



CHAMBER OF SHIPPING OF AMERICA

MONTHLY REPORT FOR BIMCO

SEPTEMBER 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 Jones Act Discussions

In the aftermath of damage to the US Gulf and East coasts from 3 major hurricanes, the issue of waivers to the Jones Act has again become a topic of discussion. As most are aware, the Jones Act requires cargoes loaded in a US port to be discharged in another US port to be carried in US flag vessels. Within the Jones Act is a procedure where a waiver can be requested to carry these cargoes on non-US flag vessels which may be granted if the US government determines that no US flag vessels are available to meet the specific carriage needs in a given situation. Waivers are granted for national security purposes which in the past has included needs related to national emergencies or catastrophes including hurricanes. In the case of two hurricanes (Harvey and Irma), one hitting the Texas Gulf of Mexico coast with the other hitting the West coast of Florida but impacting both the East and West coast of Florida, waivers were granted for the carriage of petroleum products given the relatively rapid reopening of Deepwater ports in this region. In the third instance, Hurricane Maria, which scored a direct hit on Puerto Rico, the waiver situation was a bit more fluid and unpredictable due to the small number of Deepwater ports in Puerto Rico, the relatively slow reopening of ports on the island and quite frankly, politics. The US government assessed the situation on the island and determined that sufficient US flag tonnage was available to meet the needs. The following day, the US government reversed its position and granted a waiver for all types of cargo (not just limited to petroleum products) stating a need to facilitate the transport of humanitarian aid cargoes to the island.

While CSA and US flag carriers servicing these areas do not oppose the granting of a waiver where US flag tonnage is not available in sufficient quantity to meet the needs of the affected region, CSA does object to the granting of the waiver for Puerto Rico for the following reasons. First, US flag carriers committed significant resources to assure that needed cargoes were in place on the island



CHAMBER OF SHIPPING OF AMERICA

prior to the hurricane in as far as possible given the potential for damage to these cargoes from the hurricane. Second, after the hurricane had passed, US flag carriers again positioned themselves to land cargoes on the island as soon as key ports were open. Third, while key ports were opened as soon as possible, the shore based logistics chain and road infrastructure was not operational and at one point over 6000 containers with humanitarian aid cargoes were in the port areas ready for transport to areas in need of these supplies. In summary, the problem in Puerto Rico was not an insufficiency in number of vessels but rather an insufficiency in the shore based infrastructure needed to distribute these cargoes around the island. To the credit of US flag carriers, they continue to work with federal and Puerto Rican emergency management officials to assist in the distribution of these cargoes around the island. As of this writing, there continues to be sufficient US flag capacity to service the island's needs.

Historically, these debates regarding Jones Act waivers, recur regularly after situations as described above. Those who would support total or partial permanent repeal of the Jones Act, use these unfortunate circumstances to try and advance their own agendas. In the case of Puerto Rico, there has been an ongoing debate and some would advocate for removal of Puerto Rico from the application of the Jones Act entirely. This case is no different. Prior to and after the Hurricane Maria event, legislation has been introduced to either repeal the Jones Act in its entirety or to remove the island of Puerto Rico from its scope. While this legislation is not expected to gain the necessary support in the Congress, it is notable that the discussions are again occurring.

The US House of Representatives Coast Guard and Marine Transportation subcommittee will hold a hearing in early October on these issues. CSA will update next month's report with a summary of these deliberations.

US Customs and Border Protection (CBP) Regulatory Reform (Request for Comments)

As part of the Administration's regulatory reform initiative, the US Customs and Border Protection has issued a request for information from interested parties to assist CBP in "identifying existing regulations, paperwork requirements, and other regulatory obligations that can be modified or repealed, consistent with law, to achieve savings of time and money while continuing to achieve CBP's statutory obligations". Comments are due by December 11, 2017. A copy of the request for comments can be found at <https://www.gpo.gov/fdsys/pkg/FR-2017-09-12/pdf/2017-19167.pdf>

CSA intends to submit comments on this request and preliminarily intends to address the following issues:



CHAMBER OF SHIPPING OF AMERICA

- Need for better and clearer guidance from CBP Headquarters to field offices and the regulated community to ensure consistent levels of knowledge and application of CBP policies.
- Need for consistency across the CBP field offices on imposed requirements for similar situations which will be facilitated by implementation of a program outlined in the first bullet above but will also require an acknowledgement that current challenges exist due to the broad discretion given to field office directors which have resulted in these inconsistencies.
- Need for better transparency of CBP policy and regulatory decisions which are currently implemented through policy letters and are not published in the Federal Register. While these policy letters are available on the unwieldy and difficult to manage CBP website, there is no public notification of a change in policy which we will advocate should ideally be published in the Federal Register.
- Need for reconsideration of the 29 day rule relative to the landing pass issued to mariners. Crewmembers on foreign flag ships visiting the US carry a valid passport from their country or origin and a US issued C1/D visa. The holder of the C1/D visa when they first "enter" the US is issued a landing pass valid for 29 days. A new landing pass cannot be issued until the vessel on which the crewmember serves calls in a "foreign port or place" and then returns to the United States. For routine operations, this 29 day period is more than sufficient since the vessel is typically in US ports for a significantly shorter period. However, in some specialized operations and in some operating scenarios (offshore lighterage operations, extended US coastal voyages, repairs, Panama Canal transits, anchored awaiting orders/cargo), vessels are located in the United States for periods exceeding this 29 day period. In such a situation, absent action which results in the granting of parole to crewmembers on these vessels by CBP which extends this 29 day period to some longer period, crewmembers' landing passes expire resulting in either (1) detention of the crewmember aboard vessel or (2) voluntary departure which results in revocation of the crewmembers visa but permits the crew member to leave his/her vessel for repatriation to his/her country of origin. Extensions (parole) of the original 29 day landing pass permits extended stays of the crewmember in the US and maintains the validity of the C1/D visa. While some changes have been achieved relative to offshore lightering operations, the other scenarios noted above have not been resolved. While these requirements are actually imposed by the US State Department regulations, they are enforced by CBP and we believe this is an opportunity to revisit this issue with both agencies.



CHAMBER OF SHIPPING OF AMERICA

Polar Ship Certificate USCG Final Rule

This final rule adds the Polar Ship Certificate to a list of certificates that certain U.S. and foreign-flag ships will need to carry on board if they engage in international voyages in polar waters. The Polar Ship Certificate attests that the vessel has met applicable requirements of SOLAS. Some quick points from the rule:

- No changes were made to the regulatory text. The final rule is the same as proposed in the NPRM.
- U.S.-flagged ships that need this certificate are commercial cargo ships greater than 500 gross tonnage and passenger ships carrying more than 12 passengers, that operate in polar waters as defined by SOLAS chapter XIV while engaged in international voyages.
- USCG recognized class societies will issue the certificate on behalf of the USCG.
- This final rule is effective October 23, 2017.

Link to Federal Register: [Polar Ship Certificate- Fed Reg: 82 Vol 182 p 44108-44119](#)

The Polar Code took effect on January 1, 2017, and applies to all vessels constructed on or after that date. Beginning on January 1, 2018, the Polar Code will apply to existing vessels, based upon the date their SOLAS Certificates were issued.

USCG Policy on Type Approvals Issued to Companies No Longer In Business

As the result of a recent bankruptcy of a ballast water treatment system manufacturer which had received a US type approval for their system(s), the USCG has published guidance on the status of that type approval post-bankruptcy. In essence, the type approval status remains unchanged for its five year term providing it is installed, operated, maintained and repaired according to the terms of the type approval certificate. If the equipment fails to operate and/or parts from the original manufacturer are no longer available, then the equipment is no longer operating under the terms of its type approval and must be replaced. It is also important to note that only the manufacturer listed on the type approval certificate can request renewal after the initial five year period and assuming a manufacturer who is out of business will not seek this renewal, the type approval certificate will be deemed "expired". The guidance document also provides guidance on the situation where another company purchases the original manufacturer and wants to retain type approval which will require action on that company's part in requesting that the type approval certificate be updated to reflect the new company. A copy of the guidance may be reviewed at



CHAMBER OF SHIPPING OF AMERICA

<http://mariners.coastguard.dodlive.mil/2017/09/22/9222017-what-happens-to-coast-guard-type-approval-when-a-manufacturer-goes-out-of-business/>

USCG Plans for 2018 GIUE Exercises

The US Coast Guard has published its fiscal year 2018 requirements for Government Initiated Unannounced Exercises (GIUE). GIUEs are a no-notice exercise required by the National Contingency Plan and are conducted to measure a facility or vessel response plan holder's initial response to a most probable discharge scenario. A vessel which successfully completes a GIUE is exempt from other Coast Guard led GIUE for 36 months. A copy of the summary document is available including a link to the formal "FY18 Government Initiated Unannounced Exercise (GIUE) Requirements" is available at <http://mariners.coastguard.dodlive.mil/2017/09/25/9252017-fy18-requirements-for-govt-initiated-unannounced-exercises/>

USCG NVIC 02-13 Change 1 on Implementing MLC 2006

The USCG released change 1 to NVIC 02-13, Guidance Implementing the Maritime Labour Convention, 2006. The changes are minor and do not introduce new regulations for U.S. operators rather provide explanation and guidance on how the 2014 MLC amendments conform with existing U.S. laws and regulations, collective bargaining agreements, and established industry practices. The U.S. has not ratified the MLC and this NVIC continues to be an important tool for U.S. flag vessels with voluntary MLC compliance and/or trading internationally to countries already parties to the MLC.

The changes in the NVIC incorporate amendments related to financial liability for repatriation of seafarers (MLC Regulation 2.5.2) and financial security relating to ship owners liability in cases of seafarer injury or death (MLC Regulation 4.2.1). Sections changed:

- Statement of Voluntary Compliance-Declaration of Maritime Labour Compliance (SOVC-DMLC) Parts I and II
- Owner/Operator Declaration of Maritime Labour Compliance (NVIC Enclosures (4), (5) and (6) respectively)
- New financial security form letter has been provided in Enclosure (12)

Link to NVIC: [NVIC 02-13 Change 1, Guidance Implementing the Maritime Labour Convention, 2006](#)



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2017 Chamber of Shipping Environmental Achievement Awards Dinner

Wednesday, November 8, 2017

Ronald Reagan Bldg. & International Trade Center
1300 Pennsylvania Ave, NW
Washington, DC 20004

[Dinner Tickets Available by Clicking Here](#)



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