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U.S. Coast Guard Publishes Final Rule That Increases the Marine Casualty Reporting Thresholds

On March 19, 2018, the U.S. Coast Guard published its long-awaited [final rule](#) on Marine Casualty Reporting Property Damage Thresholds. In what was widely viewed as a common-sense and non-controversial adjustment, the final rule amends the monetary property damage threshold amounts for reporting a marine casualty and serious marine incidents (“SMI”). These amended thresholds ease the reporting burdens for industry stakeholders and also reduce the administrative burden on the U.S. Coast Guard associated with investigating these incidents.

MARINE CASUALTY REPORTING REQUIREMENTS

Generally, when a marine casualty or accident occurs on navigable waters (within 12 nautical miles), or involving a U.S.-flag vessel wherever it is operating, the owner, operator, master, or person in charge of the vessel involved may have an obligation to immediately report it to the U.S. Coast Guard. Not all marine casualties are reportable, as such reporting is dependent on the type of incident, e.g., grounding, allision, loss of propulsion, injury requiring professional medical treatment, or property damage, and whether the damage meets property damage thresholds. U.S. Coast Guard regulations consider a marine casualty to be reportable when it meets distinct criteria, and has therefore developed regulations that define reporting thresholds and the manner of reporting a marine casualty or an SMI, which also requires drug and alcohol testing. *See* 46 CFR Subpart 4.

Reporting a reportable marine casualty effectively requires a two-step process. Such reporting must first be done immediately after addressing resultant safety concerns, and next by submitting a “CG-2692” form to the U.S. Coast Guard within five days. To whom a report must be made may vary by incident, but generally such reports are made to the nearest U.S. Coast Guard Sector office. Generally, the report must include the name and official number of the vessel involved; the name of the vessel’s owner or agent; the nature and circumstances of the casualty; the locality in which it occurred; the nature and extent of injury to persons; and the estimated value of the damage to property. It is generally prudent to report the incident to the U.S. Coast Guard even when in doubt regarding whether an incident is reportable—reports made in an abundance of caution not otherwise required can be amended or withdrawn.

However, since marine casualty reporting monetary thresholds had not been adjusted for inflation since the original regulations were published in the 1980s, reporting obligations had become overly burdensome to industry and government alike, as the monetary thresholds became too low resulting in over-reporting of minor marine casualties. Consequently, reporting requirements conflicted with the original intent of the regulations since the U.S. Coast Guard did not intend to require owners or operators to notify them of casualties involving relatively minor property damage. Now, the final rule appropriately adjusts for inflation by updating the dollar threshold amounts for property damage in 46 CFR 4.03-2(a)(3) and 4.05-1(a)(7), a rulemaking outcome that better realigns reporting requirements with the intent of the regulations.

THE FINAL RULE

Specifically, the final rule amends and increases the reportable marine casualty property damage threshold amount in 46 CFR 4.05-1(a)(7) from \$25,000 to \$75,000. It also changes the SMI property damage threshold in 46 CFR 4.03-2(a)(3) from \$100,000 to \$200,000. Mandatory chemical testing will still be required if the property damage meets the amended monetary threshold amounts of those marine casualties in excess of \$200,000. The amendments enter into effect on April 18, 2018.

This final rule originated from a January 23, 2017 Notice of Proposed Rulemaking on which we previously reported ([Mainbrace, March 2017](#)). Importantly, this final rule affects a wide population in the maritime industry in a positive way, including the owners, agents, masters, operators, or persons in charge of a commercial vessel who are required to notify the U.S. Coast Guard whenever a vessel is involved in a marine casualty and whenever crewmembers are required to complete chemical testing following an SMI. See 46 CFR 4.05-1, 46 CFR 4.06-3.

During the two-month comment period, the U.S. Coast Guard received 45 public comments, primarily from private companies, mariners, and trade associations. The majority of the commenters agreed that the dollar threshold amounts were outdated and too low, and thus this was a relatively non-controversial rulemaking project. The U.S. Coast Guard anticipates the increased thresholds will save the industry money, as well as time, due to the reduction in reporting, recordkeeping, and chemical testing requirements related to marine casualties and SMIs. The U.S. Coast Guard also expects cost savings by reducing the burden it experiences with investigating marine casualties and processing marine casualty forms, and thus allowing a shift of focus to higher consequence incidents.

CONCLUSION AND RECOMMENDATION

This final rule should be viewed as a common-sense and practical rulemaking solution to an issue long viewed by industry as overdue. The threshold increases in the final rule are a rare success story in the current era of de-regulation by the U.S. government. Consequently, industry stakeholders should review the final rule to determine how the new reporting thresholds and chemical testing requirement impact respective operations and revise their policies and procedures accordingly.

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