

MONTHLY REPORT for ICS

September 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.

Legislative Update

No significant changes except one have occurred relative to pending legislation which we are following, and which have been summarized in previous monthly reports. Updates for all pending bills are as follows:

- American Port Access Privileges Act (HR 1013) – introduced 2/14/23 and referred to House Committee on Transportation and Infrastructure.
- Ocean Shipping Antitrust Enforcement Act (HR 1696) – introduced 3/22/23 and referred to House Committee on Judiciary and House Committee on Transportation and Infrastructure/Subcommittee on USCG and Marine Transportation.
- Ocean Shipping Reform Implementation Act (HR 1836) – introduced 3/28/23 and referred to House Committee on Transportation and Infrastructure/Subcommittee on USCG and Marine Transportation; reported out of subcommittee and committee on 5/23/23; placed on House calendar for debate and vote on 9/26/23. Bill as proposed is intact with additional text included establishing several advisory committees which are charged with advising the Federal Maritime Commission (FMC) on a variety of related issues (National Port Advisory Committee, National Shipper Advisory Committee, National Ocean Carrier Advisory Committee) which will be detailed in the terms of reference for each committee. Additional text was also included to require an annual report of foreign laws and practices (focused on anticompetitive issues), FMC future rulemaking to create a containerized freight index, creation of a data standard for marine freight logistics and a study/report on the operations of the Shanghai Shipping Exchange.
- Clean Shipping Act of 2023 (HR 4024) – introduced 6/12/23 and referred to House Committee on Energy and Commerce/Subcommittee on Environment, Manufacturing and Critical Materials on 6/16/23.
- International Maritime Pollution Accountability Act (S 1920) – introduced 6/8/23, no committee referral to date.
- Stop Harboring Iranian Petroleum (SHIP) Act (S 1829/HR 3774) – Senate bill introduced 6/6/23 and referred to Senate Committee on Foreign

Relations; House bill introduced 5/31/23 and referred to House Committee on Foreign Affairs and House Committee on Judiciary.

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

As noted in last month's update, 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. Comments are due on October 10, 2023, although to date, CSA has received only one set of comments from a CSA member. CSA members and industry colleagues are urged to submit comments to KMetcalf@csashipping.org for inclusion into CSA comments no later than COB 10/6/23.

CSA has put together a summary of observations and draft comments for review which include the following:

Initial impressions on proposed rule

- FACT (Food, Agriculture, Conservation, and Trade) of 1990 as amended in 1996 and 2002 authorizes collection of user fees to cover all costs associated with AQI services and preclearance/preinspection at foreign ports
- FACT Act requires that amount of user fees be "commensurate with the costs of AQI services with respect to the class of persons or entities paying the fees
- AQI program has run an average deficit of over \$166 million annually from 2017-2019
- Assessed costs using a modified ABC (activity-based costing) Model with some modifications to reflect that ABC Model does not factor in costs to address new program and staffing needs or inflation
- Justification for the 400% increase in commercial vessel user fees is based on "significant increase in ship cargo capacity with a focus on the advent of container megaships (18,000 TEUs or more) which take more time to inspect due to the number of containers per vessel
- Proposed adjusted fees reflect a change in the allocation of certain costs within the model away from fee per ship arrival and toward estimated of the workload (FTE hours) it takes to inspect the average ship and its cargo

Suggested CSA position:

- Support some increase in user fees based on the documented deficit in past years and in accordance with the provisions of the FACT Act.
- We believe APHIS/USDA makes a wrong assumption that all vessels, regardless of size, result in an increase in FTE's estimated for large container megaships.
- We would support a base user fee per vessel of \$1650 (100% increase) with an add on fee for specific vessel types where the FTE's are increased due to size of vessel, type of vessel and type of cargo.
- We agree that increased FTE's for container megaships warrant additional charges based on time to inspect the large number of containers aboard.
- Increase in size of containerships and TEUs carried do not justify a similar increase for other vessel types e.g., tankers, bulk carriers where the increase in cargo volumes do not result in increased FTEs for cargo inspection
- Prior to finalization of any increase in user fees, we recommend that FTE assessments be conducted for all vessel types and sizes so that the user fees for each vessel type and size reflect more accurately the actual time required for inspection (e.g., don't assume the increase in FTE's associated with container megaships are the same as FTE's required to inspect other vessel types)
- Current regulations require AQI inspection of commercial vessels of 100 net tons or more. The base fee per vessel should be based on tonnage of vessel inspected and would be more equitable with a fee set for smaller vessels e.g., 100 net tons to 1000 net tons, medium sized vessels of 1000 net tons to 5000 net tons and large vessels over 5000 net tons.
- Additional add on fees to this base fee per vessel port call should reflect the type of cargo carried e.g., containers, bulk liquids, dry bulk, etc. and recognize the inspection times will increase with the amount of cargo carried and the manner in which it is carried e.g., containers versus bulk dry/wet cargoes.
- This graduated fee structure will be best informed with a detailed review of the most current data relating to inspection times for the various vessel types noted above and the cargo type/amount e.g., TEUs for containerships, barrels, or tons of dry/wet liquid cargoes.
- Final user fee decisions should be based on the actual times involved to inspect vessels using the latest data collected by APHIS/USDA.

The proposed rule may be viewed at:

<https://www.govinfo.gov/app/details/FR-2023-08-11/2023-17045>

Overridable Power Limitation (OPL) devices and US pilot association responses

Recently, the USCG in at least two US ports (Houston-Galveston, New Orleans) issued Marine Safety Information Bulletins (MSIBs) reminding vessel owners that the pilot card should be updated to reflect the ship's maximum power (with power limiting devices in line) and the ship's unlimited maximum power (with overridable power limiting devices disengaged). In one case (New Orleans), they also recommend that the pilot card be updated with the procedures for accessing power reserves and the time required for disengaging the ship's power limiting devices in configurations where the power limiting device can be disengaged e.g. engine power limitation (EPL) device requiring an engineer on location at the set screw for adjustment or shaft power limitation (ShaPoli) which normally includes a release button on the bridge and/or engine control room.

The publication of these MSIBs has resulted in discussions within local pilot associations expressing concerns that vessels in pilotage waters may be underpowered and, in some cases, the pilot associations are requiring that engine power limiting devices be disengaged prior to arrival at the pilot station or at least be capable of being overridden immediately upon requires of the pilot. In our view both requests by the pilot associations are impossible in some cases (governor installation which can not be overridden) or impractical in other cases (engine power limitation device utilizing a set screw as described above). The only power limiting device which may be immediately overridden (relatively speaking) is the ShaPoli device described above. In addition, when any power limiting device is overridden, appropriate logbook entries and flag state notifications must be made, and class society will be required to call on the ship to attest that the power limiting device has been reengaged.

CSA has received input from some of its members that operate vessels with power limiting devices that suggest the reserve power that would be released when an overridable power limiting device is disengaged is only the top end of full engine power/sea speed and not at maneuvering speeds. Additional confusion is created by language in one or the pilot association letters which suggest that pilots are confusing the reserve power associated with power limiting devices with load limiting programs or automatic acceleration-limiting programs associated with new engine control systems which do in fact result in slower rpm increase response than older engine control systems, which is unrelated to any type of power limiting devices which may be installed.

CSA has engaged the USCG on this issue with a request that USCG consider publishing clarification on these discussions and ensure a consistent approach to this issue is promulgated across all USCG field offices. We will advise you when further clarification is provided.

In the meantime, CSA welcomes input from any shipping company or national shipping association regarding these issues, especially relating to:

- Guidance from other national Coast Guards/Marine Safety agencies or Pilot Associations, advising what is expected of vessels when transiting pilot waters including location and substantive content of this advice and,
- Any information on the rpm/speeds impacted when an overridable power limitation device is disengaged.

Information may be sent to KMetcalfe@csashipping.org

It is also recommended that vessel Masters discuss this issue during the Master/Pilot Exchange and share information on the types of power limiting devices on their vessel and whether these devices are overridable or not, and if overridable, the time lapse between when the pilot would request reserve power and when it would be available. The ultimate goal is that the Pilot is fully aware of the maneuvering characteristics of a particular vessel and its response to requests for additional power.

One last point that is relevant to these discussions is the requirement that vessels must comply with the IMO Guidelines for Determining Minimum Propulsion Power to Maintain the Manoeuvrability of Ships in Adverse Conditions (MEPC.1/Circ.850/Rev.3) which ensures that even vessels installed with power limitation devices have the minimum propulsion power to ensure safe navigation in all circumstances.

USCG – Navigation and Inspection Circular 01-23 – Guidance for the Voluntary Use of MARPOL Electronic Record Books (ERBs)

The USCG recently published its guidance for the use of ERBs on US flag vessels and non-US flag vessels while operating in US waters. A copy of the NVIC may be viewed at:

<https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/5ps/NVIC/2020/2023/NVIC%2001-23%20-%20Guidance%20for%20Voluntary%20use%20of%20MARPOL%20Electronic%20Record%20Books%20by%20US%20flagged%20vessels.pdf?ver=tEoW5JJAz8-IsZuvssa-9A%3d%3d>

Relevant provisions of the NVIC are as follows:

- ERBs may be used as an alternative method to a hard-copy record book; hard-copy record books may still be used
- ERBs may be used as an alternative to hard-copy record books under MARPOL regulations for the Oil Record Book, Cargo Record book, Garbage Record Book, Ozone Depleting Substances Record Book, Recording of the tier and on/off status of marine diesel engine, Record of Fuel Changeover and the Record Book of Engine

Parameters; references to the specific MARPOL regulation can be found in section 6(a) of the NVIC

- US flag vessels wishing to use an ERB are subject to a two-step process (1) assessing the ERB system for compliance with the IMO guidelines and then (2) the onboard verification and issuance of a "Declaration of MARPOL Electronic Record Book"
- Non-US flag vessels will be subject to port state control inspection to ensure proper documentation is onboard in accordance with flag state documentation consistent with the IMO guidelines
- ERB system manufacturers seeking assessment of ERB systems must comply with the provisions of section 6(b)
- US flag vessels seeking the required "Declaration of MARPOL Electronic Record Book" must comply with the provisions of section 6(c)
- Note that ERB use and maintenance must be integrated into each vessel's Safety Management System as per section 6(d)

Puget Sound Pilotage Rate Increase Results – Final Order

Earlier this year, CSA learned that the Puget Sound Pilots (PSP) were requesting a significant rate increase due, in part, to their position that vessels were at higher risk due to the use of flags of convenience. CSA contacted the Pacific Merchant Shipping Association (PMSA) to offer our assistance and when the rate case came before the UTC (the body that adjudicates pilot rate cases) we were requested to testify focusing on our opposition to the rate increase based on the PSPs argument that widespread use of flags of convenience presented increasing risk and thus justified granting the rate increase. The final order was received in late August and although the PSPs did receive an increase in rates, it was very moderate compared to their initial request.

In rendering their decision, the UTC stated it is ultimately the responsibility of the safety and licensing authority to "determine the appropriate manner of addressing shipping industry practices and the management of risk". The UTC further stated that "it is our role as the rate-setting authority to allow for the recovery of prudently incurred costs in tariff rates and to determine a level of fair compensation". The UTC further stated the "PSP's challenges to shipping industry practices, however, do not appear to be tied to any specific expenses, adjustments, or other costs that would be relevant for our consideration. As PMSA witness Metcalf explains, safety and environmental regulations enforced through port state control programs and flag state control programs are "distinct and unrelated" from tariffs for pilotage services...and are distinct from and unrelated to the individual compensation that pilots receive".

Specific testimony offered by CSA was favorably received by the UTC stating in their order “Finally, we are not persuaded that absolute risks are increasing for PSP member pilots. Metcalf testifies that Costanzo (PSP witness) describes the maritime industry as it was over two decades ago, but that the flag state control program and port state control program help ensure shipping companies meet treaty requirements. Metcalf explains that the risks are not growing but are “changing due in large part to the increased size of vessels”. However, technological advancements, increased use of tug escorts, and other factors help to mitigate the risks posed by increasingly large vessels. Metcalf argues that the report cited by Captain Stoller (another PSP witness) shows that an infinitesimally small percentage of vessel movements result in collisions or other incidents. We come to much the same conclusion that the Commission reached in PSP’s last general rate case, which is that absolute risk is not increasing for pilots in the Puge Sound. We therefore decline to increase (rates), beyond what we have already approved, to account for PSP’s concerns with shipping industry practices.

CSA was honored to work with PMSA in achieving what we believe to be a more rational rate increase than would have otherwise been the case.

Nigerian Income Tax Compliance – Update

Current advice for companies which have received notice are to engage their P&I Clubs and legal counsel with license to practice in Nigeria. CSA appreciates the efforts of the ICS Secretariat in providing updates as the Nigerian government (FIRS) initiates the formation of a technical committee to review the issue and provide clarification on the process/ scope of application and to provide further advise to specific companies that have received notices of overdue taxes.

U.S. Maritime Advisories

U.S. Maritime Advisories below advise on the impact on commercial vessels due to the war in Ukraine and threats in the Persian Gulf, Strait of Hormuz, Sea of Oman, among other areas. Advisory 2023-012 notes that a new system will be sending out these alerts and advisories and to start or continue receiving them, you must click the link and follow the instructions in the Advisory.

Full Advisories are available by clicking the link here:

[U.S. Maritime Advisory 2023-012: New US Maritime Alert and Advisory Subscription Process](#)

[U.S. Maritime Advisory 2023-011: Threats to Commercial Vessels](#)

[U.S. Maritime Advisory 2023-010: Combat Operations-Black Sea and Sea of Azov](#)

