



# CHAMBER OF SHIPPING OF AMERICA

## MONTHLY REPORT FOR BIMCO

MAY 2017

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**NOTE TO THE READER:** Reference to the Federal Register may be found at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>. Please note new address and format for Federal Register retrieval due to upgrade in US government website.

References to legislation may be found at <http://thomas.loc.gov/> by entering the bill number (HR 802, S 2841) in the "search bill text" block found at the center of the page.

### **Status of Commercial Vessel Discharge Act (CVIDA)**

S. 1129, the Coast Guard Authorization Act of 2017 (which includes CVIDA text as Title VIII), successfully passed out of the Senate Commerce Committee this month. While CVIDA has bi-partisan support, six Democratic Senators voted "no" during this markup. The industry coalition is working with senior leadership in the Senate to address concerns of some Senators to facilitate the movement of this bill to the Senate floor for debate and a floor vote, which could occur as early as the first week of May 2017.

On the House side, Chairman Hunter has introduced the House version of the Coast Guard Authorization Act of 2017 which does not contain CVIDA text. Timing for action in the house (hearing, movement to the floor for debate and vote) is uncertain at this time.

It is expected that the Senate and House bills due to differences between the two bills, will go to conference committee, hopefully in the early summer for reconciliation and final adoption by both bodies. Given CSA and others has worked this issue for over 16 years (8 Congresses), this year's initiative is as close as we have come to enactment of VIDA and we remain optimistic that enactment is likely at some time in 2017. A copy of the bill can be reviewed/downloaded at: <https://www.congress.gov/115/bills/s1129/BILLS-115s1129is.pdf>

### **Customs and Border Protection (CBP) Withdraws Revocation of Rulings Proposal**

Early in May, CBP formally announced that it was withdrawing its proposal to revoke certain past rulings that allowed foreign-flag vessels to transport specific



## CHAMBER OF SHIPPING OF AMERICA

equipment used in the offshore industry from US ports to rigs located on the US Outer Continental shelf. It may be recalled that the Jones Act requires transportation of “goods and merchandise” from one US port or place to another US port or place on a US flag vessel. In the scenario addressed in this proposal, the “goods and merchandise” were particular items used in the repair and maintenance of offshore rigs and prior rulings had agreed that these items could be transported on non-US flag vessels. The proposed revocation of these past rulings would have required US flag vessels for this movement.

Not surprisingly, the proposal was strongly supported by the US offshore supply vessel industry and strongly opposed by the oil and gas lobby and the International Marine Contractors Association.

In announcing its decision, CBP’s Glen Vereb offered no reason for the withdrawal action, other sources have suggested that the decision was influenced by the White House’s Office of Management and Budget. It is unknown at this time as to when or if CBP will take additional action on this issue.

**EPA Request for Comments on Regulatory Reform**  
**(Docket ID Number EPA-HQ-OA-2017-0190 – Evaluation of Existing Regulations (Request for Comment, Federal Register, April 13, 2017, page 17793)).**

CSA has submitted comments to the EPA based on its request for comments for the purpose of evaluating existing regulations for duplicity, complexity and/or inordinate costs to the regulated community. It must be noted that this request follows two listening sessions (one hosted by the Office of Air, the other hosted by the Office of Water) that attracted literally thousands of participants given that this regulatory reform initiative is being conducted across all regulations promulgated by the EPA covering a multitude of sources. CSA’s comments made the following points relative to EPA’s regulatory impact on global shipping:

- 1) **Commerce conducted on marine vessels is critical to the US economy as regards both domestic as well as internationally trade.** A vast majority of US imports and exports are carried on marine vessels of all flags. A significant amount of goods are also carried domestically on the US inland waterways and coastal routes by US flag vessels. The goods transported include packaged and containerized goods as well as dry and wet bulk products including petroleum products, chemicals, coal, ore and agricultural products. The US regulatory structure must take into account the need for a competitive yet environmentally protective marine transportation system to maintain, in



## CHAMBER OF SHIPPING OF AMERICA

the most efficient manner, both international and domestic trade so very critical to the US economy.

- 2) **It is critical that a level playing field be created globally so as not to provide competitive advantage to vessels flying the flag of a particular nation(s).** Currently, the United States imposes a number of more stringent requirements on marine vessels that are engaged in the domestic and international trades. While certainly within the sovereign right of the US to impose, these more stringent requirements make it more costly to do business in the US, including that business which is conducted by US flag vessels engaged in the Jones Act trade. One such example relates to the established Emissions Control Area, which although recognized as an option of the MARPOL Annex VI convention, results in elevated fuel costs for all vessels, regardless of flag, trading in US waters. It should also be noted in this case that foreign flag vessels must utilize the requisite low sulfur fuel only when within 200 nautical miles of the US coastline while US flag vessels trading exclusively in this area must use the low sulfur fuel at all times. This disparity in costs has and will continue to result in realignment of trading patterns at the expense of the domestic fleet and the possible development of short sea shipping routes.
- 3) **The International Maritime Organization (IMO), a UN subsidiary body, regulates shipping across a broad range of issues, both safety and environmental related.** Key to an efficient global transportation system is a clear and consistent set of requirements relating to marine vessel operations to which nations can agree. IMO serves the critical purpose of serving as the forum where nations may identify current issues requiring attention, make proposals to address these issues and ultimately end up with a globally agreed instrument or treaty enforceable under international law and national implementing law and regulations by ratifying nations.
- 4) **The global maritime industry is committed to safe and environmentally responsible operations.** One need only review the past decade of work at IMO to appreciate the wide variety of environmental issues which has been addressed by IMO. And most importantly, these issues remain on the IMO agenda for periodic reviews and potential improvements via amendments to existing treaties where they are deemed necessary and technologically feasible. Subject matter of several of the most recent IMO actions include ballast water, air emissions from ships, fuel oil requirements and quality, antifouling systems, marine debris/garbage and ship recycling.



CHAMBER OF SHIPPING  
OF AMERICA

- 5) **National and/or regionally initiatives which create new or conflicting requirements for vessels calling in a particular port are not in the best interests of the public, the industry or the governmental body implementing these initiatives.** Over the past decade, the global marine industry has seen the development of national, regional or in some cases, sub-national programs which either conflict with existing IMO requirements or are more stringent in application. Obvious examples of this regulatory disconnect include the additional requirements imposed by US states in their 401 certifications filed during the vessel general permit (VGP) process and the agreed upon monitoring, reporting and verification (MRV) program as is being imposed by the European Union (EU).
- 6) **EPA's regulatory oversight over the maritime industry focuses generally, but not exclusively, on air emissions and discharges to the water from marine vessels.** While EPA does oversee other aspects of marine vessel operations, e.g. hazardous waste, ship recycling, its principal impact on the global shipping industry is in the areas of air emissions and discharges to the water.
- 7) **The Clean Air and its implementing regulations establishes multiple requirements for marine vessels including (1) emission standards and certification requirements for (i) Tier 1 and Tier 2 marine diesel engines below 37 kW (40 CFR Part 89), (ii) Tier 1 and Tier 2 marine diesel engines at or above 37 kW (40 CFR Part 94), (iii) Tier 3 and Tier 4 marine diesel engines (40 CFR Part 1042); regulations implementing MARPOL Annex VI including requirements for in-use fuels, marine diesel engines above 130 kW and vessels with these engines (40 CFR Part 1043); sulfur limits for marine diesel fuel (40 CFR Part 80); exhaust emission test procedures for lab and in-field testing (40 CFR Part 1065); and general compliance provisions (40 CFR Part 1068).** The referenced regulations referenced here are the suite of requirements impacting the global maritime industry. Some provisions apply solely to US flag vessels while others apply to all vessels, regardless of flag. While we are not yet in a position to suggest repeal, replacement or modification of these requirements, we strongly suggest that EPA conduct a side by side review of the US regulatory requirements and the current MARPOL Annex VI requirements to identify where these two programs differ and to place a cost estimate on the costs of compliance between these two programs.
- 8) **The Clean Water Act (33 USC 1251 et al) and its implementing regulations applying to the National Pollutant Discharge Elimination System (NPDES) was judicially deemed to be applicable to oceangoing vessels' discharges incidental to the**



CHAMBER OF SHIPPING  
OF AMERICA

**normal operation of a vessel (*Northwest Environmental Advocates; The Ocean Conservancy; Waterkeepers Northern California and The States of New York, Illinois, Michigan, Minnesota, Wisconsin, and the Commonwealth of Pennsylvania vs. United States Environmental Protection Agency (USCA, 9<sup>th</sup> Circuit (2009))* creating conflicts and confusion within the maritime industry by application of the NPDES program to discharges already managed by the US Coast Guard under existing statutes and implementing regulations.**

For more than 30 years since the passage of the Clean Water Act, EPA deemed that discharges incidental to the normal operation of vessels were not covered under the NPDES program. The logic in this interpretation was that the NPDES program was created to provide regulatory oversight for discharges from **FIXED** (stationary) sources and not from mobile sources, this interpretation being consistent with the application of the other permitting programs under the Clean Water Act. After the above referenced court case where the court determined that the NPDES program did, from a judicial perspective, apply to marine vessels, EPA was forced to create a permitting program for the thousands of vessels, regardless of flag which call in US ports annually. The resulting vessel general permit (VGP) creates conflicting requirements, duplicative oversight processes and a paperwork nightmare for both the regulatory and regulated community. In addition, the 401 certification program has resulted in multiple and varying sets of requirements in coastal states which are unreasonable, of questionable necessity and benefit and are arguably unconstitutional under the commerce clause. To be clear, we are not suggesting that these discharges should not be regulated. We are simply opposing the vehicle with which they are regulated e.g. VGP and pointing out the fact that some discharges regulated under the VGP by EPA's empowerment under the Clean Water Act are also regulated by the US Coast Guard under various statutes including the Act to Prevent Pollution from Oil, and The Nonindigenous Aquatic Nuisance Prevention and Control Act (1990) as amended by the National Invasive Species Act (1996). Simply put, we have two very different statutes empowering two different executive branch agencies to establish two arguably different and sometimes conflicting implementing regulation packages for the same discharge e.g. ballast. In this case, our recommendation is for EPA to put its full support behind pending legislation in Congress, the Commercial Vessel Incidental Discharge Act, which would ultimately establish one set of federal regulations applying to discharges currently covered by the VGP and US Coast Guard regulations thus establishing one program under which these discharges are regulated and eliminating the current 5 year churn to reissue a new NPDES permit under the current unsatisfactory program.



## CHAMBER OF SHIPPING OF AMERICA

### **US Coast Guard Receives 6<sup>th</sup> Application for Ballast Water Type Approval**

The US Coast Guard has received its 6<sup>th</sup> application for ballast water type approval from the Erma First FIT Ballast Water Treatment System. The Marine Safety Center will review the application for completeness along with two other pending applications for type approval submitted for the Sunrui BalClor system which utilizes filtration and electrolysis and the Ecochlor system which utilizes filtration and chemical injection.

Current type approved systems and pending type approval applications may be monitored on the USCG's Marine Safety Center's website at [https://www.uscg.mil/hq/msc/docs/BWMS Approval Status.pdf](https://www.uscg.mil/hq/msc/docs/BWMS_Approval_Status.pdf)

### **Cyber- Information on WannaCry Ransomware**

The massive cyber-attack called WannaCry made its way into numerous systems through a vulnerability in Microsoft Windows. It installed ransomware which infects your system by locking your files and computer. A message appeared requesting payment through Bitcoin to unlock and access your files. Microsoft released a patch to fix this vulnerability (link below). It is critical that all Microsoft systems are updated as soon as updates are released. See DHS US-CERT Alert TA17-132A for more detailed information, impacts and prevention. Associate CSA member USMRC notes that unpatched/updated systems is the most common observation in their maritime assessments which would allow this ransomware access to infect.

**Additional resources and the website for the update are below:**

- DHS US-CERT (Computer Emergency Readiness Team) ALERT: [TA17-132A: Indicators Associated With WannaCry Ransomware](#)
- DHS US-CERT ALERT: [TA16-091A on Ransomware](#)
- Microsoft Security Update for this available here: [Security Update for Microsoft Windows SMB Server](#)