

MONTHLY REPORT for ICS

August 2023

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 the new address and format for Federal Register retrieval due to upgrade in US government website.

References to legislation may be found at <https://www.congress.gov> at the center of the page.

Status of US Congress – Legislative Update

The US Congress has been on summer recess the month of August with Members and staff generally out of contact for this recess. But for the bill reported below, there are no updates on pending legislation noted in our previous monthly reports. We will provide a comprehensive assessment of these bills in our September 2023 monthly update.

Stop Harboring Iranian Petroleum (SHIP) Act – S 1829/HR 3774

Above referenced bills introduced to mandate sanctions to prohibit the direct or indirect flow of revenues from transactions and transportation of petroleum products originating from Iran.

S 1828 Introduced 6/6/23 referred to Committee on Foreign Relations; sponsored by Sen Rubio (R-FL) with 14 co-sponsors (12 Republican/2 Democratic co-sponsors)

HR 3774 Introduced 5/31/23 referred to Committees on Foreign Affairs and Judiciary; sponsored by Rep Lawler (R-NY) with 155 co-sponsors (broad bi-partisan co-sponsors)

Bills are generally identical with the exception of provision in Senate bill which contains provisions which would sanction foreign vessels calling in US for up to 2 years.

Bill Text Analysis:

- Focus on prohibition of activities that will provide direct or indirect revenue streams to Iran.

- Imposition of sanctions on persons/entities that knowingly engage in prohibited activities.
- Covered persons/entities:
 - Owners/operators of a foreign port that permits vessels controlled by OFAC specially designated nationals/blocked persons conducting offloading of petroleum products originating from Iran.
 - Owners/operators of vessels offloads/transport petroleum products originating from Iran.
 - Owners/operators of vessels conducting ship to ship transfers involving petroleum products originating from Iran.
 - Owners/operators of refineries that process, refine or “otherwise deal” with petroleum products originating from Iran.
 - Person/entities related to the above three entities e.g., ports, vessels refineries.
- Sanctions include:
 - Refusal of vessel entry to US port for two years maximum (Senate version only)
 - Blocking/prohibition property transactions in the US
 - Ineligibility for new US visas, admission documents or parole
 - Immediate revocation of existing visas, admission documents or parole
 - Exceptions to the above two requirements include individuals requiring visas/admission documents for access to UN Headquarters in NY, individuals assisting US law enforcement activities and certain importation of goods.
 - Waiver by President for no more than 180 days if deemed vital to national interests after notification to Congress.
 - Regulations to be finalized within 180 days of enactment.
- Report to Congress by Administrator of Energy Information Administration within 120 days of enactment on exports of petroleum products by Iran

CSA Comments on legislative intent/text:

- Difficult to understand why this legislation is needed as the President currently has broad powers in imposing sanctions via the US Department of Treasury, Office of Foreign Asset Control
- Suspect this may be Congressional motivation to force the President to impose these specific sanctions where the criteria is met (political motivation, not substantive)

- Due to differences between the Senate and House version, likely the bills will have to go to conference committee if they are moved out of each body to reconcile the differences in the two texts as proposed.
- No intelligence yet on whether there is sufficient will in either body to move their respective version, but if they both are moved, most likely the House version will become the base bill for negotiations due to the broad bi-partisan support indicated by the 155 co-sponsors.

User Fees for Agricultural Quarantine and Inspection Services
(APHIS/USDA – Proposed Rule)
(88 Federal Register 154 – pgs. 54796-54827)

COMMENTS DUE: October 10, 2023

Proposed rule may be viewed at: <https://www.govinfo.gov/app/details/FR-2023-08-11/2023-17045>

SUMMARY: APHIS (Animal and Plant Health Inspection Services)/USDA (US Department of Agriculture) propose to update the current user fees for inspections and monitoring associated with the agricultural quarantine and inspection services providing to transportation conveyances, including commercial vessels calling in US ports from international ports. The proposed rule also includes new programs to streamline payments and notifications. It is important to recall that Congress has mandated that that APHIS collect user fees in an amount “commensurate with the costs of services” provided by APHIS.

PROPOSED RULE ANALYSIS:

- 1) Services funded by these user fees include inspections of arriving commercial maritime vessels, monitoring phytosanitary treatment and treatment related activities where evidence of infestation is identified, and inspections of cargo, the vessel itself and packaging materials for identification of imports and contaminants, pests, or invasive species.
- 2) Services are provided both by APHIS (USDA) and CBP (Customs and Border Protection)
- 3) 70% of annual costs are associated with CBP’s agricultural inspection activities.
- 4) Proposed user fee increases are allegedly justified due to annual deficit of over \$166 million (costs of providing these services versus user fees collected)
- 5) APHIS previously conducted extensive costing analysis using an Activity-Based Costing (ABC) Model which is now seen as inadequate due to its inability to forecast increased costs associated with the new program and staffing needs and adjust for inflation.

- 6) Updates to the ABC model to reflect previous inadequacies have been implemented to produce estimates for total annual costs compared to expected number of port calls and increased size of vessels resulting in greater time per vessel to conduct the inspections.
- 7) Staff increases of approximately 30% for CBP and 50% for APHIS are expected to meet the inspection needs of both agencies.
- 8) While user fee increases are proposed for all transportation sectors, by far the most significant is the increase proposed for commercial vessels (per port call) which are as follows:
 - o Current - \$825.00
 - o January 1, 2024 - \$3219.29 (400% from current baseline)
 - o October 1, 2024 - \$3302.23
 - o October 1, 2025 - \$3386.20
 - o October 1, 2026 - \$3471.18
 - o October 1, 2027 - \$3557.18 (430% from current baseline)
- 9) Increase in user fees are allegedly justified due to the need to adjust for the significant increase in ship cargo capacity which has increased the workload required to inspect each vessel and its cargo.
- 10) Example used is the increase in size of containerships with total cargo capacity of the global container fleet expanded by more than 63% due to use of megaships which allow more containers to be moved per voyage while at the same time reducing the number of port calls
- 11) Note cost estimates are now based on per port all basis to hourly estimate of time needed to conduct requisite inspections and monitoring/treatment activities.

PROPOSED ACTIONS/RESPONSE TO THIS PROPOSED RULEMAKING:

- CSA intends to submit comments by the October 10, 2023, deadline opposing the significant increase for commercial vessel user fees assessment.
- CSA members and colleagues are urged to submit comments to CSA by close of business October 5, 2023 for incorporation in CSA comment letter with comments sent to kmetcalf@csashipping.org ; members are also urged to submit individual comments to the docket as well
- The primary argument against the significant increase in user fees is based on assumption that all vessel types and cargo quantities have increased in size as per containerships used as the basis for justifying the cost increase.
- Suggest that a base fee per vessel port call be established based on estimated port calls and additional incremental fees be assessed based on vessel size and quantity of cargo carried.
- Suggest differentiation between inspection times needed for container vessels versus bulk cargo vessels (dry and wet) where the latter does not

add significantly to cargo inspection times for larger vessels (versus increased cargo inspection times for container vessels)

- User fee increases should not be adopted until cost analysis of the above suggestion is completed relative to estimated inspection times taking into account vessel size and cargo carried.

Vessels with Installed Engine Power Limiters – Pilot Card Information and Related Issues

As reported in last month's update, MARPOL Annex VI contains requirements for EEXI and CII permitting the installation of Engine Power Limiters (EPLs) or governors to limit the power of the vessel. An EPL is an overridable system while a governor is non-overridable). While it is not expected that use of either option will limit the effectiveness of vessels to navigate safely, the use of EPL override is only allowed for the purpose of securing the safety of the ship and crew. The USCG issued a marine safety bulletin reminding the industry that information contained in the pilot card should reference both the maximum available power with the EPL in line and the maximum available power if the EPL is overridden.

On a related issue, the question has arisen as to whether the EPL can/should be overridden on a preemptive basis in pilotage waters, the wide range of conditions that can be encountered in a short span of time, including traffic density, weather, current, etc. CSA is working with the USCG on determining their perspective on this question, taking into account the time lapse between the point at which the Master/pilot recognizes a need for additional power and the execution of the EPL override. CSA will advise as we learn more from our discussions with USCG.

Status of EPA regulations implementing the Vessel Incidental Discharge Act (VIDA)

As may be recalled, VIDA was enacted in 2018. VIDA required EPA to promulgate regulations on performance standards of the covered discharges by December 2020 which would be followed by USCG promulgation of regulations by December 2022 regarding compliance and enforcement standards. EPA failed to meet the deadline and still has not yet published its final regulations although proposed regulations were published with a request for comments in October 2020. CSA has now learned that EPA expects to publish a notice of supplemental rulemaking in September 2023 which is supposed to provide clarifications on the original proposed rule and discuss additional regulatory options for control of the covered discharges. This is a long overdue and welcome development and CSA will analyze the supplemental notice of proposed rulemaking and provide this analysis to members and international colleagues with an aim to submit comments before the deadline to be determined. EPA continues to state that it

intends to publish the final rule by the fall of 2024. CSA will provide our analysis as soon as possible after the supplemental notice is published.

USCG MSIB 01-23 – Reporting Sexual Misconduct on US Vessels

In February 2023, the USCG published the above referenced marine safety information bulletin (MSIB). While we are including this report in our monthly reports to our international colleagues for information, please note that these requirements only apply to US flagged vessels. The issue of reporting sexual misconduct on US vessels was discussed during recent CSA members' meetings taking into account USCG MSIB 01-23 which can be downloaded at: https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/MSIB/2023/MSIB-01-23_Sexual_Misconduct_Reporting_Requirements.pdf?ver=h0-T-BVDT1vIJEBFGXbpiw%3d%3

Some confusion has been created by that document and post-issuance comments made by USCG on what events are required to be reported to USCG. The CSA member that brought up this issue had also brought the same issue up at recent AWO meetings. Before going directly to USCG, I discussed the issue with AWO and learned that they had already met with USCG and would be shortly meeting with RADM Arguin to discuss the matter further. We agreed that AWO should move forward with that meeting (versus CSA making our own contact with RADM Arguin) and then discuss next steps which AWO and CSA could take together to resolve the issue. This post-meeting discussion is pending.

We learned that USCG is evaluating several options including USCG legal review to create an acceptable definition of "harassment" as well as examining whether a statutory fix would provide the necessary clarification.

Relevant points taken from review of the MSIB are as follows:

- The focus of the MSIB is clearly on SEXUAL misconduct or so it appears. However, in the second line of the second paragraph it states that the reporting requirements are for "any complaint or incident of harassment, sexual harassment, or sexual assault..." Read as is, the text appears to include ALL harassment even though previous discussions with the USCG prior to publication of the MSIB suggested that it was intended to focus only on SEXUAL harassment or assault. The motivation behind publication of the MSIB was the current perception that complaints that have been filed with USCG/MARAD fall into a "black hole" with complainants receiving no feedback from USCG/MARAD on the agencies decision making process regarding their decision to take no action or further action, including the decision to forward the complaint to DOJ.
- The question that still exists is whether the MSIB is intended to include both non-sexual and sexual harassment/misconduct?

- The issue was further compounded by statements made by RADM Arguin that suggested it was intended to apply to ALL misconduct/harassment due to an example he verbally provided to the audience he was addressing.
- If it is intended to cover ALL misconduct/harassment, we believe that the Coast Guard investigative service (CGIS) will be absolutely overwhelmed with complaints which would dilute the focus of CGIS on sexual misconduct/harassment complaints.
- In our review of the MSIB flow chart on page 2, it goes through the process where a complaint is made to CGIS for review/investigation where one of two paths are taken. One path shows the referral to DOJ for further review while the second path shows CGIS notification to the suspension and revocation center of expertise (S&R NCOE).
- What we believe is missing from this flow chart is a path that represents a communication from the USCG back to the complainant about the CGIS decision to take no action (for a variety of reasons, most relating to lack of evidence) or initiate license suspension/revocation proceedings and/or referral to DOJ. While this feedback would not be possible with anonymous complaints, it would be possible and valuable to a complainant that included their personal information. This feedback loop would assist in improving the current perception that complaints are not acted upon by either USCG/MARAD or DOJ.

Recommended action for assuring compliance with MSIB 01-23:

- The text requires reporting by "the responsible entity of a vessel, defined as the owner, master or managing operator to report any complaint or incident of harassment, sexual harassment, or sexual assault to the USCG that violates company policy.
- Thus any complaint meeting the above scope that is received by the company and triggers the company harassment policy (sexual or otherwise) should be reported via the CGIS Tips App and/or the email address CGISTIPS@uscg.mil.
- Complaints may also be reported via the National Command Center at 202.372.2100.
- Providing the report is filed with one or more of the above three methods, this will satisfy the reporting requirements of the US Code section which mandates this reporting (46 US Code 10104(a).

CSA will provide updated information on the much needed clarifications noted above as soon as we receive them from the USCG.

U.S. Maritime Advisory

U.S. Maritime Advisory on the potential vulnerabilities in maritime information technology (IT) and operational technology (OT) system due to foreign companies that manufacture, install, and maintain equipment onboard and in ports. Full Advisory available by clicking the link here:

[U.S. Maritime Advisory 2023-009: Foreign Adversarial Technological, Physical, and Cyber Influence](#)

