

MONTHLY REPORT for ICS

June 2024

NOTE TO THE READER: Reference to the Federal Register may be found at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>.

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

EPA VIDA Regulations

CSA has been advised that the EPA regulations required by the Vessel Incidental Discharge Act (VIDA) have been forwarded by the EPA Administrator to the Office of Management and Budget (OMB) for final review. Depending on the complexity and length of the rulemaking, this process could take up to 3 months but even with that potential delay, EPA would meet the deadline established in the court's decision in the case filed by environmental NGOs. OMB review is the final step in the rulemaking process and when complete, the final rule will be published in the Federal Register. CSA is monitoring this issue and do our usual analysis when the final rule is published. It should be recalled that the EPA final regulations will not enter into effect until the USCG has published its final rule as required by VIDA.

**Recordkeeping and Reporting Requirements to Document
Environmental Compliance on Certain Commercial Vessels – Request
for Information
(89 Federal Register 111 – pgs. 48515-48517)**

Presumably in advance of publication of the VIDA required USCG regulations in proposed form, the USCG is requesting information on reporting and recordkeeping requirements currently contained in the USCG ballast water regulations (submission of reports to the National Ballast Information Clearing House (NBIC) and the current VGP regulations which requires vessel owners to monitor vessel discharges, retain records necessary to demonstrate compliance and submit an annual report which identifies the regions of the US in which a vessel as operated during the reporting year, details about the vessel/vessel discharges and onboard pollution control devices, details of required sampling and inspections and identification of any instances of noncompliance with the permit requirements. The USCG is asking for information on how these requirements can be streamlined, electronic submission easier than is currently the case and generally made more efficient and thus less time consuming for the industry. Comments are due by July 22 2024. A copy of the Federal Register publication may be viewed at:

<https://www.federalregister.gov/documents/2024/06/07/2024-12572/recordkeeping-and-reporting-requirements-to-document-environmental-compliance-on-certain-commercial>

Previously because these requirements were implemented under two separate agencies and regulations/permits (USCG, EPA), we are hopeful that with the combined responsibilities of both agencies under VIDA, this will allow for consolidation of all recordkeeping and reporting requirements under the VIDA required USCG/EPA regulations.

These reporting and recordkeeping requirements are implemented in a variety of ways specific to a given company's compliance plan, with some being done by shipboard personnel while others are being done by shore staff after receipt of data from shipboard personnel. While CSA intends to submit comments, due to these variations in compliance strategies across companies, it is critical for CSA to receive comments from member companies and specifically from those individuals responsible for compliance with these requirements whether they be shipboard personnel, shore side personnel or some combination of the two (the usual case). The comments most valuable will be from those who are responsible for compliance with these requirements and should include suggestions on how the compliance, recordkeeping and reporting processes can be made more efficient. While CSA staff obviously has never completed any of these reporting or recordkeeping requirements, we offer the following general comments as a basis for our CSA comment submission to which we can add specific cases/suggestions provided by our members.

- All data points required under the current, but separate USCG and EPA regulations should be combined into one set of requirements listing all data points.
- One portal should be created by which all submissions may be uploaded. This will give both agencies access to the information needed to assess compliance within one database.
- Thought should be given as to the appropriate format and programs available to maximize the efficiency of the data submission process in usable form by both submitters and the government agencies e.g., USCG and EPA.

The reader is directed to the specific questions posed in this document beginning at the bottom of page 48516 and running through the end of the document at page 48517. The questions are broken down into 4 general categories (1) General question (2) Information collection by vessel owner/operator for submission to the USCG, EPA or both (3) Compiling data and preparing reports by vessel owner/operator for submission to the USCG, EPA or both and (4) Submission of reports by vessel owner/operator to the USCG or EPA. As you evaluate these questions, please be as specific as possible in your comments

and provide suggested improvements in the current process/systems. Comments may be provided to kmetcalf@csashipping.org

Policy options to Decarbonize Ocean Going Vessels (Commissioned by Pacific Environment)

Pacific Environment commissioned a study on ocean going vessel decarbonization conducted by the Goldman School of Public Policy, University of California at Berkeley which was recently published. A copy of the study may be downloaded at <https://www.pacificenvironment.org/reports/california-can-lead-the-world-to-reduce-emissions-from-ocean-cargo-ships-lower-climate-impacts-and-improve-air-quality-around-ports/>

The study outlines decarbonization technologies for ships, including low and zero emission fuels and propulsion, supplemental power systems and bunkering fuel infrastructure, provides a summary of the policy landscape at national and international levels and provides recommendations for further action by state and federal agencies in the US. Of particular note is the recommendation that in the absence of strong IMO action, California (and other sub-national governments) should consider requiring zero carbon fuels in ships operating in their coastal waters much like the EU ETS program now in place or, in the alternative, the US should consider establishing a national program if IMO progress is stalled.

CSA is not convinced that any US state has the legal jurisdiction to establish a state specific ETS program but certainly the US could do so. CSA continues to object to local, state, regional or national programs with the view that a robust international program is necessary to achieve the environmental benefits of decarbonization across the maritime sector without market distortions which could occur should local, state, regional or national programs be instituted.

IMO Guidelines for Managing Challenging Ballast Water Quality (Resolution MEPC.387(81)) and Guidelines on the Temporary Storage of Treated Sewage and/or Grey Water in Ballast Water Tanks (BWM.2/CIRC.82)

At MEPC 81, two important guidance documents were adopted with respect to ballast water management.

Resolution MEPC.387(81) provides interim guidance for ships operating in challenging water quality conditions. As recognized when the experience building phase was agreed, there are documented situations where a type-approved ballast water management system (BWMS) is unable to meet the discharge compliance standards in areas where challenging water quality (CWQ) are encountered. This guidance applies to these situations but only when the BWMS has been properly installed, operated, and maintained. This guidance

does NOT apply to situations where the BWMS is inoperable for reasons unrelated to CWQ or in situations where the temperature and/or salinity of the uptake water is outside the design limitations as contained in the type approval certificate.

It should be emphasized that this document is guidance for ship owners/operators, flag states and port states and the ultimate decision regarding acceptable action is left to the flag and port states. It should also be emphasized that procedures for managing CWQ will be specific to the ship and BWMS installed on that vessel, and it is critical that these procedures should be included as amendments to the BWMP. Given the general nature of this guidance, key portions of the document are as follows:

- Pre-planning including inclusion of practical and realistic measures specific to the vessel, definition of operational demand, development of ship-specific flow charts based on appendices to this guidance and a detailed plan including maintenance, assessment of BWMS operations, trouble shooting and mitigation, CWQ triggers, alternative to bypass, bypass procedures, decontamination procedures, communications with port states and recordkeeping.
- Assessment of CWQ conditions impacting ballasting operations and possible options. Note here that preemptive bypass (bypass which is initiated before CWQ is encountered) is discouraged but if preemptive bypass is warranted, this should be agreed in advance with the flag and port states.
- Troubleshooting and mitigation as set out in the ship specific BWMP and OMSM. Mitigation measures may include manual operation of backflushing controls, application of backpressure at high differential filter pressures, maximizing UV intensity or progressive reduction of BW flow rate to the point of operational demand or limitation.
- CWQ triggers clearly identified in the BWMP and the OMSM includes required UV transmittance or dose, maximum allowable differential pressure across the filter(s), minimum flow rate in accordance with the BWMS requirements and monitoring data and alarms.
- Alternatives to bypass should be attempted before a bypass is initiated with actions including evaluation of any BWMS alarms attributable to CWQ, adherence to the troubleshooting protocol as contained in the BWMS and OMSM, and restriction of flow rate to minimum level consistent with operational demand.
- Bypass procedures must be included in the BWMP and OMSM and options should consider minimizing the number of ballast tanks that will be exposed to partially or untreated ballast water, treating the maximum

amount possible of uptake ballast water e.g., minimizing the amount of bypassed uptake ballast water, minimizing the uptake of ballast water.

- Decontamination procedures for tanks and piping contained in the BWMP must be followed where partial or complete bypass is conducted.
- Communication among the vessel, flag state and port state (including the next port state) is critical
- Recordkeeping requires documentation of all situations where the BWMS has not operated as expected with full details as to the reasons for the nonoperability and the mitigation strategies undertaken to minimize the risk to the environment.
- Considerations to be taken by the flag state, port state and BWMS manufacturers with respect to pre-planning are provided.
- Appendices to the resolution include sample decontamination procedures (Appendix 1), sample process diagram for ships ballasting in areas with CWQ (Appendix 2, Process diagram 1), sample process diagram for CWQ (Appendix 2, Process diagram 2), alternatives to bypass (Appendix 2, Process diagram 3) and decontamination: managing ballast water following a BWMS bypass (Appendix 2, Process diagram 4).

As regards vessels calling in US ports where CWQ are encountered, adherence to the provisions in this document and incorporation into the BWMP are critical to increase the likelihood that USCG will permit alternative actions where the BWMS is unable to operate due to CWQ. Obviously, communication between the vessel and the port officials at the earliest possible time is key to finding a viable solution.

Circular BWM.2/Circ.82 provides guidance on the temporary storage of treated sewage and/or grey water in ballast water tanks and details the general procedure for this temporary storage including changeover procedures and decontamination actions to be taken when returning these tanks to ballast water service. detailed in the BWMP. These procedures should be detailed in the BWMP.

Both documents may be accessed on the IMO website at <https://www.imo.org/en/> by searching the respective document numbers noted above.

USTR – Petition by US Labor Unions

As summarized in our past monthly report, five US labor unions have submitted a petition to the US Trade Representative (USTR) alleging unfair practices by China in the maritime, logistics and shipbuilding sector, arguing that the actions by China are a factor in the decline of the US shipbuilding industry. The petitioners requested remedial measures, the most troublesome being the levy of a port fee on any vessel calling in a US port that was built in China, regardless of the current nationality of its owner and flag registry. Since our initial report, the USTR has initiated an investigation into the claims made in the petition but has restricted the terms of reference of the investigation to assessing the validity of these claims and does not include an evaluation of the remedial measures requested in the petition.

A hearing was held on May 29 2024. Senator Tammy Baldwin and Rep. Debbie Dingell provided testimony supporting the allegations and urging the USTR to consider all possible remedies. Three panels were convened as follows: (1) petitioner labor unions supporting the allegations and remedies proposed in the petition (2) industry organizations including Chinese associations arguing the allegations were unfounded and opposing an imposition of the port fee on vessels constructed in China and (3) a representative of the EU generally opposing the port fee and urging negotiations to address the allegations and an interagency panel generally supporting the imposition of remedies, some supporting the port fee, and national security interests.

CSA's position on this issue is to oppose an imposition of the proposed port fee on vessels constructed in China on the grounds that such a fee would not impact the Chinese shipbuilding industry but rather would impact current owners of vessels constructed in China, but which currently have no linkage to the Chinese government.

It should be noted that the revitalization of the US domestic shipbuilding capacity is a highly political issue particularly as it relates to national security and commercial sealift capability should a foreign military deployment be executed. CSA continues to monitor this issue and will stand by for further developments which should include a formal finding by the USTR based on the hearing and comments submitted regarding the allegation of unfair practices and possibly further action in assessing remedies including those proposed by the petitioners.