

Chapter 317-31 WAC

CARGO AND PASSENGER VESSELS—SUBSTANTIAL RISK

WAC

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WAC 317-31-010 Purpose. This chapter implements the cargo and passenger vessel screening and boarding program under RCW 88.46.050 to:

- (1) Protect the state's natural resources;
- (2) Provide for safe marine transportation in state waters; and
- (3) Determine whether cargo and passenger vessels entering or operating in state waters pose a substantial risk of harm to the public health and safety and to the environment.

[Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-010, filed 6/5/96, effective 7/6/96.]

WAC 317-31-020 Application. Owners and operators of cargo and passenger vessels entering or operating in state waters shall comply with the provisions of this chapter.

[Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-020, filed 6/5/96, effective 7/6/96.]

WAC 317-31-030 Definitions. Unless the context clearly requires otherwise, the definitions in chapter 317-05 WAC and the following apply to this chapter.

- (1) "Boarding checklist" means a checklist used by vessel inspectors from the office as a guideline to determine the risk a vessel poses to the public health and safety and the environment.
- (2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred gross tons or more, including but not limited to, fishing vessels and freighters.
- (3) "Event" means a:
 - (a) Collision, allision or grounding;

(b) Near-miss incident in which a pilot, master, or other person in charge of navigating a vessel successfully takes action of a nonroutine nature to avoid a collision with another ship, structure, or aid to navigation, or grounding of the vessel, or damage to the environment;

(c) Marine casualties described in 46 C.F.R. sec. 4.05-1, except subsections (a)(5), (a)(6) and (b), regardless of vessel type, or nation of registry;

(d) Disabled vessel due to an accidental or intentional grounding, failure of the propulsion or primary steering systems, failure of a component or control system that reduces the vessel's maneuverability, or fire, flood, or other incident that affects the vessel's seaworthiness or fitness for service;
OR

(e) Spills of oil into state waters.

(4) "Fishing vessel" means a vessel engaged in the commercial catching, harvesting or processing of fish, or in tendering to or from vessels that catch, harvest or process fish.

(5) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(6) "Potential risk" means the potential for harm to public health and welfare and the environment posed by a vessel as calculated through vessel screening.

(7) "Screening" means a process of determining a vessel's potential risk based on historical factors that are risk predictors.

(8) "State waters" means the navigable waters of the state.

(9) "Substantial risk" means a vessel falls below accepted industry standards to a degree that the vessel's continued operation seriously threatens the public health and safety and the environment.

[Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-030, filed 6/5/96, effective 7/6/96.]

PART 1 VESSEL SCREENING

WAC 317-31-100 Vessel screening. (1) The office may screen any cargo or passenger vessel, except fishing vessels and vessels subject to chapter 317-21 WAC, entering or operating in state waters to determine a vessel's potential risk based on vessel information collected by the office. The office may collect information from any source, including the owner and operator, other public agencies, or by inspection. A vessel's potential risk is based on vessel information relating to factors that are risk predictors and that include, but are not limited to:

- (a) Vessel age;
- (b) Vessel type;
- (c) Redundancy of mechanical, navigational, and electrical generation systems;

- (d) Country of registry (flag);
 - (e) Classification society;
 - (f) Owner;
 - (g) Presence of a state-licensed pilot while in state waters;
 - (h) Changes in ownership, country of registry, or classification society;
 - (i) History of violations of international, federal, and state laws and regulations;
 - (j) History of marine casualties; and
 - (k) Key personnel history.
- (2) The risk factors are arranged in a matrix and assigned a risk weight according to a factor's impact on safe marine transportation. The greater impact a factor has results in a higher risk weight. Risk weights are based on opinions of expert mariners experienced in marine transportation in state waters and data supplied by the office's vessel boarding program. Vessel information is evaluated through the matrix to calculate a vessel's potential risk.

[Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-100, filed 6/5/96, effective 7/6/96.]

WAC 317-31-110 Advance notice of entry. (1) A cargo or passenger vessel owner or operator shall submit a notice of entry to the office by telefax or telephone at least twenty-four hours before the vessel enters state waters. An owner or operator of a vessel in intrastate operation is exempt from this provision if in compliance with WAC 317-31-120.

- (2) The advance notice of entry must provide:
 - (a) The vessel's name, country of registry, gross tonnage, call sign, and official number of the vessel;
 - (b) The name and telephone number of the vessel's local representative or agent;
 - (c) The estimated date, time, and point of entry into state waters by the vessel;
 - (d) Intended berths or anchorages in Washington;
 - (e) Last and next port of call;
 - (f) The amount and type of bunkers, if any, that will be transferred;
 - (g) The type of cargo, if any, that will be transferred;
 - (h) A safety report if required under WAC 317-31-130; and

(i) Identification of the contingency plan covering the vessel under Washington law and chapter 317-10 WAC.

(3) In addition to providing the information in subsection (2) of this section, an owner or operator of a cargo or passenger vessel carrying dangerous cargo in bulk, defined in 33 C.F.R. section 160.203, shall submit with its notice of entry the following information:

- (a) The name and quantity of the dangerous cargo carried in bulk;
 - (b) The location of the vessel at the time the report is submitted; and
 - (c) The stowage location of the dangerous cargo.
- (4) If an owner or operator is unable to provide notice at least twenty-four hours prior to arrival as required by subsection (1) of this section, the owner or operator shall give notice to the office as soon as practicable and shall include an explanation for the delay in notifying the office.

(5) Vessels that submit an advance notice of arrival containing all the information required under subsections (2) and

(3) of this section to the U.S. Coast Guard, directly or through the Canada/United States Cooperative Vessel Traffic Service (CVTS), need not provide the notice to the office otherwise required by subsection (1) of this section. However, safety reports required by WAC 317-31-130 or 317-31-140 must be submitted to the office.

[Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-110, filed 6/5/96, effective 7/6/96.]

WAC 317-31-120 Intrastate operation. (1) If a cargo or passenger vessel is underway more than fifty percent of the time in state waters in a calendar year, the vessel's owner or operator shall submit to the office a written schedule of the vessel's typical operations before operating the vessel in state waters.

(2) The written schedule must identify the:

- (a) Vessel's name, size (including gross tonnage, length overall, beam, and maximum anticipated draft), type, call sign, and official number;
- (b) Name, mailing address, telefax number, and telephone number for immediate contact of the owner or operator;
- (c) Vessel's maximum fuel oil capacity in barrels, average quantity of fuel oil carried, type of fuel oil carried, usual place and schedule for bunkering;
- (d) Typical routes served by the vessel;
- (e) Usual or typical schedule of the vessel; and
- (f) Cargo(s) carried and capacity.

(3) An owner or operator providing a schedule under this section is excused from notice requirements under WAC 317-31-110.

[Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-120, filed 6/5/96, effective 7/6/96.]

WAC 317-31-130 Safety reports. (1) The owners or operators of cargo and passenger vessels shall submit a safety report to the office that indicates the existence of any of the following vessel conditions:

- (a) Any abnormality or malfunction of any steering, propulsion or safety systems, or navigation systems required by federal or international law or regulation;
- (b) A breach of the hull or the integrity of a cargo or bunker tank that causes or that may reasonably be expected to cause an oil spill or loss of stability;
- (c) Damage from a fire or explosion;
- (d) An incomplete engineering or deck complement under United States law or regulation or under the requirements of the vessel's country of registry; or
- (e) Any condition that could adversely affect the safety of a vessel, bridge, structure, shore area, or the environment.

(2) The safety report must describe the condition and state the steps taken, being taken, or planned to correct or compensate for the condition.

(3) Safety reports should be submitted to the office at least twenty-four hours before the vessel enters state waters, or immediately on request by the office.

[Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-130, filed 6/5/96, effective 7/6/96.]

WAC 317-31-140 Safety reports after notice of entry.

If a condition described in WAC 317-31-130(1) arises after a notice of entry or notice of intrastate operation is submitted, the owner or operator shall immediately notify the office of the condition by telefax or telephone. A written safety report meeting the requirements of WAC 317-31-130 must be submitted to the office no later than forty-eight hours after notice of the condition is made.

[Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-140, filed 6/5/96, effective 7/6/96.]

PART 2 VESSEL BOARDING

WAC 317-31-200 Accepted industry standards.

Accepted industry standards are those standards established under WAC 317-31-220 for cargo and passenger vessels, or WAC 317-31-230 for fishing vessels, and applicable requirements of the following international conventions and federal regulations:

- (1) The International Convention for the Safety of Life at Sea, 1974 (SOLAS);
- (2) The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW);
- (3) The International Convention for Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78);
- (4) The International Labor Organization, Convention Concerning Minimum Standards in Merchant Ships, convention number 147 (ILO 147);
- (5) Provisions of chapter 33 of the Code of Federal Regulations including:
 - (a) Part 26 (Vessel bridge-to-bridge radiotelephone regulations);
 - (b) Part 70 (Interference with or damage to aids to navigation);
 - (c) Subchapter D (International Navigation Rules);
 - (d) Subchapter E (Inland Navigation Rules);
 - (e) Part 95 (Operating a vessel while intoxicated);
 - (f) [CFR] Subchapter M (Marine Pollution Financial Responsibility and Compensation);
 - (g) Subchapter O (Pollution);
 - (h) Subchapter P (Ports and Waterways Safety); and
 - (6) Provisions of chapter 46 of the Code of Federal Regulations including:
 - (a) Part 4 (Marine Casualties and Investigations);
 - (b) Subchapter B (Merchant Marine Officers and Seamen);
 - (c) Subchapter C (Uninspected Vessels);
 - (d) Subchapter D (Tank Vessels);
 - (e) Subchapter E (Load Lines);
 - (f) Subchapter F (Marine Engineering);
 - (g) Subchapter G (Documentation and Measurement of Vessels);
 - (h) Subchapter H (Passenger Vessels);
 - (i) Subchapter I (Cargo and Miscellaneous Vessels);
 - (j) Subchapter J (Electrical Engineering);
 - (k) Subchapter N (Dangerous Cargoes);
 - (l) Subchapter O (Certain Bulk Dangerous Cargoes);

- (m) Subchapter Q (Equipment, Construction and Materials: Specification[s] and Approval);
- (n) Subchapter S (Subdivision and Stability); and
- (o) Part 197, subpart C (Benzene).

[Statutory Authority: RCW 43.211.030. 97-10-097, § 317-31-200, filed 5/7/97, effective 6/7/97. Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-200, filed 6/5/96, effective 7/6/96.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 317-31-210 Determination of substantial risk.

(1) The office shall determine whether a vessel poses a substantial risk after boarding and inspecting the vessel during its scheduled stay in port, or upon notice of any condition on board that poses a substantial risk of harm to the public health and safety and the environment. The office shall determine substantial risk based on the condition of the vessel and crew, and the professional judgment of its inspectors.

(2) The office shall board each fishing vessel at least once every two years.

(3) The office may not board vessels subject to chapter 317-21 WAC for purposes of making a substantial risk determination.

(4) Vessel inspections involve evaluation of the following:

- (a) Documented compliance with applicable federal laws and regulations, and international maritime conventions;
- (b) Vessel crewing and personnel policies and practices that ensure compliance with the vessel's Safe Manning Certificate or Certificate of Inspection, and that address language capabilities, work hours, health, and training;
- (c) Safety and environmental management policies and practices that address vessel and personnel safety, pollution prevention, management oversight, preventive maintenance, and inspections and surveys;
- (d) Vessel operating policies and practices for bridge operations and navigation, ground tackle procedures, emergency preparedness;
- (e) Engineering policies and practices for maintaining machinery, organization, and operating procedures; and
- (f) Condition of engineering and deck spaces including safety and lifesaving equipment.

(5) Vessel inspectors use a boarding checklist that incorporates accepted industry standards to gather information to guide vessel inspectors in making determinations of substantial risk. Vessel owners and operators may receive a copy of a boarding checklist prior to their vessel entering state waters by submitting a request by mail or telefax to the following address:

Washington State Office of Marine Safety
PO Box 42407
Olympia, Washington 98504-2407
USA
Telefax: 1-800-664-9184

[Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-210, filed 6/5/96, effective 7/6/96.]

WAC 317-31-220 Modification of accepted industry standards. (1) This section establishes a process for modify-

ing accepted industry standards as established by the advisory group on cargo and passenger vessel substantial risk criteria and noticed in the *Washington State Register*, No. 96-03-082. The purpose of this section is to establish a process that results in enforceable standards while affording vessel owners and operators substantial input and notice.

(2) The vessel inspection advisory council is hereby established. The council's mission is to make recommendations to the office every two years, if necessary, concerning accepted industry standards for cargo and passenger vessels. The office shall review the council's recommendations and publish in the state register proposed standards. After the date of publication, the office shall allow thirty days for public comment. After consideration of council recommendations and public comment, the office shall adopt the proposed industry standards by publication of a notice of adoption and availability of the standards in the state register.

(3) Council members and their replacements shall be appointed by the office and serve a term of two years. The council chair shall be appointed by the office. Each council member may designate one alternate who may exercise that member's vote. The office shall invite the U.S. Coast Guard to participate as a nonvoting advisor to the council. The council shall comprise at least fifteen members who represent the following interests:

- (a) Classification societies;
- (b) Commercial fishing vessels;
- (c) Environmental organizations;
- (d) Maritime labor organizations;
- (e) Maritime trade associations;
- (f) Oregon state department of environmental quality;
- (g) Native American tribes;
- (h) Cargo vessel owners;
- (i) Cargo vessel operators;
- (j) Cruise ship owners;
- (k) Cruise ship operators;
- (l) Washington state ferry system;
- (m) Washington state department of ecology;
- (n) Washington state office of marine safety;
- (o) Washington state pilots;
- (p) Oregon state pilots;
- (q) Washington state public ports;
- (r) Public agencies responsible for regulating natural resources;

- (s) Marine education and training; and
- (t) The public at large.

(4) A meeting of the council may be held fourteen days after the notice of the meeting is published in the state register. The meeting notice shall state the date, time, and place of the meeting, and the names of the organizations represented. Meetings of the council may be convened either by the office or the council's chair. At the first meeting of the council, the office shall present a compilation of boarding results under the boarding checklist for the council's review.

(5) The office shall provide staff and administrative support for the council. The office shall also maintain minutes, public comments, boarding results, and other council records in a file available to the public.

[Statutory Authority: RCW 43.211.030, 97-10-097, § 317-31-220, filed 5/7/97, effective 6/7/97. Statutory Authority: RCW 88.46.050 and 43.211-030, 96-12-077, § 317-31-220, filed 6/5/96, effective 7/6/96.]

WAC 317-31-230 Modification of accepted industry standards for fishing vessels. (1) This provision establishes a process for establishing and modifying accepted industry standards for fishing vessels. The purpose of this section is to establish a process that results in enforceable standards while affording vessels owners and operators substantial input and notice.

(2) The fishing vessel inspection advisory council is hereby established. The council shall make recommendations based on international and federal laws and regulations applicable to fishing vessels, and on the actual practices of the Washington-based fishing industry as revealed in the boarding results presented by the office. The council may recommend higher standards than the actual practices of the Washington-based fishing industry and those in applicable international and federal laws and regulations only where reasonably necessary to protect public health and safety, and the environment. The office shall review the council's recommendations and publish in the state register proposed standards. After the date of publication, the office shall allow thirty days for public comment. After consideration of council recommendations and public comment, the office shall adopt the proposed industry standards by publication of a notice of adoption and availability of the standards in the state register.

(3) Council members and their replacements shall be appointed by the office and serve a term of two years. The council chair shall be appointed by the office. Each council member may designate one alternate who may exercise that member's vote. The office shall invite the U.S. Coast Guard to participate as a nonvoting advisor to the council. The council shall comprise at least six members who represent the following interests:

- (a) Commercial fishing vessels;
- (b) Commercial fish processing vessels;
- (c) Environmental organizations;
- (d) Native American tribes;
- (e) Washington state department of ecology;
- (f) Washington state office of marine safety; and
- (g) The public at large.

(4) A meeting of the council may be held fourteen days after the notice of the meeting is published in the state register. The meeting notice shall state the date, time, and place of the meeting, and the names of the organizations represented. Meetings of the council may be convened either by the office or the council's chair. At the first meeting of the council, the office shall present a compilation of boarding results under the boarding checklist for the council's review.

(5) The office shall provide staff and administrative support for the council. The office shall also maintain council minutes, public comment, boarding results, and other council records in a file available to the public.

(6) Until the council has established accepted industry standards under this section, the office shall use an interim standard to determine substantial risk for fishing vessels under WAC 317-31-210. The office will board fishing vessels as provided in WAC 317-31-210(2) using a boarding checklist developed through agreement with a representative of the fishing industry as published in the *Washington State Register*, No. 95-06-063.

[Statutory Authority: RCW 43.211.030. 97-10-097, § 317-31-230, filed 5/7/97, effective 6/7/97. Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-230, filed 6/5/96, effective 7/6/96.]

WAC 317-31-240 Event reports. (1) The owner or operator of a cargo, passenger, or fishing vessel that experiences an event in state waters shall submit a report to the office immediately on request or, if not requested, no later than thirty days after the date of the event. Each report must contain:

- (a) The date, time, and location of the event;
- (b) The weather conditions at the time of the event;
- (c) The vessel operations underway at the time;
- (d) The identity of any facilities or other vessels involved, or both;
- (e) The type and amount of any oil spilled, and the estimated amount recovered;
- (f) A list of any government agencies to which the event was reported;
- (g) A brief analysis of any known causes and contributing factors; and
- (h) A description of measures taken to prevent a reoccurrence of the event including changes to operating or maintenance procedures, personnel policies, vessel crew and organization, and the vessel's technology.

(2) A copy of the report submitted to the U.S. Coast Guard under 46 CFR subpart 4.05 will satisfy the requirements of subsection (1) of this section if subsection (1)(a) through (h) of this section are addressed.

(3) The office may investigate reported events for the purpose of identifying policies, procedures, or practices that may pose a substantial risk.

[Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-240, filed 6/5/96, effective 7/6/96.]

WAC 317-31-250 Inspections. (1) Vessel inspectors may board and inspect a cargo or passenger vessel during the vessel's scheduled stay in port that poses a high potential risk under WAC 317-31-100. Vessel inspectors may also board and inspect cargo or passenger vessels the office has reason to believe may pose a substantial risk, or if the office does not have sufficient information to determine potential risk under WAC 317-30-100. The owner or operator shall make the vessel available for inspection on request by the office.

(2) The office may seek more information concerning the vessel from the U.S. Coast Guard or the owner or operator of the vessel, prior to or in lieu of performing an inspection of the vessel.

(3) Any violations of federal or international rules observed will be reported to the U.S. Coast Guard. Inspections will be coordinated with the U.S. Coast Guard to avoid duplication.

[Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-250, filed 6/5/96, effective 7/6/96.]

PART 3 ENFORCEMENT

WAC 317-31-300 Vessels posing a substantial risk. If the office determines that a cargo or passenger vessel poses a substantial risk, the office may:

- (1) Request that the U.S. Coast Guard deny entry; or
- (2) Issue an order under RCW 88.46.070 (2) or (3) that allows the vessel to enter or operate in state waters subject to conditions the office determines necessary to minimize the risk the vessel poses. The conditions may include:
 - (a) Submission of specified information or written material about the vessel and its operations;
 - (b) Tug or spill response vessel escorts;
 - (c) The addition of officers, crew, or licensed pilots;
 - (d) Restricting the vessel's route, or area of operation;
 - (e) Restricting operations in adverse weather, tidal, or current conditions;
 - (f) Restricting bunkering or cargo transfer operations;
 - (g) Placing navigation, communications, or other special equipment on board; and
 - (h) Other conditions, restrictions, or requirements deemed appropriate under the circumstances.

[Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-300, filed 6/5/96, effective 7/6/96.]

WAC 317-31-310 Penalties. A person who violates the provisions of this chapter or orders issued under this chapter, is subject to civil and criminal penalties and procedures under RCW 88.46.080 and 88.46.090.

[Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-310, filed 6/5/96, effective 7/6/96.]

WAC 317-31-900 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

[Statutory Authority: RCW 88.46.050 and 43.211.030. 96-12-077, § 317-31-900, filed 6/5/96, effective 7/6/96.]