel with a keel laid on or after January 1, 2015, needs to include a cargo safe access plan. Under the applicable IMO guidance, such a plan must provide detailed information on safe access for persons stowing and securing cargo on vessels that are specifically designed and fitted for carrying containers.

Section 97.200 describes how a U.S.-flagged vessel owner or operator applies for Coast Guard approval of the vessel’s CSM. Third-party approval authorities review and approve CSMs on the Coast Guard’s behalf. This section also describes the contents of approval statements, the procedure to follow when a CSM is disapproved, and document retention requirements.

Section 97.205 describes when a CSM must be resubmitted for approval, and § 97.210 contains provisions for appeal from a CSM approval authority’s decision.

Section 97.300 designates the organizations that are initially authorized to act as CSM approval authorities, and §§ 97.305 through 97.315 discuss who may request that authorization in the future, the criteria for authorization, and the requirements for approval authorities. We modified this section from what we originally published in the SNPRM by removing specific reference to the American Bureau of Shipping (ABS) and Lloyd's Register, because they are already included on the list of recognized classification societies to which the Coast Guard has delegated authority for the issuance of a Cargo Ship Safety Equipment Certificate in accordance with 46 CFR 8.320(b)(4) and covered under the paragraph recognizing those classification societies. Section 97.320 provides for the revocation of authorization if an approval authority fails to maintain standards acceptable to the Coast Guard.

*33 CFR Part 160 – Ports and Waterways Safety – General.* The only change made to part 160 is an amendment to § 160.215, to prescribe the information to be reported when a hazardous condition is created by the loss or jettisoning of cargo.

*46 CFR Part 97— [Cargo and Miscellaneous Vessel] Operations.* The interim rule amends the subpart 97.12 operational rules for vessels carrying bulk solid cargoes by adding § 97.12-10, which requires such vessels to have on board a CSM that complies with 33 CFR part 97.

## VI. Discussion of Comments on SNPRM and Changes

The SNPRM drew public comments from 12 sources: 7 individuals (one of whom submitted 2 comments, which we consider together), 2 barge companies, 1 shipping

industry organization, 1 trade association, and 1 environmental advocacy organization. The docket also contains 1 comment from another Federal agency.

*General.* All three organizations and six individuals expressed support for the Coast Guard's proposal.

The environmental advocacy organization and two individuals said that the loss of cargo containers is a serious problem. The organization said container loss has an immediate impact by changing deep sea habitats, and a long term impact by changing the natural distribution of species, including the threat of introducing invasive species. One individual said container loss is a major threat to the environment, to pleasure craft, and to commercial shipping. This commenter suggested that the insurance industry should welcome our proposal because of the economic impact of container losses. The other individual said we should require containers to be weighed so that weight can be distributed for safety.

We share these commenters' concern for the safety and environmental hazards that can be caused by the loss of containers or other cargo at sea, and we agree with most of their comments. However, we decline to require containers to be weighed, because this information is the subject of several existing Federal and International Maritime Organization (IMO) requirements. The Occupational Safety and Health Administration requires a container to be weighed before it can be handled by U.S. workers, and the Department of Transportation has stringent notification and certification requirements for intermodal containers.<sup>8</sup> With the Coast Guard's full participation, the IMO recently amended an international convention to require shippers to verify a container's gross

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<sup>8</sup> See 29 CFR 1918.85 and 49 U.S.C. 5902 for the Occupational Safety and Health Administration and Department of Transportation requirements, respectively.

mass to a vessel's master before it is loaded on board.<sup>9</sup> The existence of these requirements makes it unnecessary for the Coast Guard to issue separate and potentially overlapping provisions on the topic.

The shipping organization said that, whereas the SNPRM based its cost analysis on an IMO estimate of 4,000 containers lost at sea per year worldwide, the shipping organization's own analysis found that, on average, only 1,679 containers are lost at sea each year. We appreciate the shipping organization's analysis and are using their most current estimate in the regulatory analysis for this interim rule. Please see Section VIII, Regulatory Analyses, for details.

The two towing companies expressed appreciation that we do not propose to regulate cargo securing on barges in coastwise trade, but opposed our SNPRM's proposed extension<sup>10</sup> of such regulations to seagoing barges in international commerce. The companies said that barges have a strong safety record and are not subject to cargo securing requirements under SOLAS. Therefore, they should not be required to undertake the work of developing unique CSMs for each type of cargo. They also pointed out that, if seagoing barges are included, the universe of affected vessels will be far greater than the 26 U.S.-flagged vessels the Coast Guard estimates will be impacted in its regulatory analysis. They specifically requested that the Coast Guard clarify that "barges on international voyages will also be exempt from this rulemaking." We agree with the commenters and the interim rule amends the applicability provisions of new 33 CFR 97.100 so that part 97, subpart A, applies only to self-propelled vessels that are

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<sup>9</sup> The International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1988. *See* Regulation VI/2, which enters into force July 1, 2016. The International Maritime Organization previously issued guidance to help ensure accurate pre-loading container weighing; *see* Maritime Safety Committee Circular MSC.1/Circ. 1475, Guidelines Regarding the Verified Gross Mass of a Container Carrying Cargo.

<sup>10</sup> 78 FR at 68788, col. 1.

subject to SOLAS Chapter VI/5.6 or Chapter VII/5. SOLAS does not apply to non self-propelled vessels and the barge industry has demonstrated a strong safety record in the past. Therefore, we do not intend to require non-self -propelled vessels to have CSMs at this time.

*Proposed change for final rule.* One of the individual commenters said that, to conform to Chapter VII/5 of SOLAS, we should regulate cargo securing on cargo vessels below 500 gross tons as well as on vessels of 500 gross tons and above. We agree with the commenter's assessment that the cargo securing manual requirements of Chapter VII/5 of SOLAS apply to all vessels covered by other SOLAS provisions *and* to vessels below 500 gross tons that carry dangerous goods in packaged form. As previously stated, one of our intentions in this rule is to align our regulations with SOLAS requirements for cargo securing manuals, and, therefore, we propose modifying the final rule to more accurately align with SOLAS by extending the applicability provisions of 33 CFR 97.100 to self-propelled cargo vessels less than 500 gross tons carrying dangerous goods in packaged form on international voyages. We specifically request public comment on that proposal.

## VII. Incorporation by Reference

The Director of the Federal Register has approved the material in 33 CFR 97.110 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 § 97.110. The following paragraphs summarize the material incorporated by reference.

IMO Assembly Resolution A.739(18) (Res.A.739(18)), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, November 22,

1993: International guidelines developed to establish a uniform program for controlling and assigning authority of organizations to act on behalf of administrations in conducting surveys, certifications, and determination of tonnages.

IMO Maritime Safety Committee Circular 1352 (MSC.1/Circ.1352), Amendments to the Code of Safe Practice for Cargo Stowage and Securing (CSS Code) Annex 14, Guidance on Providing Safe Working Conditions for Securing of Containers on Deck, June 30, 2010: International guidance developed to ensure persons engaged in carrying out container securing operations on deck have safe working conditions including safe access, and appropriate securing equipment.

IMO Maritime Safety Committee Circular 1353 (MSC.1/Circ. 1353/Rev.1), Revised Guidelines for the Preparation of the Cargo Securing Manual, December 15, 2014: International guidelines providing information on developing cargo securing manuals, including required contents and details for stowing and securing non-standardized and semi-standardized cargo.

## VIII. Regulatory Analyses

We developed this interim rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

### A. Regulatory Planning and Review

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental,

public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has not been designated a “significant regulatory action” under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that E.O. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB). A final Regulatory Assessment for the interim rule follows.

#### 1. Summary

This interim rule amends the CFR by adding the following provisions:

- Requirements for the reporting of lost or jettisoned cargo;
- The CSM requirements of SOLAS, for vessels of 500 gross tons or more;
- Extending the CSM requirements to self-propelled cargo vessels that travel on international voyages and carry cargo other than solid or liquid bulk cargo that is designated as a dangerous good carried in packaged form; and
- Procedures for authorization of third-party organizations to review and approve CSMs on the Coast Guard’s behalf.

Table 1 presents a summary of our analysis.

**Table 1: Summary of the 10-Year Regulatory Economic Impacts**

Changes	Description	Affected Population	Costs (7% Discount Rate)		Benefits
			Annualized	Total	
1. Reporting of lost or jettisoned cargo.	Codify lost or jettisoned cargo as a hazardous condition and specify data to be reported.	U.S.- and foreign-flagged vessels engaged in transport to or from a U.S. port.	\$578	\$4,063	Better tracking and response of lost or jettisoned cargo.
2. CSM requirements.	Codify SOLAS rules and guidance from NVIC 10-97.	Owners/operators of 6,436 vessels: 83 U.S.-flagged, 6,353 foreign-flagged.	\$212,226	\$1,490,587	Increased enforcement authority.
3. Approval of authorized organizations.	Codify guidance from NVIC 10-97.	6 currently approved organizations, others applying for approval status.	\$0	\$0	Increased enforcement authority.
<b>Total</b>			<b>\$212,804</b>	<b>\$1,494,649</b>	

Note: Due to independent rounding, the totals may not equal the sum of the components.



Table 2 presents a summary of the 10-year cost schedule, showing total costs on an undiscounted basis and discounted at 7-percent and 3-percent interest rates.

**Table 2: Summary of the 10-year Total Cost to the International Cargo Industry and U.S. Government**

Year	Undiscounted			Discounted	
	Industry	Government	Total	7%	3%
1	\$757,015	\$90,514	\$847,529	\$792,083	\$822,844
2	\$99,403	\$10,013	\$109,416	\$95,568	\$103,135
3	\$99,417	\$10,023	\$109,440	\$89,336	\$100,153
4	\$99,430	\$10,034	\$109,464	\$83,510	\$97,257
5	\$107,068	\$10,044	\$117,112	\$83,499	\$101,022
6	\$107,081	\$10,055	\$117,136	\$78,053	\$98,100
7	\$107,108	\$10,076	\$117,184	\$72,976	\$95,281
8	\$107,121	\$10,086	\$117,207	\$68,216	\$92,524
9	\$114,759	\$10,097	\$124,856	\$67,913	\$95,692
10	\$114,786	\$10,118	\$124,904	\$63,495	\$92,940
Total	\$1,713,188	\$181,060	\$1,894,248	\$1,494,649	\$1,698,948
Annualized				\$212,804	\$199,169

## 2. Changes from SNPRM

Because there are no changes between the requirements proposed in the SNPRM and those contained in this interim rule, and because we received no public comments that affect the Regulatory Assessment, we retained the structure of the economic analyses from the SNPRM, but updated our analysis with the most current data. The data elements that we revised for this analysis are as follows:

- Affected vessel population, U.S.- and foreign-flagged vessels used 2011 through 2013 data.
- Visits to U.S. ports, updated with data from 2011 through 2013.
- Wage rates for commercial and Coast Guard employees, updated with current data.

- Container ship traffic data, updated with current data.

### 3. Affected Population

The affected population, those vessels subject to the regulations in this interim rule, consists of U.S.- and foreign-flagged self-propelled vessels that—

- Are engaged in international trade as indicated by currently having a SOLAS Cargo Ship Safety Certificate;
- Are 500 gross tons or more; and
- Carry any cargo other than solid or liquid bulk commodities.

The United States is a signatory state to SOLAS, and U.S.-flagged vessels in international trade must meet SOLAS requirements, including the CSM rules, to receive a SOLAS certificate. A 2013 extract from the Coast Guard’s Marine Information for Safety and Law Enforcement (MISLE) database identified 83 U.S.-flagged vessels as meeting the above tonnage and cargo criteria.

The applicable foreign-flagged vessels are those that transit U.S. waters. The source for data on these vessels was the Coast Guard’s Ship Arrival Notification System (SANS) database. This database contains data on notifications of arrival and departure of vessels to and from U.S. ports and is supplemented by data from MISLE. We extracted from SANS the most recent 3 years of data available, 2011 through 2013. This data produced a list of 6,353 foreign-flagged vessels that had one or more visits to a U.S. port and met the tonnage and cargo-type criteria. Table 3 presents the affected population of 6,436 vessels categorized by flag status, SOLAS status, and tonnage class (less than 500 gross tons, 500 gross tons or more).

**Table 3: Applicable Population, Non-Bulk Cargo Vessels**

Flag Class	SOLAS Status	Tonnage Class in Gross Tons	Vessels	
U.S.	SOLAS	500 gross tons or more		83
Foreign	SOLAS	500 gross tons or more	6,314	
	Non-SOLAS	500 gross tons or more	39	
	Foreign Total		6,353	
Total			6,436	

Notes: (1) All U.S. vessels are SOLAS and in the 500 GT or more class.  
(2) Foreign-flagged vessels will follow SOLAS CSM rules.

#### 4. Economic Analyses

The economic analyses include—

- An analysis of the costs, benefits, and alternatives for each of the interim rule’s three provisions: a) Requirements for the reporting of lost or jettisoned cargo, b) CSM requirements, and c) Approval of authorized organizations. A summary of the costs and benefits for the entire rule; and
- A preliminary analysis of expanding the affected population.

##### a. Requirements for the reporting of lost or jettisoned cargo.

###### *i. Current practices, applicable population, and description of changes and edits.*

As noted in Section IV, Background and Regulatory History, of this preamble, the current regulations require the Coast Guard to be notified immediately when a hazardous condition is caused by a vessel or its operation. Incidents of lost or jettisoned cargo<sup>11</sup> are considered hazardous conditions and must be reported. However, current industry practice does not correspond with that interpretation. According to Captain James J. McNamara, President of the National Cargo Bureau in 2000, “When a container or

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<sup>11</sup> All data and industry reports refer only to containers when describing incidents involving lost or jettisoned cargo. We will assume that containers will continue as the only lost cargo in the future and refer to containers as the generic description of the involved cargo for this analysis.

containers are lost overboard, usually there is no news release and seldom is the fact publicized. The loss is only revealed to those in a need-to-know situation, i.e., the ship owner, shipper, receiver, and insurer.”<sup>12</sup> As we will discuss in detail, our research indicates a significant underreporting of lost or jettisoned cargo to the Coast Guard. Coast Guard and other vessels cannot respond to these unreported incidents, so they represent a risk to navigation and the marine environment. The underreporting also prevents the Coast Guard and other interested parties from accurately tracking the extent and trends of lost cargo incidents.

In this interim rule we include requirements for the immediate reporting of lost or jettisoned cargo. We anticipate that adoption of these requirements will correct this underreporting and lead to some increased costs to industry. Table 4 presents the change matrix for modifying the reporting of hazardous conditions and summarizes the specific edit or change, the affected population, and the economic impact.

**Table 4: Change Matrix for Reporting of Hazardous Conditions in 33 CFR**

Reference & Description	Affected Population	Economic Impact
<i>97.100 Applicability</i>		
...(a)(1), U.S. vessels.	U.S. cargo vessels and non-U.S. cargo vessels in U.S. waters.	None, administrative only
97.105 Definitions.	All vessels and approval organizations.	None, administrative only.
97.110 Incorporation by reference, lists IBR references.	All affected vessels and approval organizations.	None, administrative only.
97.115 Situation requiring report, criteria for reporting lost cargo.	Vessels subject to the rule that lose cargo overboard.	Costs for correction of noncompliance with existing requirements.
160.215(a), requirement to report hazardous condition.	Operators of vessels involved in incident resulting in hazardous	No change, new label of existing text.

<sup>12</sup> McNamara, James J., “Containers and Cargoes Lost Overboard,” National Cargo Bureau; conference of the International Union of Marine Insurers; September 13, 2000, <http://www.iumi.com/images/stories/IUMI/Pictures/Conferences/London2000/Wednesday/02%20mcnamara%20cargo.pdf>.

	condition.	
160.215(b), data to be reported.	Operators of vessels involved in incident resulting in hazardous condition.	This requirement references 97.115 and all costs are included there.

Source: Coast Guard analysis.

*ii. Affected population.* This interim rule applies to both U.S.- and foreign-flagged vessels engaged in transport to or from U.S. ports. Therefore, the costs for reporting the lost or jettisoned cargo must be accounted for throughout the entire applicable population of 6,436 vessels, as reported in Table 3.

For the years 2009 through 2013, there were only five incidents of containers lost or damaged at sea and reported to the Coast Guard. As previously noted, industry experts assert that many incidents of lost or jettisoned cargo are not reported to the appropriate authorities. To test this assertion, we developed an estimate of lost or jettisoned cargo incidents that are subject to Coast Guard rules.

As the base of our estimate, we used the annual estimate of 1,679 containers lost at sea worldwide, as reported by the World Shipping Council (WSC) in its 2014 report<sup>13</sup> to the IMO's Sub-Committee on Carriage of Cargoes and Containers.<sup>14</sup> The WSC's estimate is based on a survey of their membership. The survey respondents accounted for 70 percent of the world's container-ship capacity. The WSC adjusted the survey data to account for the 30 percent non-respondents. They also prepared two estimates, one without catastrophic events and the other that included the less-frequent catastrophic ones with large numbers of lost containers. We reviewed the WSC's methodology and we are satisfied that it produced a valid estimate. As we are using a 10-year forecast for our

<sup>13</sup> The report is on WSC's website: [http://www.worldshipping.org/industry-issues/safety/Containers\\_Lost\\_at\\_Sea\\_-\\_2014\\_Update\\_Final\\_for\\_Dist.pdf](http://www.worldshipping.org/industry-issues/safety/Containers_Lost_at_Sea_-_2014_Update_Final_for_Dist.pdf).

<sup>14</sup> Report number CCC 1/NF 9, dated June 27, 2014.

analysis, we needed to account for the low frequency-high consequence events, and used the higher annual estimate that included the catastrophic events.

However, the WSC report was not categorized by route or flag of the vessel. We derived the U.S. share of global container traffic using data reported by the U.S. Department of Transportation's Maritime Administration (MARAD), which reported in 2011 that there were 376,389 container ship visits worldwide,<sup>15</sup> and that, out of this total, 22,089 were at U.S. ports.<sup>16</sup> Thus, the U.S. share of global container traffic is 5.9 percent (22,089/376,389).

We used that 5.9 percent share to estimate that about 99 containers in U.S. traffic are lost annually (1,679 containers lost world-wide x 5.9 percent U.S. share of traffic, rounded). The 5 incidents resulted in a loss of a total of 25 containers, so we estimate on average there were 5 lost containers per incident. Using those data, we estimate that there will be 20 reports of lost containers to the Coast Guard (99 containers lost / 5 containers per incident, rounded to the nearest 10) in the first year the rule becomes effective.

The Tioga Group, a freight transportation services consulting firm<sup>17</sup>, in its report<sup>18</sup> on the container market to the port authorities of Los Angeles and Long Beach, presents estimates of 4.9 percent annual compounded growth rate for the United States in container traffic from 2010 to 2020. We assume that the number of lost container

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<sup>15</sup> See [http://www.marad.dot.gov/documents/Vessel\\_Calls\\_at\\_US\\_Ports\\_Snapshot.pdf](http://www.marad.dot.gov/documents/Vessel_Calls_at_US_Ports_Snapshot.pdf), p. 7, "Global Vessel Calls by Country, 2011."

<sup>16</sup> See [http://www.marad.dot.gov/documents/Vessel\\_Calls\\_at\\_US\\_Ports\\_Snapshot.pdf](http://www.marad.dot.gov/documents/Vessel_Calls_at_US_Ports_Snapshot.pdf), p. 3. "Containership Calls at U.S. Ports by Size, 2006-2011."

<sup>17</sup> For information on The Tioga Group, see [www.tiogagroup.com](http://www.tiogagroup.com).

<sup>18</sup> The Tioga Group, Inc. and IHS Global Insight, "San Pedro Bay Container Forecast Update", Exhibit 33: Total U.S. Loaded Total TEU and CAGRs, p. 33, [www.portoflosangeles.org/pdf/spb\\_container\\_forecast\\_update\\_073109.pdf](http://www.portoflosangeles.org/pdf/spb_container_forecast_update_073109.pdf).

incidents will grow proportionally with the growth in container trade. We applied the Tioga Group's estimate of 4.9 percent growth rate to the base estimate of 20 lost containers in Years 2 through 10 in this cost analysis. This yields an estimate of 31 incidents by Year 10 (the complete series is shown in the "Estimated Incidents" column of Table 6.)

*iii. Costs.* When cargo is lost or jettisoned, the vessel staff already collects data for company purposes.<sup>19</sup> Thus, the only additional cost for compliance with this rule is the time to report the data to the Coast Guard and for the Coast Guard to record the data. Coast Guard staff who are familiar with vessel operations and incident reporting estimated that it will take 0.25 hours for a Master or other senior ship's officer to compile a report and transmit it to the Coast Guard.

The wage rate for the Master was obtained from the U.S. Bureau of Labor Statistics (BLS), using Occupational Series 53-5021, Captains, Mates, and Pilots of Water Vessels. The BLS reports that the hourly rate for a Master is \$36.34 per hour.<sup>20</sup> To account for benefits, the load factor, or ratio between total compensation and wages is calculated at 1.44<sup>21</sup>, using BLS data. The fully loaded wage rate for a Master is estimated at \$53 per hour (\$36.34 base wages x 1.44 load factor, rounded up to capture the entire cost). The cost for the additional time to report an incident is \$13.25 (\$53 x 0.25).

Similarly, we estimate that it will take a quarter of an hour for Coast Guard personnel at the E-4 level to record the data. The fully loaded wage rate for an E-4 rating

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<sup>19</sup> Captain James J. McNamara, "Containers and Cargo Lost Overboard", p. 2. National Cargo Bureau; conference of the International Union of Marine Insurers; September 13, 2000, <http://www.iumi.com/images/stories/IUMI/Pictures/Conferences/London2000/Wednesday/02%20mcnamara%20cargo.pdf>.

<sup>20</sup> Mean wage, <http://www.bls.gov/oes/2013/may/oes535021.htm>.

<sup>21</sup> Load Factor calculation, source: [http://www.bls.gov/news.releases/archives/ecec\\_09112013.htm](http://www.bls.gov/news.releases/archives/ecec_09112013.htm), all Workers Total compensation, \$31,00 / Wages and salaries, \$21.44.

is \$42, per Commandant Instruction 7310.1N.<sup>22</sup> The unit cost for the Coast Guard is \$10.50 (\$42 per hour x 0.25 hours).

As shown in Table 5, the unit cost for reporting lost or jettisoned cargo is \$23.75.

**Table 5: Unit Cost For Reporting Lost or Jettisoned Cargo**

Task	Time (hours)	Wage Rate	Cost
Master to report	0.25	\$53	\$13.25
CG data entry (E4)	0.25	\$42	\$10.50
Total			\$23.75

Sources: BLS, Coast Guard estimates.

The baseline estimate of lost or jettisoned cargo incidents, the growth rate, and the unit cost data provide the inputs into the 10-year cost schedule. Table 6 displays the input data and the resulting cost estimates on an undiscounted basis and discounted at 7-percent and 3-percent interest rates.

**Table 6: Cost Schedule for Reporting Lost or Jettisoned Cargo**

Year	Estimated Incidents	Rounded Incidents	Industry Cost	Coast Guard Cost	Total Cost	Discounted	
						7%	3%
1	20	20	\$265	\$210	\$475	\$444	\$461
2	20.98	21	\$278	\$221	\$499	\$436	\$470
3	22.01	22	\$292	\$231	\$523	\$427	\$479
4	23.09	23	\$305	\$242	\$547	\$417	\$486
5	24.22	24	\$318	\$252	\$570	\$406	\$492
6	25.41	25	\$331	\$263	\$594	\$396	\$497
7	26.66	27	\$358	\$284	\$642	\$400	\$522
8	27.97	28	\$371	\$294	\$665	\$387	\$525
9	29.34	29	\$384	\$305	\$689	\$375	\$528
10	30.78	31	\$411	\$326	\$737	\$375	\$548
Total			\$3,313	\$2,628	\$5,941	\$4,063	\$5,008

<sup>22</sup> [http://www.uscg.mil/directives/ci/7000-7999/CI\\_7310\\_1N.pdf](http://www.uscg.mil/directives/ci/7000-7999/CI_7310_1N.pdf)



Annualized	\$578	\$587
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To provide an estimate of costs by flag status, we extracted from the Coast Guard’s SANS database the vessels calling on U.S. ports in 2011.<sup>23</sup> We divided the vessels into U.S.- and foreign-flagged status. Table 7 presents the data and shows that in 2013, U.S.-flagged vessels accounted for 11.8 percent of the visits by vessels that would be subject to this interim rule.

**Table 7: 2013 Visits to U.S. Ports by Flag-Status of Vessels Non-Bulk Trade**

Flag	Visits	Percent
United States	2,955	11.8%
Foreign	22,001	88.2%
Total	24,956	100.0%

We produced an estimate for U.S. costs of lost or jettisoned cargo by applying the 11.8 percent of visits by U.S.-flagged vessels from Table 7 to the cost estimates from Table 6. Note that U.S. costs include both costs to U.S.-flagged vessels and the Coast Guard. Table 8 displays the data for the U.S. costs.

**Table 8: Cost Schedule for U.S.-Flagged Vessels for Reporting Lost or Jettisoned Cargo**

Year	Rounded Incidents	Industry Cost	CG Cost	Total Cost	Discounted	
					7%	3%
1	2	\$27	\$21	\$48	\$45	\$47
2	2	\$27	\$21	\$48	\$42	\$45
3	3	\$40	\$32	\$72	\$59	\$66
4	3	\$40	\$32	\$72	\$55	\$64
5	3	\$40	\$32	\$72	\$51	\$62
6	3	\$40	\$32	\$72	\$48	\$60
7	3	\$40	\$32	\$72	\$45	\$59
8	3	\$40	\$32	\$72	\$42	\$57
9	3	\$40	\$32	\$72	\$39	\$55
10	4	\$53	\$42	\$95	\$48	\$71

<sup>23</sup> 2011 is the most recent year of verified data.

Total	\$387	\$308	\$695	\$474	\$586
Annualized				\$67	\$69

We obtained the costs of reporting lost or jettisoned cargo for non-U.S.-flagged vessels by subtracting the U.S. costs, as reported in Table 8, from the costs as displayed in Table 6. Table 9 presents the results of these calculations.

**Table 9: Cost Schedule for Non-U.S.-Flagged Vessels for Reporting Lost or Jettisoned Cargo**

Year	Rounded Incidents	Industry Cost	Coast Guard Cost	Total Cost	Discounted	
					7%	3%
1	18	\$239	\$189	\$428	\$400	\$416
2	19	\$252	\$200	\$452	\$395	\$426
3	19	\$252	\$200	\$452	\$369	\$414
4	20	\$265	\$210	\$475	\$362	\$422
5	21	\$278	\$221	\$499	\$356	\$430
6	22	\$292	\$231	\$523	\$348	\$438
7	24	\$318	\$252	\$570	\$355	\$463
8	25	\$331	\$263	\$594	\$346	\$469
9	26	\$345	\$273	\$618	\$336	\$474
10	27	\$358	\$284	\$642	\$326	\$478
Total		\$2,930	\$2,323	\$5,253	\$3,593	\$4,430
Annualized					\$512	\$519

*iv. Benefits.* A 2011 news release from the Monterey Bay Aquarium Research Institute (MBARI)<sup>24</sup> stated that containers that fall from ships can “float at the surface for months” and that “most eventually sink to the seafloor.” While they float they can present a hazard to navigation. However, sunken containers may pose immediate and long-term threats to the marine environment. The MBARI news release also stated that “[N]o one knows what happens to these containers once they reach the deep seafloor” and that “[p]erhaps 10 percent of shipping containers carry household and industrial

<sup>24</sup> [http://www.mbari.org/news/news\\_releases/2011/containers/containers-release.html](http://www.mbari.org/news/news_releases/2011/containers/containers-release.html)

chemicals that could be toxic to marine life.” The small number of MISLE incidents provides additional information. Of the 25 containers, one container held 22,500 pounds of used batteries and another held an unspecified hazardous material.

The immediate benefit of the reporting provisions is that they will enhance the Coast Guard’s ability to identify potential problems with securing equipment, locate and warn mariners about drifting containers that endanger safe navigation, and assess and respond to any potential environmental hazard created by the cargo loss. In the longer term, having complete and accurate data on lost cargo incidents will enable the Coast Guard and other parties to identify industry trends and track potential long-term threats to the marine environment from sunken containers.

*v. Alternatives.* We considered possible alternatives to this rule. One possibility, as suggested in the SNPRM, would be to limit the reporting of lost containers to only those containing hazardous materials. However, we consider any overboard container to be a potential hazard to navigation and, as noted above, the contents may pose a long-term threat to the marine environment. To ensure safety of navigation and the marine environment, we believe all lost or jettisoned cargo should be reported. As one commenter noted, the containers may not disintegrate for hundreds of years once they reach the floor. Thus, the long-term impacts on the environment are extremely hard to assess.

Another alternative we considered was to reduce the amount of information to be sent to the Coast Guard in order to minimize recordkeeping burden. We examined the data specified in this rule and determined that all of it would be needed by the Coast Guard in order to completely evaluate the situation and determine the appropriate

response. Therefore, we believe that the reporting requirements in this rule will provide the Coast Guard with sufficient information to fulfill its missions of maritime safety and marine environmental protection while minimizing the vessel's recordkeeping and reporting burdens.

b. CSM Requirements.

*i. Current practices, applicable population, and description of changes and edits.*

As stated in Section IV of this preamble, Background and Regulatory History, the Coast Guard has developed guidance,<sup>25</sup> based on IMO Circular 1353, for implementing SOLAS provisions for cargo securing manuals.

Under the Coast Guard's safety and security vessel examinations program, the Coast Guard checks that the subject vessels in U.S. ports have CSMs and that the crews follow them. MISLE data show that from 2011 through 2013, the 83 U.S.-flagged vessels that are part of the affected population were subject to 646 inspections. In all of these inspections there were no citations for a deficient CSM.

MISLE also recorded that from 2011 through 2013, the Coast Guard conducted 14,358 vessel inspections of foreign-flagged vessels and found problems relating to CSMs in only 9 instances. These data indicate an ongoing compliance process for both U.S.- and foreign-flagged vessels subject to CSM rules. Therefore, the Coast Guard anticipates that the only costs regarding the CSM requirement, once the requirements of SOLAS and Coast Guard guidance are moved into the CFR, would be those associated with owners or operators of the few deficient vessels who are prompted to ensure their CSMs are fully compliant with SOLAS prior to entering U.S. waters.

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<sup>25</sup> NVIC 10-97.

Tables 10 and 11 present the change matrix for the edits to Titles 33 and 46 of the CFR, respectively, that relate to the CSM requirements of the interim rule. Each matrix summarizes the specific edit or change, the affected population, and the economic impact.

**Table 10: Change Matrix for Adding CSM Requirements to 33 CFR**

Reference & Description	Affected Population	Economic Impact
<i>97.100 Applicability</i>		
...(a)(1), U.S. vessels	U.S. cargo vessels, non-U.S. cargo vessels of <i>500 gross tons or more</i> in U.S. waters.	None, administrative only.
... (a)(2), voluntary compliance	U.S. vessels requesting coverage.	No change, codifies guidance currently located in NVIC.
...(b), exemption for Ready Reserve and public vessels	Ready Reserve and public vessels.	None, these vessels currently are exempted.
97.105 Definitions	All vessels and approval organizations.	None, administrative only.
97.110 Incorporation by reference (lists IBR references)	All affected vessels and approval organizations.	None, administrative only.
<i>97.120 Cargo Securing Manuals</i>		
...(a)(1), CSMs required	SOLAS vessels and non-U.S., non-SOLAS vessels noted with deficient CSMs by Coast Guard.	Cost of developing CSM for noncompliant vessels.
... (a)(2), CSAP required after 2015	Non-SOLAS vessels.	Edit to close regulatory gap. No costs, no current vessels affected and none expected in future.
... (b), authorizes CG enforcement	All U.S.- and foreign-flagged vessels subject to the rule.	No cost, provides authority for current CG compliance activities.

Source: Coast Guard analysis.

**Table 11: Change Matrix for Edits to 46 CFR 97 that Apply to U.S. SOLAS Vessels**

Reference & Description	Affected Population	Economic Impact
97.12-10, Cargo securing manuals, new section to reference new 33 CFR 97.120	Owners and operators of U.S. SOLAS vessels.	Administrative edit, all costs accounted for in 33 CFR 97.120.

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Source: Coast Guard analysis.

*ii. Affected population.* As stated earlier, the Coast Guard's current safety and security examinations include checking to see if a subject vessel has a current CSM and that the crew follows it. The inspection results indicate that the 83 U.S.-flagged vessels in international trade are all in the 500 gross tons or more class and that they comply with the SOLAS CSM rules. Under an assumption that they will continue with those practices, this establishes a baseline of current compliance throughout the 10-year analysis period. In this scenario, the U.S.-flagged vessels will incur no additional costs from this rule. However, to conduct a thorough regulatory analysis, we included the 83 U.S.-flagged vessels in the analysis and assumed that they will obtain a SOLAS-compliant CSM in the first year the rule is in effect. A review of the year-built data for these vessels shows that the most recently built was in 2009. We assume that this trend of no new builds will continue and that the population will remain stable at 83 vessels per year throughout the 10-year analysis period.

Additionally, the interim rule requires that a CSM must be revised if one of these two criteria are met:

1. The vessel changes its type. As an example, a former break-bulk carrier is modified to become a container ship.
2. An existing vessel changes 15 percent of its cargo securing systems or more than 15 percent of its portable securing devices.

MISLE data indicates that none of the subject U.S.-flagged vessels have changed vessel type from 2001 through 2012. We assume that this trend will continue and that no vessels will change type during our analysis period. From information provided by an

approved organization,<sup>26</sup> we estimated that, on an annual basis, 11.3 percent of the U.S.-flagged fleet revises its CSM based on the second criterion described above. We applied this rate to the subject 83 U.S.-flagged vessels to estimate that 9 vessels per year will revise their CSMs (83 x 11.3 percent, rounded) in Years 2 through 10 of the analysis period.

Foreign-flagged vessels that are 500 gross tons or more follow SOLAS rules and current Coast Guard guidance. We estimated the costs of compliance for these vessels based on the following assumptions:

- 1) In the absence of the rule, the current deficiency rate for subject foreign-flagged vessels would continue.
- 2) Under the rule, the increased enforceability posture from codifying the CSM rules will lead all vessels to comply with the SOLAS standards and current Coast Guard guidance prior to entering U.S. waters. That is, the deficiency rate will be reduced to zero for foreign-flagged vessels.

We reported above that there were nine deficiencies related to CSMs from 2011 through 2013. These deficiencies are comprised of five that were missing approval from an authorized organization, three that did not have a CSM on the vessel, and one that had a CSM with missing sections. Table 12 presents the data from 2011 through 2013 for the calculation of a deficiency rate by year and an annual average for the 3 years.

**Table 12: Annual CSM Deficiency Rate**

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<sup>26</sup> To protect proprietary information, we cannot provide the name of the organization.

Year	Vessel Examinations	CSM Deficiencies	Deficiency Rate
2011	5,135	2	0.04%
2012	4,464	4	0.09%
2013	4,759	3	0.06%
Total	14,358	9	0.06%

\* Average deficiency rate

We used the average deficiency rate of 0.06 percent throughout our 10-year analysis period. The estimate of the number of deficient CSMs in any year equals the estimate of the vessel population for that year multiplied by the deficiency rate.

As reported in Table 3 in the “SOLAS Class” subtotal, there are 6,353 foreign-flagged vessels that are currently subject to the CSM requirements. Applying the 0.06 percent deficiency rate from Table 12 yields an estimate of four vessels that will need to remedy deficient CSMs in the first year the rule comes into effect.

In the analysis of the reporting requirements, we cited the Tioga Group’s report on the container market that growth in container shipments to the United States is expected to increase,<sup>27</sup> so a flat extrapolation of the seven CSMs in the first year through Years 2 through 10 of the analysis period would result in an underestimate.

We used the Tioga Group’s estimate of a 4.9 percent rate for our estimate for growth in our 10-year analysis period. Currently, we do not have detailed information on the current and projected capacity utilization of container ships visiting U.S. ports, so we posited that the trips per year of the affected vessels would remain constant through

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<sup>27</sup> The Tioga Group, Inc. and IHS Global Insight, “San Pedro Bay Container Forecast Update”, Exhibit 33: Total U.S. Loaded Total TEU and CAGRs, p. 33, [www.portoflosangeles.org/pdf/spb\\_container\\_forecast\\_update\\_073109.pdf](http://www.portoflosangeles.org/pdf/spb_container_forecast_update_073109.pdf).



the analysis period. With that assumption, we applied the 4.9 percent annual growth rate to the fleet of foreign-flagged vessels serving U.S. ports.

For Years 2 through 10, the base population is the base population from the previous year multiplied by the 4.9 percent growth rate. The resulting estimates of the base populations are shown in the “Base Population” column of Table 14.

*iii. Costs.* To obtain a current estimate for the cost of developing a CSM, we contacted industry cargo securing subject matter experts in 2013.<sup>28</sup> These experts are familiar with the entire development of CSMs, including vessel survey, evaluation of cargo securing equipment and procedures, preparation of manuals, and training of crews. From the information they provided, we estimate that the cost to develop a CSM will range between \$7,500 and \$10,000, depending on factors such as the size and type of vessel. We used the midpoint of this range, \$8,750  $((\$7,500 + \$10,000)/2)$ , as the unit cost of developing a CSM.

We anticipate that a CSM will be revised to either remedy a deficiency or because the vessel met the previously discussed criterion of new cargo securing systems. We do not have detailed descriptions of each deficiency or changes in cargo securing equipment, so for the unit cost, we assume that a vessel will revise the CSM using an existing survey of the vessel. A 2013 study conducted by ABS Consulting, Inc. for the Coast Guard provided estimates on the costs of a suite of marine engineering and naval architecture services.<sup>29</sup> That study estimated that the average cost of a survey for a freight ship is \$1,125. We estimate the unit cost to remedy a deficiency as the average cost of

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<sup>28</sup> The data obtained contain proprietary information and are not available publicly.

<sup>29</sup> ABS Consulting, Inc., “Study of Marine Engineering and Naval Architecture Costs for Use in Regulatory Analyses,” Table 5, p. 26. A copy of this study can be found in the docket for this rulemaking.

developing a CSM [ $\$8,750 = (\$7,500 + \$10,000)/2$ ] less the average cost of a survey. This yields an estimated unit cost of \$7,625 ( $\$8,750 - \$1,125$ ).

The costs to the Federal government are accounted for by the oversight actions performed by the authorized approval organizations. These actions include reviewing new or revised CSMs, issuing letters of approval, and, for CSMs that are not approved, issuing letters that explain why the CSMs were not approved. We anticipate that the reviews of the CSM will be conducted by a marine engineer or naval architect. We estimate that each review will take on average 2 working days and another hour will be needed to prepare the appropriate correspondence to the vessel's managers. Thus, the attributed burden to the Federal government for each review is 17 hours ( $(2 \times 8) + 1 = 17$ ).

We estimate that the average loaded (including benefits) hourly wage for a marine architect or naval engineer is \$64 per hour.<sup>30</sup> The unit cost to review one CSM is \$1,088 (17 hours x \$64 per hour). Table 13 shows the undiscounted costs to industry and the Federal government for the 10-year analysis period.

#### Costs for Foreign-Flagged Vessels

As foreign-flagged vessels are obtaining and revising CSMs under the auspices of their flag states, their only cost for this interim rule is to remedy deficiencies. The cost in each year is the number of deficient vessels times the unit cost of \$7,625. Table 13 presents the undiscounted cost estimate for foreign-flagged vessels over the 10-year period.

#### **Table 13: Costs to Foreign-Flagged Vessels for Developing CSMs**

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<sup>30</sup> Mean hourly wage of \$44.10 for a marine engineer/naval architect from the Bureau of Labor Statistics (<http://www.bls.gov/oes/2011/may/oes172121.htm>) multiplied by load factor of 1.44 to account for benefits (<ftp://ftp.bls.gov/pub/special.requests/ocwc/ect/eccecqrtn.pdf>).

Year	Base Population	Remedied	Unit Cost	Total Cost
1	6,353	4	\$7,625	\$30,500
2	6,664	4	\$7,625	\$30,500
3	6,991	4	\$7,625	\$30,500
4	7,334	4	\$7,625	\$30,500
5	7,693	5	\$7,625	\$38,125
6	8,070	5	\$7,625	\$38,125
7	8,465	5	\$7,625	\$38,125
8	8,880	5	\$7,625	\$38,125
9	9,315	6	\$7,625	\$45,750
10	9,771	6	\$7,625	\$45,750
Total		48		\$366,000

Costs for U.S.-Flagged Vessels

As discussed previously, all 83 U.S.-flagged vessels have CSMs and have operated under them for over a decade. In addition, current business practices, particularly the requirements of insurers, would also indicate the use of a CSM. For these reasons, and as presented in the Regulatory Analysis of the NPRM, the requirements in this interim rule are not expected to result in a change in practice or incur a cost for the 83 U.S.-flagged vessels.

For the purposes of this regulatory analysis, we also compute costs assuming a baseline without CSMs for the 83 U.S.-flagged vessels. The cost for U.S.-flagged vessels to develop CSMs is presented in Table 14.

**Table 14: Costs of Developing CSMs for U.S. Vessels to Industry and the Federal Government**

Year	Base Population	Industry CSM Cost	Industry Cost	Federal Government Cost	Total Cost
1	83	\$8,750	\$726,250	\$90,304	\$816,554
2	9	\$7,625	\$68,625	\$9,792	\$78,417
3	9	\$7,625	\$68,625	\$9,792	\$78,417
4	9	\$7,625	\$68,625	\$9,792	\$78,417

5	9	\$7,625	\$68,625	\$9,792	\$78,417
6	9	\$7,625	\$68,625	\$9,792	\$78,417
7	9	\$7,625	\$68,625	\$9,792	\$78,417
8	9	\$7,625	\$68,625	\$9,792	\$78,417
9	9	\$7,625	\$68,625	\$9,792	\$78,417
10	9	\$7,625	\$68,625	\$9,792	\$78,417
Total	164		\$1,343,875	\$178,432	\$1,522,307

Table 15 presents the total costs for foreign-flagged vessels and U.S.-flagged vessels assuming a pre-CSM baseline on an undiscounted basis and the total costs discounted at rates of 7 percent and 3 percent. As shown in Table 15, the total 10-year cost for upgrading CSMs at a 7-percent discount rate is \$1,490,587, or \$212,226 on an annualized basis.

**Table 15: CSMs—Undiscounted Component and Total Costs; and Total Costs at Discount Rates of 7 Percent and 3 Percent**

Year	Undiscounted			Discounted	
	U.S-Flagged Cost	Foreign-Flagged Cost	Total Cost	7%	3%
1	\$816,554	\$30,500	\$847,054	\$791,639	\$822,383
2	\$78,417	\$30,500	\$108,917	\$95,132	\$102,665
3	\$78,417	\$30,500	\$108,917	\$88,909	\$99,674
4	\$78,417	\$30,500	\$108,917	\$83,092	\$96,771
5	\$78,417	\$38,125	\$116,542	\$83,093	\$100,530
6	\$78,417	\$38,125	\$116,542	\$77,657	\$97,602
7	\$78,417	\$38,125	\$116,542	\$72,577	\$94,759
8	\$78,417	\$38,125	\$116,542	\$67,829	\$91,999
9	\$78,417	\$45,750	\$124,167	\$67,539	\$95,164
10	\$78,417	\$45,750	\$124,167	\$63,120	\$92,392
Total	\$1,522,307	\$366,000	\$1,888,307	\$1,490,587	\$1,693,939
Annualized				\$212,226	\$198,581

*iv. Benefits.* The benefit of adding the SOLAS requirements and current Coast Guard guidance on CSMs to the CFR is increased Coast Guard enforcement authority.

We previously cited the statistics from the Coast Guard’s CSM inspection activities from 2009 through 2011 for both U.S.- and foreign-flagged vessels. However, as noted in Section IV, Background and Regulatory History, of this preamble, the only current U.S. implementation of the CSM is via current Coast Guard guidance, which is unenforceable. Incorporating these rules into the CFR elevates the guidelines and standards to being a Federal regulation. As described in Section III, Basis and Purpose, of this preamble, the Coast Guard has existing authorities to inspect vessels, regulate an inspected vessel’s operation, fittings, equipment, and appliances, and implement SOLAS. The Coast Guard believes that it can enforce the provisions of this rule under these authorities.

v. *Alternatives.* Alternatives to this provision of the rule that we considered include various ways to apply the requirements to prepare and implement CSMs to U.S.-flagged vessels in coastwise trade. The NPRM published in 2000 presented five options for applying CSM regulations to U.S. domestic voyages. Table 16 presents descriptions of these options and a summary of the comments.

**Table 16: Options to Extend CSM Requirements to U.S. Domestic Voyages**

Option Number	Description	Summary of Comments
1	Extend SOLAS requirements to domestic voyages.	4 supported, 5 opposed for these reasons: <ul style="list-style-type: none"> <li>• Preferred compromise of Options 1 &amp; 2;</li> <li>• Not requiring regular reviews;</li> <li>• Too restrictive;</li> <li>• Require too much standardization; and</li> <li>• Would not work for seagoing barges as no two barge cargoes are identical.</li> </ul>
2	Vessel specific standards, Coast Guard approval.	1 supported, 5 opposed for these reasons: <ul style="list-style-type: none"> <li>• Evaluate against experience with continuous examination program and noted similarity with Option 5;</li> <li>• Too many variables causing unneeded burden;</li> <li>• Would not work, but did not give specific reasons;</li> <li>• Second choice; and</li> </ul>

		<ul style="list-style-type: none"> <li>• Preferred compromise of Options 1 and 2.</li> </ul>
3	Certificate for carrying hazardous materials.	<p>One commenter stated its decision would depend on specific requirements, and 3 commenters opposed for these reasons:</p> <ul style="list-style-type: none"> <li>• Surveyors for multiple voyages not feasible for cost and availability;</li> <li>• Could not ensure surveyor availability; and</li> <li>• High costs of surveyors.</li> </ul>
4	Allow each vessel to choose from among Options 1, 2, and 3.	<p>One commenter noted that companies supporting domestic rules would find this attractive, but did not state its own opinion. Another stated that it combined the strengths and weaknesses of the other Options. One opposed for unstated reasons and another was opposed because the “menu of options” would cause confusion.</p>
5	Standards developed with industry.	<p>Three comments supported, 1 for unstated reasons and 2 because of its flexibility; and 1 commenter was opposed because it would not ensure meeting needs of different vessel types and operations.</p>

The options presented in the NPRM were only outlined and did not have cost estimates. We developed a cost estimate for Option 1 that would extend SOLAS requirements to domestic vessels. We added these details to Option 1 to make the calculations:

- The affected population will be U.S.-flagged vessels in coastwise trade. The geographic identification was vessels with coastwise route certifications. We identified 688 vessels from MISLE that met these requirements, comprised of 195 freight barges, 160 freight ships, and 333 offshore supply vessels.
- In general, the vessels in the U.S. affected population for this alternative are smaller than the foreign-flagged vessels that comprise the affected population of the regulation. Data comparisons for the U.S. fleet shows average gross tons of 8,165 and average length of 326 feet. The comparable data for the foreign-flagged vessels is average gross tonnage of 31,306 and average

length of 619 feet. Therefore, for the unit cost of the U.S. coastwise vessels, we assigned the low-end value of \$7,500, which came from the range supplied by the subject matter experts we contacted. The recent history of new builds is projected to continue through the 10-year analysis period. MISLE reported 22 new vessels per year from 2009 through 2012, and we used this in our analysis.

- A phase-in period was not in the NPRM, but we added a 3-year phase-in period to this interim rule to mitigate the burden on both vessel owners and the authorized approval organizations. We assume that vessel owners will distribute the certification of the manuals for their vessels evenly over the phase-in period. This will enable vessel owners and authorized approval organizations to schedule cargo securing approvals in conjunction with vessel down-time, such as scheduled examinations or times of vessel repairs and upgrades.

With these parameters, we developed a 10-year cost schedule for Option 1.

Because the costs to foreign-flagged vessels would be the same for Option 1 as for the preferred alternative, the data presented show the marginal costs for Option 1. The annualized cost, using a 7-percent discount rate, would be \$807,605. The cost estimates are displayed in Table 17.

**Table 17: Cost Estimate for Option 1, Extend CSM Requirements to Domestic Vessels**

Year	Existing Vessels	New Vessels	Total Vessels	Unit Cost	Total Cost	Discounted	
						7%	3%
1	229	22	251	\$7,500	\$1,882,500	\$1,759,346	\$1,827,670
2	229	22	251	\$7,500	\$1,882,500	\$1,644,248	\$1,774,437
3	230	22	252	\$7,500	\$1,890,000	\$1,542,803	\$1,729,618
4	0	22	22	\$7,500	\$165,000	\$125,878	\$146,600
5	0	22	22	\$7,500	\$165,000	\$117,643	\$142,330
6	0	22	22	\$7,500	\$165,000	\$109,946	\$138,185
7	0	22	22	\$7,500	\$165,000	\$102,754	\$134,160
8	0	22	22	\$7,500	\$165,000	\$96,032	\$130,253
9	0	22	22	\$7,500	\$165,000	\$89,749	\$126,459
10	0	22	22	\$7,500	\$165,000	\$83,878	\$122,775
Total	688	220	908		\$6,810,000	\$5,672,277	\$6,272,487
Annualized						\$807,605	\$735,327

The goal of Option 1 is to reduce the occurrence and impacts of lost containers in U.S. coastwise trade. However, the comments to the NPRM indicate that this is not a significant problem. One commenter stated that cargo losses from barges are rare, another stated that seagoing barges “are generally safe from cargo loss,” and another commenter stated that “most cargo losses result from container structural problems that the vessel owner or operator cannot know about or prevent.” However, as described above, the reporting of these incidents is uncertain. We anticipate that, with the more accurate reporting required by this interim rule, we will be able to validate this assertion. Additionally, our initial cost estimates, as presented in Table 17, indicate that industry would incur annualized costs, discounted at 7 percent, of \$807,605 beyond what is in this rule. Therefore, this interim rule focuses exclusively on vessels in international trade. However, the Coast Guard can reevaluate this position and initiate another rulemaking



for the U.S. coastwise trade if new information indicates either underreporting or an upward trend of lost containers.

c. Approval of authorized organizations

The Coast Guard authorizes classification societies and other organizations to review and approve CSMs on its behalf. The procedures for these organizations are currently found in Coast Guard guidance and cover selection criteria, information required by organizations applying for authorization status, and the Coast Guard's application review procedures, termination of authorization procedures, and appeals procedures.

Following the procedures in current Coast Guard guidance, the Coast Guard has authorized these six classification societies to review and approve CSMs: American Bureau of Shipping (ABS), Det Norske Veritas (DNV), Lloyd's Register of Shipping (LR), Germanischer Lloyd (GL), RINA S.p.A, and ClassNK (NK).<sup>31</sup> We anticipate that no other classification societies will be applying for CSM approval authority in the near future.<sup>32</sup>

However, current Coast Guard guidance is not legally enforceable. This interim rule will incorporate these procedures from guidance into the CFR with only some minor editorial changes, such as updating the address of Coast Guard Headquarters. Therefore, we believe there will be no additional regulatory costs associated with the codification of these application procedures. Table 18 presents the change matrix for the codification of

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<sup>31</sup> List of classification societies authorizations:  
<http://www.uscg.mil/hq/cg5/acp/docs/ClassSocietyAuths22Dec2013.pdf>.

<sup>32</sup> For more information see the final rule "Approval of Classification Societies", VII. A, "Regulatory Planning and Review", 77 FR 47548, RIN 1625-AB35).

the class society approval guidance into the CFR and summarizes the specific edit or change, the affected population, and the economic impact.

**Table 18: Change Matrix for Incorporating Class Society Approval Procedures into 46 CFR**

Reference & Description	Affected Population	Economic Impact
<i>97.100 Applicability</i>		
...(a)(4), organizations applying for CSM approval authority	New applicants.	No impact, incorporates current guidance into regulations.
97.115 Situation requiring report, criteria for reporting lost cargo	Vessels subject to the rule that lose cargo overboard.	Costs for correction of noncompliance with existing requirements.
<i>97.200 CSM approval for U.S. vessels on international voyages</i>		
...(a)(1), authorized applicants include owner, operator, or agent	Owners, operators, and agents, of new U.S. vessels in international trade.	Administrative change, guidance only referenced owner.
...(a)(2), CG oversight of approval authority applications	Organizations applying for CSM approval authority.	No change, incorporates current guidance into regulations.
...(a)(3), application procedures	U.S. vessels in international trade.	No change, incorporates current guidance into regulations.
...(a)(4), approval authority retains a copy	Authorized approval organizations.	No change, incorporates current guidance into regulations.
...(b), approval letter contents	Authorized approval organizations.	No change, incorporates current guidance into regulations
...(c), disapproval procedures	Authorized approval organizations.	No change, incorporates current guidance into regulations.
...(d), resubmit procedures	Owners or operators resubmitting a CSM.	No change, incorporates current guidance into regulations.
...(e), documents kept on vessel	Owners or operators of U.S. vessels subject to the rule.	No change, incorporates current guidance into regulations.
97.205 Requirements for amending an approved CSM, amending procedures	Owners or operators of U.S. vessels subject to the rule.	No change, incorporates current guidance into regulations.
97.210 Appeals, appeals procedures	Owners or operators of U.S. vessels subject to the rule and	No change, incorporates current guidance into

	authorized approval organizations.	regulations
97.300 Authorized CSM approval authorities, lists approved organizations	ABS, DNV, LR, GL, RINA, NK, National Cargo Bureau.	No change, incorporates current guidance into regulations.
97.305 Requests for authorization, application process	Organizations seeking to become approved organizations.	No change, incorporates current guidance into regulations.
97.310 Criteria for authorization, evaluation criteria	CG and organizations seeking to become approved organizations.	No change, incorporates current guidance into regulations.
97.315 Requirements for authorized approval organizations, responsibilities of CG and authorized approval organizations	CG and authorized approval organizations.	No change, substantively incorporates and rewords current guidance into regulations.
97.320 Revocation of authorization, procedures for CG revoking an authorization	CG and referenced organizations.	No change, substantively incorporates and rewords current guidance into regulations.

Source: Coast Guard analysis.

We considered alternatives to these changes and edits, and we concluded that there were no viable alternatives. The procedures in current Coast Guard guidance provide a complete description of all processes needed for approval and oversight of the subject organizations. Reducing or eliminating any of them, such as the one covering appeals, would leave a gap in the approval or oversight processes. We did not identify any weaknesses or gaps in the current Coast Guard guidance, other than the editorial changes. We also concluded that the recordkeeping information in the current Coast Guard guidance provides complete documentation for all the involved parties—vessel owners or operators, and approved organizations. Reducing or eliminating any of the recordkeeping rules would run the risk of producing a gap in the documentation. Conversely, adding additional recordkeeping rules would only increase associated burdens, but not provide any additional useful information.

In summary, the rules governing organizations approved to issue CSMs will codify current procedures with no associated costs to industry or the government. The benefit of these rules is that they will provide a regulatory basis for the Coast Guard’s oversight of organizations authorized to approve CSMs.

d. Review of Costs and Benefits. The total cost of this interim rule is for the two cost elements: 1) Reporting of lost or Jettisoned Cargo; and 2) CSM Requirements. Table 19 presents the 10-year total cost schedule assuming a pre-CSM baseline for undiscounted costs, and the discounted costs at 7-percent and 3-percent interest rates.

**Table 19: Summary of the 10-year Total Cost of Interim Rule, Undiscounted and Discounted at Interest Rates of 7 Percent and 3 Percent**

Year	Undiscounted			Discounted	
	Lost or Jettisoned Cargo	CSM Plans	Total	7%	3%
1	\$475	\$847,054	\$847,529	\$792,083	\$822,844
2	\$499	\$108,917	\$109,416	\$95,568	\$103,135
3	\$523	\$108,917	\$109,440	\$89,336	\$100,153
4	\$547	\$108,917	\$109,464	\$83,510	\$97,257
5	\$570	\$116,542	\$117,112	\$83,499	\$101,022
6	\$594	\$116,542	\$117,136	\$78,053	\$98,100
7	\$642	\$116,542	\$117,184	\$72,976	\$95,281
8	\$665	\$116,542	\$117,207	\$68,216	\$92,524
9	\$689	\$124,167	\$124,856	\$67,913	\$95,692
10	\$737	\$124,167	\$124,904	\$63,495	\$92,940
Total	\$5,941	\$1,888,307	\$1,894,248	\$1,494,649	\$1,698,948
Annualized				\$212,804	\$199,169

Table 20 summarizes the undiscounted costs disaggregated by flag, requirement, and sector.

**Table 20: 10-Year Undiscounted Costs by Flag, Requirement, and Sector**

Flag	Requirement	Industry	Federal Government	Total
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United States	Lost Cargo	\$387	\$308	\$695
	CSM	\$1,343,875	\$178,432	\$1,522,307
	U.S. Total	\$1,344,262	\$178,740	\$1,523,002
Foreign	Lost Cargo	\$2,930	\$2,323	\$5,253
	CSM	\$366,000	\$0	\$366,000
	Foreign Total	\$368,930	\$2,323	\$371,253
Total		\$1,713,192	\$181,063	\$1,894,255

Note: Subtotals and Totals do not match with those in other tables due to independent rounding.

The primary benefit of this interim rule is that it places into the CFR rules and procedures for the cargo securing plans, the approval and oversight of organizations authorized to approve CSMs, and the reporting of lost or jettisoned cargo. Additionally, the reporting requirements for the lost or jettisoned cargo will provide the Coast Guard with additional information to track and monitor the effects on both navigation and the environment, and to take any appropriate enforcement actions. Overall, the interim rule will support the Coast Guard’s missions of maritime safety and stewardship.

e. Preliminary analysis of expanding the affected population.

In Section V, Summary of the Rule, and Section VI, Discussion of Comments on SNPRM and Changes, we requested comments on our proposal to include self-propelled vessels less than 500 gross tons in the affected population. We conducted a preliminary analysis of the economic impacts of the proposal and summarize our findings below.

The proposal would add an additional 45 foreign-flagged vessels, resulting in a new total of 6,398 foreign-flagged vessels. Combined with the 83 U.S.-flagged vessels, the total affected population would be 6,481 vessels.

The only requirement that would be affected is the one requiring a subject vessel to have and follow an approved CSM. Of the 45 new vessels, 42 currently hold SOLAS

cargo safety certificates. For this preliminary analysis we assumed that the three vessels without a cargo safety certificate would need to obtain an approved CSM. This would add an additional \$26,250 (3 vessels x \$8,750 per new CSM). A revised 10-year cost estimate for this requirement based on these assumptions is presented in Table 21.

**Table 21: Cost of CSM Plans under the Proposed Rule (Adding Vessels Under 500 GT to Interim Rule Estimates), Undiscounted and Discounted at 7 Percent and 3 Percent**

Year	U.S-Flagged Cost	Foreign-Flagged	Total Cost	7%	3%
1	\$816,554	\$53,375	\$869,929	\$813,018	\$844,591
2	\$78,417	\$30,500	\$108,917	\$95,132	\$102,665
3	\$78,417	\$30,500	\$108,917	\$88,909	\$99,674
4	\$78,417	\$30,500	\$108,917	\$83,092	\$96,771
5	\$78,417	\$38,125	\$116,542	\$83,093	\$100,530
6	\$78,417	\$38,125	\$116,542	\$77,657	\$97,602
7	\$78,417	\$38,125	\$116,542	\$72,577	\$94,759
8	\$78,417	\$38,125	\$116,542	\$67,829	\$91,999
9	\$78,417	\$45,750	\$124,167	\$67,539	\$95,164
10	\$78,417	\$45,750	\$124,167	\$63,120	\$92,392
Total	\$1,522,307	\$388,875	\$1,911,182	\$1,511,966	\$1,716,147
Annualized				\$215,270	\$201,185

The 7-percent annualized cost for the proposed modification to the CSM requirement is \$215,270, compared to \$212,226 for the interim rule, as shown in Table 15. Table 22 presents a revised 10-year schedule. It adds the \$26,250 cost of new CSMs for the 3 vessels under 500 gross tons to the other requirements for reporting lost or jettisoned cargo and approval of classification societies.

**Table 22: Summary of the 10-year Total Cost of the Proposed Rule (Adding Vessels Under 500 GT to Interim Rule Estimates) by Sector, Undiscounted and Discounted at 7 Percent and 3 Percent**

Year	Industry	Government	Total	7%	3%
1	\$779,890	\$90,514	\$870,404	\$813,462	\$845,052
2	\$99,403	\$10,013	\$109,416	\$95,568	\$103,135

3	\$99,417	\$10,023	\$109,440	\$89,336	\$100,153
4	\$99,430	\$10,034	\$109,464	\$83,510	\$97,257
5	\$107,068	\$10,044	\$117,112	\$83,499	\$101,022
6	\$107,081	\$10,055	\$117,136	\$78,053	\$98,100
7	\$107,108	\$10,076	\$117,184	\$72,976	\$95,281
8	\$107,121	\$10,086	\$117,207	\$68,216	\$92,524
9	\$114,759	\$10,097	\$124,856	\$67,913	\$95,692
10	\$114,786	\$10,118	\$124,904	\$63,495	\$92,940
Total	\$1,736,063	\$181,060	\$1,917,123	\$1,516,028	\$1,721,156
Annualized				\$215,848	\$201,772

With the addition of self-propelled vessels that are less than 500 gross tons, the annualized cost at a 7-percent discount rate increases to \$215,848, compared to \$212,804 for the interim rule, as shown in Table 19.

## B. Small Entities

### 1. Summary of Findings

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) (RFA) and Executive Order (E.O.) 13272 require a review of proposed and final rules to assess their impacts on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. During the SNPRM stage, we published an IRFA to aid the public in commenting on the potential small business impacts of the proposals in the SNPRM. All interested parties were invited to submit data and information regarding the potential economic impact that would result from adoption of the proposals in the SNPRM.

Under the RFA, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises 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.

We determined that this interim rule affects a variety of large and small businesses, not-for-profit organizations, and governments (see the “Description of the Potential Number of Small Entities” section below). Based on the information from this analysis, we found—

- Using size standards from the Small Business Administration (SBA), the 83 U.S.-flagged vessels are controlled by 21 entities, none of which are small. The 6,353 foreign-flagged vessels are controlled by 1,023 entities. A review of the entities that control these vessels found that one foreign-flagged vessel is controlled by a non-U.S. not-for-profit entity that is not considered to be small, 7 foreign-flagged vessels are controlled by government agencies, and the remaining 6,345 foreign-flagged vessels are controlled by businesses. An analysis of a sample of the businesses controlling these vessels indicates that 48 percent are considered small.
- Compliance actions will consist of upgrading deficient CSMs and reporting lost or jettisoned cargo.
- Of the small entities in our sample with revenue information, 62 percent of them had an impact of less than 1 percent, and 28 percent had an impact within the 1 percent to 3 percent range.

The Regulatory Flexibility Act also requires an agency to conduct a final regulatory flexibility analysis (FRFA) unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. We are



not able to certify that the interim rule will not have a significant economic impact on a substantial number of small entities. Therefore, we have prepared the following FRFA.

## 2. FRFA

The RFA establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.”

This FRFA was developed in accordance with Section 604 (a) of the RFA. An FRFA must provide and/or address—

- a. A statement of the need for, and objectives of, the rule;
- b. A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the rule as a result of such comments;
- c. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the SBA in response to the rule, and a detailed statement of any change made to the interim rule as a result of the comments;
- d. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- e. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities

that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

- f. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the interim rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected;
- g. For a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

*a. A statement of the need for, and objectives of, the rule.* The Coast Guard undertook this rulemaking to align U.S. regulations with the CSM requirements of SOLAS. The provisions of this rule also authorize recognized classification societies to review and approve CSMs on behalf of the Coast Guard, prescribe how other organizations can become CSM approval authorities, and prescribe when and how the loss or jettisoning of cargo must be reported. Enforcing those requirements should help prevent or mitigate the consequences of vessel cargo loss, and promote the Coast Guard maritime safety and stewardship missions.

Sections 2103 and 3306 of 46 U.S.C. provide the statutory basis for this rule. Section 2103 gives the Secretary of the department in which the Coast Guard is operating general regulatory authority to implement Subtitle II (Chapters 21 through 147) of Title 46, which includes statutory requirements in 46 U.S.C. Chapter 33 for inspecting the

vessels to which this rule applies. Section 3306 gives the Secretary authority to regulate an inspected vessel's operation, fittings, equipment, appliances, and other items in the interest of safety. The Secretary's authority under both statutes has been delegated to the Coast Guard in Department of Homeland Security Delegation No. 0170.1(92)(a) and (b). Additionally, the United States is a party to SOLAS. Where SOLAS must be enforced through U.S. regulations, those regulations are authorized by E.O. 12234.

*b. A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.* We received no specific comments in response to the IRFA. However, in response to one commenter's suggestion, when we finalize this interim rule we intend to make 33 CFR part 97, subpart A, applicable to all self-propelled vessels, regardless of tonnage, and not just to vessels of 500 gross tons or more. Also in response to comments, we have removed seagoing barges and other non-self-propelled vessels from the applicability of subpart A; this subpart now is applicable only to self-propelled vessels. In all other respects, the interim rule is substantively unchanged from our SNPRM proposals.

*c. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the interim rule as a result of the comments.* We received no comments from the Chief Counsel for Advocacy of the SBA after the publication of the SNPRM.

*d. A description of, and an estimate of, the number of small entities to which the proposed rule will apply or an explanation of why no such estimate is available.* The applicable population consists of self-propelled vessels that carry any cargo other than solid or liquid bulk commodities and are—

- U.S.-flagged vessels engaged in international trade; or
- Foreign-flagged vessels that are in the U.S. trade.

Section VII.A.3, Affected Population, of this preamble presents an estimate of 6,436 vessels that will be subject to the interim rule. As described in Section VIII, Regulatory Analyses, of this preamble, we found that 83 vessels in the affected population were U.S.-flagged. For the cost analysis, we found that these vessels were currently in compliance with the CSM requirements. Also for the cost analysis, we assumed that compliance would continue throughout the 10-year forecast period and we continue with that assumption in this FRFA. The focus of this FRFA is on the 4,353 foreign-flagged vessels, which may be under the control of U.S. entities or foreign entities. Table 23 displays a break-out of this population by the type of entity that owns or operates these vessels.

**Table 23: Non-U.S. Vessels by Type of Entity**

Entity Type	Count	Percent
Business	6,345	99.87%
Government	7	0.11%
Not-for-Profit	1	0.02%
Total	6,353	100.00%

All the government entities exceed the threshold for being classified as a small entity, as they are either agencies of a foreign government or exceed the 50,000

population threshold. We excluded these government entities from the revenue impact analysis. The single not-for-profit entity is also deemed not small, as it is part of an international organization.

To analyze the potential impact on these businesses, we produced a random sample with a 95-percent confidence level and a confidence interval of 5 percent.<sup>33</sup> The resulting sample consisted of 288 businesses. We researched public and proprietary databases and company Web sites for the location of the company, entity type (subsidiary or parent company), primary line of business, employee size, revenue, and other information.<sup>34</sup> During the initial research, we found 1 entity that is now out of business and excluded it from the analysis. We found that 142 of the companies in our sample are based in countries other than the United States. There are another 78 entities for which we could not locate address information. Since they operate foreign-flagged vessels and we could not find location information in the Coast Guard databases and other sources, we inferred that they are operated by firms outside of the United States. Combining this information, we identified a total of 221 non-U.S. companies and excluded them from this revenue impact analysis. The population for the revenue impact analysis consists of the remaining 67 businesses from the working sample, and we found address information that locates all 67 of them in the United States.

We researched and compiled the employee size and revenue data for the 67 U.S. businesses and we compared this information to the SBA “Table of Small Business Size Standards” to determine if an entity is small in its primary line of business as classified in

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<sup>33</sup> We selected a statistical sample so we would not need to research and collect employee size and revenue information for the entire affected operator population. We selected the operators in the sample through a random number generator process available in most statistical or spreadsheet software.

<sup>34</sup> We used information and data from Cortera ([www.cortera.com](http://www.cortera.com)), Manta (<http://Manta.com>), and ReferenceUSA (<http://www.referenceusa.com>).

the North American Industry Classification System (NAICS).<sup>35</sup> We determined that 35 businesses exceeded the SBA small business size standards, and 32 businesses, or 48 percent of the sample, are small by the SBA standards. The information on location and size determination is summarized in Table 24.

**Table 24: U.S. Business by Size Determination**

Entity Type	Entities	Percent
Exceed the threshold	35	52.2%
Below the threshold	32	47.8%
Total	67	100.0%

These 32 businesses that are below the SBA size thresholds are distributed among 16 NAICS classified industries. Table 25 lists the frequency, percentage, size standard, and size threshold of NAICS codes for the 32 small businesses found in the sample.

**Table 25: NAICS Codes of Identified Small Businesses**

NAICS Code	Industry	Count	Percent	Size Standard	Size Threshold
483111	Deep Sea Freight Transportation	12	37.5%	Number of employees	500
488510	Freight Transportation Arrangement	5	15.6%	Revenue	\$14,000,000
487210	Scenic & Sightseeing Transportation, Water	2	6.3%	Revenue	\$7,000,000
423310	Lumber & Wood Merchant Whls	1	3.1%	Number of employees	100
423860	Transportation Equipment and Supplies, Except Motor Vehicles	1	3.1%	Number of employees	100

<sup>35</sup> The SBA lists small business size standards for industries described in the North American Industry Classification System. See <http://www.sba.gov/content/table-small-business-size-standards>.

424420	Packaged Frozen Food Merchant Wholesalers	1	3.1%	Number of employees	100
424910	Farm Supplies Merchant Whls	1	3.1%	Number of employees	100
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	1	3.1%	Number of employees	100
441222	Boat Dealers	1	3.1%	Revenue	\$25,500,000
483113	Coastal and Great Lakes Freight Transportation	1	3.1%	Number of employees	500
484230	Specialized Freight Tracking Long Distance	1	3.1%	Revenue	\$14,000,000
488210	Support Activities for Rail Transportation	1	3.1%	Revenue	500
488320	Marine Cargo Handling	1	3.1%	Revenue	\$25,500,000
493130	Farm Product Warehousing & Storage	1	3.1%	Revenue	\$14,000,000
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	1	3.1%	Revenue	\$32,500,000
541618	Other Management Consulting Services	1	3.1%	Revenue	\$15,000,000
Total		32	99.7%		

We selected the two industries that appeared most frequently in the random sample of entities. Businesses from these two industries accounted for 17 entities, or 53 percent of the entities in the random sample. Therefore, we assume that approximately 53 percent of all entities affected by this regulation will be in one of these industries. A brief description of the two industries affected most by this rule follows.

- Deep Water Freight Transportation (483111): This industry comprises establishments primarily engaged in providing deep sea transportation of cargo to or from foreign ports.
- Freight Transportation Arrangement (488510): This industry comprises establishments primarily engaged in arranging transportation of freight between shippers and carriers. These establishments are usually known as freight forwarders, marine shipping agents, or customs brokers, and offer a combination of services spanning transportation modes.

*e. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.* The compliance requirements of the rule consist of upgrading deficient CSMs and reporting lost or jettisoned cargo. Therefore, this rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Details on the burden estimate associated with this collection are available in Section VIII.D of this preamble.

As discussed in Section VIII.A, Regulatory Planning and Review, from 2011 through 2013, the Coast Guard conducted 14,358 vessel inspections and found problems relating to CSMs in only 9 instances, which amounts to approximately 0.1 percent of the foreign-flagged vessels whose CSMs were deficient. We anticipate that the owners or operators of these vessels will upgrade their CSMs to meet standards and comply with this rule. We do not have detailed descriptions on each of the deficiency cases. To estimate a cost for this compliance action, we apply the estimate of \$7,625 to remedy a CSM, as used in the Regulatory Analysis.

For reporting lost or jettisoned cargo, we noted in Section VIII.A, Cost Discussions, that when one of these incidents occurs, the vessel staff already collects the



needed information for company purposes. Thus, the only additional cost to the vessel is to report this information to the Coast Guard. We estimate the additional reporting will take 0.25 hours for the vessel’s Master or other senior officer to compile and transmit the report to the Coast Guard. We estimate that the loaded wage rate for the Master or senior officer is \$53.00 per hour. The cost of reporting is \$13.25 (0.25 hours x \$53 per hour).

As discussed in Section VIII.A, Regulatory Planning and Review, we adjusted the affected population to account for anticipated growth in container traffic. In our 10-year analysis, we estimate that the number of vessels that will need to upgrade their CSMs will be 4 in Years 1 through 5, and will increase to 6 in Year 10. We also accounted for this growth in container traffic in our estimate of lost or jettisoned cargoes. In Section VIII.A, Cost Discussions, we estimate that in the first year the rule becomes effective, 20 incidents of lost or jettisoned cargo will occur. We estimate that the affected population in that year consists of 6,436 U.S.- and foreign-flagged vessels, yielding an incident rate of 0.3 percent (20 incidents / 6,436 vessels). To execute a revenue impact analysis, we posited that in any given year, each business would have one vessel that will need to upgrade its CSM and one vessel that will experience an incident of lost or jettisoned cargo. Given these assumptions, the total annual compliance cost for any company is \$7,638.25, as shown in Table 26.

**Table 26: Annual Compliance Cost for Revenue Impact Analysis**

Cost	Loaded Wage	Hours	Total Cost
Upgrading 1 CSM	N/A	N/A	\$7,625
Reporting 1 hazardous condition	\$53	0.25	\$13.25
Total			\$7,638.25

For each business in our sample with revenue data, we calculated the impact as the assumed cost of \$7,638.25 as a percentage of that business’s annual revenue. This produced a range of potential revenue impacts across the sample. Table 27 presents the impact data in ranges of less than 1 percent, 1 to 3 percent, 3 to 5 percent, and greater than 5 percent. As shown in this table, for approximately 62 percent of the companies, the revenue impact is less than 1 percent of annual revenue, and for approximately 28 percent of the companies, the revenue impact is between 1 percent and 3 percent.

**Table 27: Estimated Revenue Impact on Small Businesses**

Revenue Impact Class	Count	Percentage of Companies
Less than 1%	20	62.5%
1% to 3%	9	28.1%
3% to 5%	1	3.1%
Less than 5%	2	6.3%
Total	32	100.0%

As shown in Table 22, the highest cost to industry in any one year on an undiscounted basis is \$114,786, which occurs in Year 10.

The revenue impact analysis indicates that 62 percent of the affected population will have an impact of less than 1 percent and the other 28 percent will have an impact between 1 percent and 3 percent.

*f. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the interim rule. Also, include a description explaining why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. Our cost estimate for the reporting of the lost*

or jettisoned cargo was based on information indicating that the vessel's crew already collects the needed information for business reasons. The only additional step required by this interim rule is to prepare the message to the Coast Guard, and that message can be delivered by a variety of electronic media. Thus, this interim rule minimizes the burden to a vessel's crew in order to provide additional information to the Coast Guard to enhance its execution of its maritime environmental protection mission.

For CSMs, this interim rule is based solely on current requirements contained in SOLAS and current Coast Guard guidance. Our regulatory analysis indicates that 99 percent of the subject vessels currently comply with these requirements. This rule enhances the Coast Guard's maritime safety mission without adding any new requirements to vessel owners and operators.

Alternatives were considered in this interim rule and are discussed in section VIII.A, Cost Discussions, of this preamble. Alternatives include various ways to apply the requirements to prepare and implement CSMs to U.S.-flagged vessels in coastwise trade. However, we concluded that standards developed for international trade cannot be economically justified for vessels operating only domestically at this time. Therefore, the focus of this interim rule is exclusively on vessels in international trade.

*g. For a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.*

The Coast Guard is not a covered agency.

#### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we offered to assist small entities in understanding this rule

so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### D. Collection of Information

This rule calls for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for preparing and reporting for the development of a CSM, revising a CSM, notification of other hazardous conditions, and notification of lost or jettisoned cargo.

This collection of information applies to rulemaking procedures regarding CSMs. Specific areas covered in this information collection include 33 CFR Part 97, "Cargo Securing Manuals;" 33 CFR Part 160, "Ports and Waterways Safety-General;" and 46 CFR Part 97, "Operations." This rule will align the CFR with SOLAS.

TITLE: Cargo Securing Manuals

OMB CONTROL NUMBER: 1625-0122

**SUMMARY OF COLLECTION OF INFORMATION:** The rule will add a new part 97, “Cargo Securing Manuals” to chapter 33 of the CFR. The collection of information burden for CSMs derives from one of these three events:

- A SOLAS container vessel built after the rule becomes effective will need to develop and implement a CSM. The new vessel will need an approved CSM.
- If a vessel changes its type, the CSM must be revised. An example of a type change is when a general break-bulk carrier is modified to become a containership.
- If an existing vessel either changes 15 percent of its cargo securing systems or more than 15 percent of its portable securing devices, the CSM must be revised.

Additionally, this interim rule will impose burdens for the notification of hazardous conditions. Currently, these notifications are made via VHS radio, satellite radio, cell phones, and other forms of electronic communication. The rule specifically allows for electronic communications, and we anticipate this will continue to be how the notifications are transmitted.

**NEED FOR INFORMATION:** Vessel owners or operators need to develop and implement CSMs to fulfill international safety standards established by SOLAS. The Coast Guard needs timely information on hazardous conditions to carry out its missions relating to protecting vessels, their crews and passengers, and the environment.

**PROPOSED USE OF INFORMATION:** For new and modified CSMs, Coast Guard-authorized third-party organizations will review these CSMs and, if they are found to be acceptable, approve them. The Coast Guard will use the information from the notification of hazardous conditions to inform other vessel operators or waterway users of the situation and initiate any needed measures to reduce or eliminate the hazard. These

actions will lead to a reduction of vessel casualties and pollution.

DESCRIPTION OF RESPONDENTS: There are three groups of respondents impacted by this interim rule:

- Owners or operators of U.S.-flagged vessels that will need to submit new or revised CSMs to the recognized classification societies.
- Recognized classification societies and other approved third-party organizations that will review the CSMs on behalf of the Coast Guard.
- The operators of vessels that will be required to report hazardous conditions.

NUMBER OF RESPONDENTS: We estimate that there will be 276 respondents affected annually by the CSM requirements. The total is divided into these three classes: 1) 83 for new CSMs; 2) 9 for revisions to existing CSMs; and 3) 184 notifications of hazardous conditions, which include lost or jettisoned cargo and other incidents. Table 28 describes the calculations for developing the estimates of each requirement relating to the CSM plans.

**Table 28: Estimates of Number of Respondents**

Class	Requirement	Description	Count	Total
CSM	Develop CSM, new vessel	83 in Year 1	83	
	Revise CSM, change in vessel type	MISLE data shows none of the affected vessels have changed vessel type from 2001-2012	0	
	Revise CSM, replace CSM systems or equipment	Annual rate of 11.3% from information supplied by an approved organization. Applied to U.S. population (see Table 3), (83 x 11.3%)	9	
CSM Total				92
Notifications	Notifications of hazardous condition	From MISLE, average of 2009-2011 notifications	180	
	Notifications of lost or jettisoned	U.S. notifications, Table 8, year 10	4	

	cargo			
	Notifications Total			184
Grand Total				276

**FREQUENCY OF RESPONSE:** A CSM is valid indefinitely, provided it does not meet any of the conditions for a revision. The reporting of hazardous conditions occurs as needed. In the subsequent “Number of Respondents” section, we present annual estimates of the reports.

**BURDEN OF RESPONSE:** The burden hours per requirement is estimated and shown below in Table 29.

**Table 29: Annual Burden Hours Per Request**

Requirement	Hours	Notes
Develop new CSM	48	8 hours to survey the vessel and 40 hours to draft the CSM
Revise CSM—change in vessel type	48	8 hours to survey the vessel and 40 hours to draft the CSM
Revise CSM—change in cargo securing systems or equipment	20	20 hours to revise the existing CSM
Notification of hazardous condition	0.25	0.25 hours for vessel crew to prepare and transmit the notice
Notification of lost of jettisoned cargo	0.25	0.25 hours for vessel crew to prepare and transmit the notice

**ESTIMATED TOTAL ANNUAL BURDEN:** We estimate that the total annual burden to industry will be 4,210 hours. Table 30 displays the total burden hours for each request:

**Table 30: Total Annual Burden Hours**

Requirement	Hours
Develop new CSM	3,984
Revise CSM, change in vessel type	0
Revise CSM, change in cargo securing systems or equipment	180
Notification of hazardous condition	45

Notification of lost or jettisoned cargo	1
Total	4,210

Note: Total does not exactly sum due to independent rounding.

REASON FOR CHANGE: This interim rule will require collections of information regarding these two activities: 1) Development or revision of a CSM; and 2) notification of hazardous conditions, including lost or jettisoned cargo.

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that we consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number.

This interim rule will impose new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit these new information collection requirements to OMB for its review. Notice of OMB information collection will be published in a future *Federal Register* notice.

E. Federalism

A rule has implications for federalism under E.O. 13132, Federalism, if it has substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under E.O. 13132 and have determined that it does not have implications for federalism. Our analysis follows.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46



U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke*.)<sup>36</sup>

This rule on cargo securing falls into the category of vessel operation. Because the States may not regulate within this category, the rule is consistent with the principles of federalism and preemption requirements in E.O. 13132.

Additionally, 33 CFR 160.215 is promulgated under the authority of the Ports and Waterways Safety Act, Title I, and therefore, under the principles of *Locke*, preempts any conflicting or similar State regulations.<sup>37</sup> The *Locke* court also held that Congress preempted the field of marine casualty reporting. The Coast Guard does not believe that this proposed amendment to an existing reporting requirement would be preemptive of any existing State or local regulations or requirements. However, any prospective State requirement for information reporting that conflicts with or is similar to the one proposed in this interim rule would be inconsistent with the federalism principles enunciated in *Locke* and therefore would be preempted.

The Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, E.O. 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this

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<sup>36</sup> 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).

<sup>37</sup> See our statement to this effect, 68 FR 9537 at 9543 (Feb. 28, 2003).

interim rule has implications for federalism under E.O. 13132, please contact the person listed in the FOR FURTHER INFORMATION section of this preamble.

F. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule uses technical standards other than voluntary consensus standards. It incorporates two circulars and one resolution adopted by arms of the International Maritime Organization, an international organization under United Nations auspices, of which the United States is a member state. The two circulars describe in detail how a vessel's owner or operator may comply with CSM requirements contained in the International Convention for the Safety of Life at Sea. The resolution provides guidelines for third parties acting on behalf of a government agency like the Coast Guard.

All three documents may be obtained from the IMO using the address given in the regulatory text for new 33 CFR 97.110.

#### M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(d) and under section 6(a) of the "Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" (67 FR 48244, July 23, 2002). This rule involves regulations which concern documentation and equipping of vessels, as well as regulations concerning vessel operation safety standards. An environmental analysis checklist and a categorical exclusion are available in the docket where indicated under ADDRESSES.

List of Subjects

33 CFR Part 97

Cargo stowage and securing, Cargo vessels, Hazardous materials, Incorporation by reference, Reporting and record keeping requirements.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Personally identifiable information, Reporting and recordkeeping requirements, Seamen, Vessels, Waterways.

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR chapter I and 46 CFR part 97 as follows:

Title 33—Navigation and Navigable Waters

1. Add part 97 to subchapter F to read as follows:

**PART 97—RULES FOR THE SAFE OPERATION OF VESSELS, STOWAGE AND SECURING OF CARGOES**

Subpart A —Cargo Securing Manuals

Sec.

97.100 Applicability – Electronic documentation.

97.105 Definitions.

97.110 Incorporation by reference.

97.115 Reporting lost or jettisoned cargo.

97.120 Cargo securing manuals.

97.121-97.199 [Reserved]

97.200 Cargo securing manual (CSM) approval for U.S.-flagged vessels on international voyages.

- 97.205 Requirements for amending an approved cargo securing manual (CSM).
- 97.210 Appeals.
- 97.211-97.299 [Reserved]
- 97.300 Authorized cargo securing manual (CSM) approval authorities.
- 97.305 Requests for authorization to act as cargo securing manual (CSM) approval authority.
- 97.310 Criteria for authorization.
- 97.315 Requirements for authorized approval organizations.
- 97.320 Revocation of authorization.

Subpart B—[Reserved]

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234; Department of Homeland Security Delegation No. 0170.1(92)(a) and (b).

## **PART 97—RULES FOR THE SAFE OPERATION OF VESSELS, STOWAGE AND SECURING OF CARGOES**

### **Subpart A—Cargo Securing Manuals**

#### **§ 97.100 Applicability – Electronic documentation.**

(a) This subpart applies to—

(1) A self-propelled cargo vessel of 500 gross tons or more, on an international voyage, that must comply with Chapter VI/5.6 or Chapter VII/5 of the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS), that does not solely carry liquid or solid cargoes in bulk, and that is either a U.S.-flagged self-propelled cargo vessel, or a foreign-flagged self-propelled cargo vessel that is operating in waters subject to the jurisdiction of the United States;

(2) A U.S.-flagged self-propelled cargo vessel that chooses to have this subpart applied to it by submitting a cargo securing manual for approval in accordance with § 97.200(a)(3);

(3) A foreign-flagged self-propelled cargo vessel of 500 gross tons or more on an international voyage from a country that is not a signatory to SOLAS, that would otherwise be required to comply with Chapter VI/5.6 or Chapter VII/5 of SOLAS, that does not solely carry liquid or solid cargoes in bulk, and that is operating in waters subject to the jurisdiction of the United States; and

(4) Any organization applying to be selected as a cargo securing manual approval authority.

(b) This subpart does not apply to a vessel owned by the Maritime Administration that is part of the Ready Reserve Force or the title of which is vested in the United States and which is used for public purposes only.

(c) Any manual, letter, request, appeal, or ruling required by this subpart may be provided or submitted in electronic form or in printed form.

**§ 97.105 Definitions.**

As used in this subpart—

*Approval authority* means a CSM approval authority, as that term is defined in this section.

*Cargo* means the goods or merchandise conveyed in a vessel, and includes, but is not limited to, cargo that can be measured as a “cargo unit” as that term is used in the International Maritime Organization’s Code of Safe Practice for Cargo Stowage and Securing, 2003 edition: “a vehicle, container, flat, pallet, portable tank, packaged unit, or any other entity, etc., and loading equipment, or any part thereof, which belongs to the ship but is not fixed to the ship...”; but it does not include other vessel equipment or the incidental personal possessions of persons on board the vessel.

*Cargo safe access plan (CSAP)* means a plan included in the cargo securing manual that provides detailed information on safe access for persons engaged in work connected with cargo stowage and securing on ships that are specifically designed and fitted for the purpose of carrying containers.

*Cargo securing manual (CSM)* means an electronic or printed manual developed to meet the requirements of SOLAS and this subpart and that is used by the master of a vessel to properly stow and secure cargoes on the vessel for which it is developed.

*Cargo securing manual approval authority or CSM approval authority* means an organization that meets the requirements of this subpart, and that the Commandant has authorized to conduct certain actions and issue electronic or printed approval letters 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.

*Commandant*, except as otherwise specified, means the Chief, Office of Operating and Environmental Standards, whose address is Commandant (CG-OES), 2703 Martin Luther King, Jr. Avenue, SE., Stop 7509, Washington, DC 20593-7509 and whose telephone number is 202-372-1404.

*Container* means an article of transport equipment described in 49 CFR 450.3.

*Container vessel* means a vessel specifically designed and fitted for the purpose of carrying containers.

*International voyage* means a voyage between a port or place in one country (or its possessions) and a port or place in another country.

**§ 97.110 Incorporation by reference.**



(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection by contacting Mr. Ken Smith of the Coast Guard's Vessel and Facility Operating Standards Division, Commandant (CG-OES-2); telephone 202-372-1413, e-mail Ken.A.Smith@uscg.mil., and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(b) *International Maritime Organization (IMO), Publications Section*, 4 Albert Embankment, London, SE1 7SR, United Kingdom, +44(0)20 7735 7611, <http://www.imo.org>.

(1) MSC.1/Circ.1352, Amendments to the Code of Safe Practice for Cargo Stowage and Securing (CSS Code), June 30, 2010 (Maritime Safety Committee Circular), IBR approved for § 97.120(b).

(2) MSC.1/Circ. 1353/Rev.1, Revised Guidelines for the Preparation of the Cargo Securing Manual, December 15, 2014 (Maritime Safety Committee Circular), IBR approved for § 97.120(a).

(3) Resolution A.739(18) (Res.A.739(18)), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, November 22, 1993 (Assembly Resolution), IBR approved for § 97.310(a).

**§ 97.115 Reporting lost or jettisoned cargo.**

(a) In the event a vessel loses or jettisons at sea any cargo described in paragraph (b) of this section, it must comply with the immediate notification requirements of 33 CFR 160.215, and if the cargo contains hazardous material as defined in paragraph (c) of this section, the vessel must also report it as soon as possible in accordance with 49 CFR 176.48.

(b) The cargo to which this section applies includes any container and any other cargo the loss or jettisoning of which could adversely affect the safety of any vessel, bridge, structure, or shore area or the environmental quality of any port, harbor, or navigable waterway of the United States.

(c) As used in this section, “hazardous material” means a substance or material designated by the Secretary of Transportation as capable of posing an unreasonable risk to health, safety, and property when transported in commerce. The term includes hazardous substances, hazardous wastes, marine pollutants, and elevated temperature materials as defined in 49 CFR 171.8, materials designated as hazardous under the provisions of 49 CFR 172.101, and materials that meet the defining criteria for hazard classes and divisions in 49 CFR part 173.

**§ 97.120 Cargo securing manuals.**

(a) Any vessel to which this subpart applies must have a cargo securing manual (CSM) on board that has been approved by the government of the country whose flag the vessel is entitled to fly; and a CSM approved after June 30, 2010, must, at a minimum, meet the guidelines in MSC.1/Circ. 1353/Rev.1, (incorporated by reference, see 33 CFR 97.110).

(b) A container vessel with a keel laid on or after January 1, 2015, must include a cargo safe access plan that, at a minimum, meets the guidelines in MSC.1/Circ.1352, Annex 14, Guidance on Providing Safe Working Conditions for Securing of Containers on Deck (incorporated by reference, see 33 CFR 97.110).

(c) While operating in waters under the jurisdiction of the United States, the Coast Guard may board any vessel to which this subpart applies to determine that the vessel has the document(s) required by paragraph (a) of this section on board. Any foreign-flagged vessel found not to be in compliance with paragraph (a) of this section may be detained by order of the Captain of the Port at the port or terminal where the noncompliance is found until the COTP determines that the vessel can go to sea without presenting an unreasonable threat of harm to the port, the marine environment, the vessel, or its crew.

**§§ 97.121–97.199 [Reserved]**

**§ 97.200 Cargo securing manual (CSM) approval for U.S.-flagged vessels on international voyages.**

(a) Owners of U.S.-flagged vessels on international voyages must have Cargo Securing Manuals (CSMs) approved in accordance with this part.

(1) An applicant for CSM approval may be the owner or operator of the vessel, or a person acting on the owner or operator's behalf.

(2) The Commandant is responsible for overseeing and managing the review and approval of CSM approval authority applications and providing an up-to-date list of organizations authorized to act under this subpart, which is available at

<http://www.uscg.mil/hq/cg5/cg522/cg5222>, or by requesting it in writing from the Commandant and enclosing a self-addressed, stamped envelope.

(3) The applicant must submit two dated copies of a CSM that meets the requirements of this subpart to a CSM approval authority for review and approval. If any amendments are submitted, they must be dated. The CSM must include a "change page" document to ensure continuous documentation of amendments made and the dates they were completed.

(4) The approval authority will retain one copy of the CSM for its records.

(b) If the approval authority completes the review process and approves the CSM, the approval authority will provide a CSM approval letter on its letterhead, containing—

(1) Date of CSM approval;

(2) A subject line reading: "APPROVAL OF CARGO SECURING MANUAL (AMENDMENT – if applicable) FOR THE M/V \_\_\_\_\_, OFFICIAL NUMBER \_\_\_\_\_";

(3) The following statement: "This is to certify that the Cargo Securing Manual (Amendment – if applicable) dated \_\_\_\_\_ for the M/V \_\_\_\_\_, Official Number \_\_\_\_\_, has been approved on behalf of the United States. The Cargo Securing Manual (Amendment – if applicable) was reviewed for compliance with Maritime Safety Committee Circular 1353 (MSC.1/Circ. 1353/Rev.1) for content, and correctness of the calculations on which the approval is based. This approval letter is to be kept with the Cargo Securing Manual, as proof of compliance with regulations VI/5.6

and VII5 of the 2004 amendments to the International Convention for the Safety of Life at Sea (SOLAS) 1974.";

(4) Signature of the approval authority official responsible for review and approval of the CSM; and

(5) The approval authority's seal or stamp.

(c) If the approval authority completes the review process and disapproves the CSM, the approval authority will provide a letter on its letterhead, containing—

(1) Date of CSM disapproval; and

(2) Explanation of why the CSM was disapproved and what the submitter must do to correct deficiencies.

(d) The submitter of a disapproved CSM may resubmit the CSM with amendments for further review, either to correct deficiencies noted by the approval authority or to expand the CSM to fully meet the requirements of this part.

(e) The original copy of the CSM approval letter must be kept with the approved CSM and its amendments, together with supporting documents and calculations used in granting the approval, on board the vessel for review by Coast Guard personnel upon request.

#### **§ 97.205 Requirements for amending an approved cargo securing manual (CSM).**

Resubmission and re-approval by a CSM approval authority are required after any of the following events occurs:

(a) Reconfiguration of a vessel from one type of cargo carriage to another (e.g., a general break-bulk cargo vessel reconfigured to a container or a roll-on/roll-off vessel).

(b) Reconfiguration or replacement of 15 percent or more of the vessel's fixed cargo securing or tie-down systems with different types of devices or systems.

(c) Replacement of 15 percent or more of the vessel's portable cargo securing devices, with different types of devices for securing the cargo not already used aboard the vessel (e.g., wire lashings replaced with turnbuckles or chains).

**§ 97.210 Appeals.**

(a) A vessel owner or operator, or person acting on their behalf, who disagrees with a decision of a CSM approval authority may submit a written appeal to the approval authority requesting reconsideration of information in dispute. Within 30 days of receiving the appeal, the approval authority must provide the submitter with a final written ruling on the request, with a copy to the Commandant.

(b) A submitter who is dissatisfied with the approval authority's final written ruling may appeal directly to the Commandant. The appeal must be made in writing and include the documentation and supporting evidence the submitter wants to be considered, and may ask the Commandant to stay the effect of the appealed decision while it is under review by the Commandant.

(c) The Commandant will make a decision on the appeal and send a formal response to the submitter and a copy to the approval authority. The Commandant's decision will constitute final agency action on the appeal request.

**§§ 97.211-97.299 [Reserved]**

**§ 97.300 Authorized cargo securing manual (CSM) approval authorities.**

The following organizations are authorized to act on behalf of the United States for the review and approval of CSMs:

(a) Any recognized classification society to which the Coast Guard has delegated issuance of a Cargo Ship Safety Equipment Certificate in accordance with 46 CFR 8.320(b)(4). A list of these organizations can be found at [www.uscg.mil/hq/cg5/cg522/cg5222](http://www.uscg.mil/hq/cg5/cg522/cg5222) in the “Summary of Authorizations” link.

(b) The National Cargo Bureau, Inc., 17 Battery Place, Suite 1232, New York, NY 10004-1110, 212-785-8300, <http://www.natcargo.org>.

**§ 97.305 Requests for authorization to act as cargo securing manual (CSM) approval authority.**

An organization seeking authorization as a CSM approval authority must make a request to the Commandant for authorization. The request must include, in writing, the items listed in this section or as otherwise specified by the Commandant.

(a) A certified copy of the organization’s certificate of incorporation or partnership on file with a U.S. State, including the name and address of the organization, with written statements or documents which show that—

(1) The organization’s owners, managers, and employees are free from influence or control by vessel shipbuilders, owners, operators, lessors, or other related commercial interests as evidenced by past and present business practices;

(2) The organization has demonstrated, through other related work, the capability to competently evaluate CSMs for completeness and sufficiency according to the requirements of SOLAS and this part;

(3) The organization has an acceptable degree of financial security, based on recent audits by certified public accountants over the last 5 years; and

(4) The organization maintains a corporate office in the United States that has adequate resources and staff to support all aspects of CSM review, approval, and recordkeeping.

(b) A listing of the names of the organization's principal executives, with titles, telephone, and telefax numbers.

(c) A written general description of the organization, covering the ownership, managerial structure, and organization components, including any directly affiliated organizations, and their functions utilized for supporting technical services.

(d) A written list of technical services the organization offers.

(e) A written general description of the geographical area the organization serves.

(f) A written general description of the clients the organization is serving, or intends to serve.

(g) A written general description of similar work performed by the organization in the past, noting the amount and extent of such work performed within the previous 3 years.

(h) A written listing of the names of full-time professional staff employed by the organization and available for technical review and approval of CSMs including—

(1) Naval architects and naval engineers, with copies of their professional credentials, college degrees, and specialized training certificates;

(2) Merchant mariners with Coast Guard-issued credentials, with a summary of their working experience on board cargo vessels (including vessel tonnage and types of cargo); and



(3) Written proof of staff competence to perform CSM review and approval, evidenced by detailed summaries of each individual's experience (measured in months) during the past 5 years of evaluating maritime cargo securing systems. Experience summaries must be documented on company letterhead and endorsed by a company executive who has had direct observation of the individual and quality of his or her work product.

(j) A complete description of the organization's internal quality control processes, including written standards used by the organization to ensure consistency in CSM review and approval procedures by qualified professionals.

(k) A description of the organization's training program for assuring continued competency of professional employees performing CSM review and approval who are identified in the application.

(l) Evidence of financial stability over the past 5-year period, such as financial reports completed independently by certified public accountants.

(m) A list of five or more business references, including names, addresses, and telephone numbers of principal executives, who can attest to the organization's competence within the past 2 years.

(n) A statement to the Coast Guard that gives its officials permission to inspect the organization's facilities and records of CSM review and approval on behalf of the United States at any time with reasonable advance notice.

(o) Any additional information the organization deems to be pertinent.

**§ 97.310 Criteria for authorization.**

(a) The Commandant will evaluate the organization's request for authorization and supporting written materials, looking for evidence of—

- (1) The organization's clear assignment of management duties;
- (2) Ethical standards for managers and cargo securing manual (CSM) reviewers;
- (3) Procedures for personnel training, qualification, certification, and re-qualification that are consistent with recognized industry standards;
- (4) Acceptable standards available for the organization's internal auditing and management review;
- (5) Recordkeeping standards for CSM review and approval;
- (6) Methods used to review and certify CSMs;
- (7) Experience and knowledge demonstrating competency to evaluate CSMs for completeness and sufficiency according to the requirements of SOLAS;
- (8) Methods for handling appeals; and
- (9) Overall procedures consistent with Res.A.739(18), (incorporated by reference, see § 97.110).

(b) After a favorable evaluation of the organization's request, the Commandant may arrange to visit the organization's corporate and port offices for an on-site evaluation of operations.

(c) When a request is approved, the organization and the Coast Guard will enter into the written agreement provided for by 33 CFR 97.315. If the request is not approved, the Commandant will give the organization a written explanation, and the organization may resubmit its request if it corrects any noted deficiencies.

**§ 97.315 Requirements for authorized approval organizations.**

Approved organizations will enter into a written agreement with the Coast Guard that specifies—

- (a) The period the authorization is valid;
  - (b) Which duties and responsibilities the organization may perform and what approval letters it may issue on behalf of the U.S.;
  - (c) Reports and information the organization must send to the Commandant;
  - (d) Actions the organization must take to renew the agreement when it expires;
- and
- (e) Actions the organization must take if the Commandant revokes authorization pursuant to 33 CFR 97.320.

**§ 97.320 Revocation of authorization.**

The Commandant may revoke a cargo securing manual (CSM) approval authority's authorization and remove it from the list of CSM approval authorities if it fails to maintain acceptable standards. For the purposes of 46 CFR subpart 1.03, such a revocation would be treated as involving the recognition of a classification society and could be appealed pursuant to 46 CFR 1.03-15(h)(4). Upon revocation, the former approval authority must send written notice to each vessel owner whose CSM it approved. The notice must include the current list of CSM approval authorities and state—

- (a) That its authorization as a CSM approval authority has been revoked;
- (b) The Coast Guard's explanation for the revocation; and

(c) That the vessel's CSM remains valid as long as amendments have not been completed which require it to be re-approved pursuant to 33 CFR 97.200 or 97.205.

**Subpart B—[Reserved]**

**PART 160—PORTS AND WATERWAYS SAFETY- GENERAL**

2. The authority citation for part 160 continues to read as follows:

**Authority:** 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

3. Revise § 160.215 to read as follows:

**§ 160.215 Notice of hazardous conditions.**

(a) Whenever there is a hazardous condition either on board a vessel or caused by a vessel or its operation, the owner, agent, master, operator, or person in charge must immediately notify the nearest Coast Guard Sector Office or Group Office, and in addition submit any report required by 46 CFR 4.05-10.

(b) When the hazardous condition involves cargo loss or jettisoning as described in 33 CFR 97.115, the notification required by paragraph (a) of this section must include—

(1) What was lost, including a description of cargo, substances involved, and types of packages;

(2) How many were lost, including the number of packages and quantity of substances they represent;

(3) When the incident occurred, including the time of the incident or period of time over which the incident occurred;

(4) Where the incident occurred, including the exact or estimated location of the incident, the route the ship was taking, and the weather (wind and sea) conditions at the time or approximate time of the incident; and

(5) How the incident occurred, including the circumstances of the incident, the type of securing equipment that was used, and any other material failures that may have contributed to the incident.

## **Title 46—Shipping**

### **PART 97—OPERATIONS**

3. The authority citation for part 97 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 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; Department of Homeland Security Delegation No. 0170.1.

4. Add § 97.12-10 to read as follows:

#### **§ 97.12-10 Cargo securing manuals.**

Each U.S.-flagged vessel that must comply with Chapter VI/5.6 or Chapter VII/5 of the International Convention for the Safety of Life at Sea, 1974 as amended must have on board a cargo securing manual that meets the requirements of 33 CFR part 97.

Dated: April 28, 2016

J.G. Lantz,  
Director of Commercial Regulations and Standards,  
U.S. Coast Guard.  
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