



IMO MEMBER STATE AUDIT SCHEME SAFEMED IV Training on the implementation of the III Code

FLAG STATE ACTIVITIES
IMPLEMENTATION &
ENFORCEMENT

Content

- Implementation
- Enforcement

Implementation

III Code, part 2, para. 15 – 17

- ❖ Para. 15 of the code requires flag States to implement policies through the issuance of national legislation and guidance which will assist in the implementation and enforcement of the requirements of all safety and pollution prevention conventions and protocols to which they are party and to assign responsibilities within the Administration
- ❖ Para. 16 requires Flag States to establish resources and processes capable of administering a safety and environmental protection programme
- ❖ Para. 17 addresses safe manning
 - 👉 **In previous audits deficiencies were noted regularly!**

Implementation (cont.)

IMO Code, part 2, para. 15

◆ Implementation and enforcement policy

- ✓ A **policy** defines the principles to ensure consistency in governance and to avoid deviations from standards.

[illegible]

Implementation (cont.)

III Code, part 2, para. 15

What does this mean?

- The international instruments provide for the standards but they do not always provide the necessary guidance needed in order to effectively enforce them
- Example – Requirement to investigate accident – Guidance needed
 - What is a suitably qualified investigator
 - At what intervals training is needed for investigators
 - What are reporting requirements for accidents

Implementation (cont.)

What does this mean?

- Assign responsibilities within the Administration to update and revise any relevant policies adopted, as necessary.
 - ☞ Assign clear responsibility for the instruments where the State is a Party to or intends to become a party or recognizes it by other means (e.g. HSSC)
 - ☞ Analyze the implications for instruments where the State is not a party
 - ☞ Adjust responsibilities and resources according to the needs of actual developments and consider areas of expertise to be developed for new instruments coming into force

Implementation (cont.)

Guidance for the Implementation and Enforcement

Step 1

- Decision to ratify and implement an international Instrument

Step 2

- National legislative process
- Notification

step3

- Provide policies and guidance (incl. interpretations) for implementation and enforcement
- Publication

Step 4

- Information to IMO, owners, ROs and other interested parties

Implementation

III Code, part 2, para. 16 (I)

- A flag State should establish resources and processes capable of administering a safety and environmental protection programme, which, as a minimum, should consist of the following:
 1. Administrative instructions to implement applicable international rules and regulations as well as develop and disseminate any interpretative national regulations that may be needed;
 2. Compliance with the requirements of the applicable international instruments, using an audit and inspection programme, independent of any administrative bodies issuing the required certificates and relevant documentation and/or of any entity which has been delegated authority by the State to issue the required certificates and relevant documentation;

Implementation

III Code, part 2, para. 16 (II)

- A flag State should establish resources and processes capable of administering a safety and environmental protection programme, which, as a minimum, should consist of the following:
 3. STCW
 4. The conduct of investigations into casualties and adequate and timely handling of cases involving ships with identified deficiencies; and
 5. The development, documentation and provision of guidance concerning those requirements found in the relevant international instruments that are to the satisfaction of the Administration

Implementation

What does that mean?

Resources are needed for:

- ✓ Administrative instructions to implement applicable international rules and regulations as well as develop and disseminate any interpretative national regulations that may be needed
 - ✎ Instructions and procedures for staff of the Administration, e.g. QMS instructions
 - ✎ Instructions and information for ship owners
 - ✎ Forms and templates for certificates and survey reports to be used by the Administration and Recognized Organisations
 - ✎ Interpretations of ambiguous regulations such as the application dates for retrofitting requirements
 - ✎ Application of IMO guidelines, e.g. MSC Circular 1206 (Measures to prevent accidents with lifeboats)

Implementation

What does that mean?

Resources are needed for:

- ✓ the development, documentation and provision of guidance concerning those requirements that are to the satisfaction of the Administration, found in relevant mandatory IMO instruments
 - ☞ In various IMO instruments the decision about acceptability of is left to the Administration. Solely in SOLAS this occurs in more than 50 places.
 - ✍ In some cases these requirements are addressed by the rules of classification societies, such that a reference to those rules can be made.
 - ✍ Often industry standards (ISO, IACS) provide acceptance criteria
 - ✍ If no external standards are available or considered acceptable, own criteria should be developed

Implementation

What does that mean?

Flag State Inspection Regime

One of following methods is usually implemented by flag States applying a systematic approach:

1. Each ships of a flag States fleet is visited regularly, e.g. once a year
2. The flag State maintains a fleet ranking and the frequency of Flag State Inspections depends on the ranking
3. Some flags apply a regular scheme but provide for an extraordinary Flag State Inspection in case of poor performance, e.g. following a PSC detention

Implementation

What does that mean?

Flag State Inspection Regime

- ✓ Regardless of the system used, a suitable flag State inspection regime requires:
 - A number of surveyors/auditors commensurate to the size of the fleet
 - Support staff analysing the reports and doing the follow up
 - In case of systems using performance rating a performance monitoring regime has to be implemented

Implementation

What does that mean?

Resources are needed to:

- ✓ Ensure the conduct of investigations into casualties and adequate and timely handling of cases of ships with identified deficiencies
- ✓ Casualty investigations will be discussed in detail later
- ✓ Ships with identified deficiencies means
 - ☞ Deficiencies detected during Flag State Inspections
 - ☞ Deficiencies detected during Port State Control
 - ☞ Deficiencies reported by Recognized Organizations
 - ☞ Deficiencies reported by ships crew
- ✓ Timely handling requires staff commensurate by number and technically qualified to evaluate the incoming reports.
- ✓ For technical decisions experts with a qualification as flag State inspectors are needed

Implementation (cont.)

- STCW Convention – to be guided by the restriction established in the Framework. List of questions included in amendments to STCW Code (resolution MSC.374(93))

Implementation (STCW 1978)

- **Initial communications of Information**

- Has the Party communicated information pursuant to article IV and regulation I/7 If yes, has the Maritime Safety Committee confirmed that the information provided demonstrates that "full and complete effect" is given to the provisions of the STCW Convention?

- **Equivalents**

- Has the Administration retained/adopted any equivalent educational and training arrangements since communicating information pursuant to regulation I/7?
- If yes, have the details of such arrangements been reported to the Secretary - General?

Implementation (STCW 1978)

Recognition of certificates

- Does the Administration recognize certificates issued by other Party in accordance with regulation I/10?
- If yes, has the Party submitted reports on the measures taken to ensure compliance with regulation I/10?

Alternative certification

- Does the Party authorize employment of seafarers holding alternative certificates issued under regulation VII/1 on ships entitled to fly its flag?
- If yes, has a copy of the type of minimum safe manning document issued to such ships been provided to the Secretary-General?

Implementation (STCW 1978)

Communication of information concerning the periodic independent evaluation

- Has the Party communicated its report of independent evaluation Pursuant to regulation I/8?

Communication of information concerning STCW amendments

- Has the Party communicated a report concerning implementation of subsequent mandatory amendments to the STCW Convention and Code?

Implementation (STCW 1978)

Conduct of trials

- Has the Administration authorized ships entitle to fly its flag to participate in trials?
- If yes, have the details of such trials been reported to the Secretary-General (paragraph 4)?, and Have the details of results of the trials been reported to the Secretary-General (paragraph 5)?

Dispensations

- Has the Administration issued any dispensation?
- If yes, are reports related to dispensations issued during each year sent to the Secretary-General?

Implementation (STCW 1978)

Port State control

- Has the Party exercised port State control?
- If yes, have control measures as required under article X been established?

Fatigue prevention

- Has the Administration established measures to enforce the STCW Convention and Code requirements in respect of fatigue prevention?

Implementation (STCW 1978)

Prevention of drug and alcohol abuse

- Has the Administration established measures to enforce STCW Convention and Code requirements for the purpose of preventing drug and alcohol abuse?

Watchkeeping arrangements and principles to be observed

- Has the Administration directed the attention of companies, masters, chief engineer officers and all watchkeeping personnel to the requirements, principles and guidance set out in the STCW Code to ensure that safe continuous watches appropriate to prevailing circumstances and conditions are maintained in all seagoing ships at all times?

Enforcement

Therefore,

To fulfil its international obligations, it is essential for a flag State to establish and maintain an effective control over the ships flying its flag. The need for this control is set out in Article 94 of UNCLOS and implied in the IMO Conventions.

Enforcement (cont.)

Refers to para. 22 - 27 of the III Code

Includes following measures:

1. prohibiting ships flying the flag of the State from sailing until they are in compliance with applicable requirements
2. conducting periodic inspections of its ships in its own ports or, where necessary, in foreign ports
3. ensuring safe manning of ships
4. instituting proceedings, after an investigation, against owners, operators or crews of ships where national laws have been infringed, with application of penalties where appropriate
5. implementing a control and monitoring programme
6. providing appropriate number of qualified personnel to implement and enforce national legislation
7. taking actions after a ship flying the flag of the State has been detailed by PSC

Enforcement (cont.)

Refers to para. 22 - 27 of the III Code

Enforcement powers should be provided in national legislation and authorization given to officers of the competent entity for, inter alia:

- *boarding and inspecting a ship or her equipment*
- *requiring the production of any book, certificate or document relating to any ship or persons on the ship*
- *detaining a ship*
- *requiring a ship to be taken into a dock to survey the hull*

Enforcement (cont.)

Refers to para. 22 - 27 of the III Code

- Enforcement provisions not necessarily rest within maritime laws and regulations
- In some cases, incorporated under civil or criminal law statutes
- Some enforcement actions may rest with another governmental entity that is not directly participating in the audit
- What role, if any, does the maritime authority play in the collection and provision of adequate information to enforcement agencies

Enforcement (cont.)

Prosecution:

1. When breaches of statutory requirements have occurred, it is necessary to consider whether prosecution should take place.
2. Prosecution action will depend on the circumstances and the nature of the breach.

Discussion - actions in implementing and enforcing

Example: MARPOL 73/78

1. Accede to MARPOL 73/78
2. Give effect to Annexes I and II
3. Give effect to optional annexes accepted or given force by national law
4. Prohibit violations
5. Provide sanctions
6. Take proceedings
7. Inform parties concerned
8. Inform IMO

Discussion - actions in implementing and enforcing (cont.)

9. Inspect ships
10. Monitor compliance
11. Avoid undue delay to ships
12. Report on incidents
13. Provide IMO with documents (Article 11)
14. Investigate casualties involving pollution and report findings
15. Ensure provision of adequate reception facilities

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