

June 2008

Coast Guard Authorization Act

Provisions of interest

Dennis L. Bryant

On April 24, 2008, the US House of Representatives passed and sent to the Senate the Coast Guard Authorization Act of 2008 (H.R. 2830). If history is any guide, a large percentage of its provisions will eventually be enacted into law. It therefore behooves the maritime industry to have some familiarity with important provisions of the bill.

Ballast water management

The bill includes a major (and lengthy) title devoted to ballast water treatment. This would, if enacted, make it a national goal that, by 2015, ballast water when discharged into waters of the United States will contain no living (viable) organisms. This would constitute a ridiculously high standard and would be virtually impossible to test for. Ships would be required to have ballast water management plans approved by the US Coast Guard, but the agency would be given sufficient authority to approve or accept ballast water management plans approved by the flag administration of a foreign ship if the criteria used by the foreign nation are comparable to that used by the United States.

Each ship must maintain a ballast water record book, similar to an oil record book, showing each ballast water operation. Each entry must be signed by the officer in charge of the operation and each page of the book must be signed by the master. This will undoubtedly lead to prosecutions for false statements if incorrect entries are intentionally made. Interestingly, the ballast water record book must be kept in English. This is different from the international standard, which allows log books to be kept in the working language of the ship with translations into English, Spanish, or French. At least monthly, the owner or operator would have to electronically transmit to the Coast Guard all entries in the ballast water record book for the previous month. The purpose of this electronic transmission requirement, particularly for a foreign ship that might only call in the United States two or three times a year, is a mystery to this author.

New ships would be required to install and existing ships would be required to retrofit approved ballast water treatment systems. Ships with certain experimental treatment systems

E-mail

dennis.l.bryant@gmail.com

Internet

<http://brymar-consulting.com/>

Maritime Reporter & Engineering News

<http://marinelink.com/en-US/magazines/Archive.aspx?MID=3>

could continue to utilize those systems for up to 10 years. States would be largely preempted from adopting and enforcing their own ballast water standards unless specially authorized by the federal government. The performance standard for ballast water treatment systems in this version of the legislation is not as stringent as was originally proposed, but in some aspects is still ten times higher than the standard contained in the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004. Since only one manufacturer has developed a technology approved under the international standard, it is unclear when, or if, technology will be developed consistent with the standard in this bill (which fortunately contains an escape clause, albeit awkward). The Bush Administration has belatedly proposed an alternative approach to ballast water treatment that deserves serious consideration in lieu of this flawed approach.

Work hours

Official logbooks for most inspected vessels of the United States would be required to include entries showing: the time each seaman and each officer assumed or relieved the watch; the number of hours in service to the vessel of each seaman and each officer; and an account of each accident, illness, and injury that occurs during each watch. This provision is primarily intended to address the widespread problem with fatigue among crewmembers.

State pilots in Buzzards Bay

In a concession to the State of Massachusetts, the bill would require that, with certain exceptions, single-hull tank vessels transiting Buzzards Bay have on board a pilot who is not a regular member of the crew and is licensed by the State of Massachusetts. This establishes an unfortunate precedent, opening the door to every state to contend that local conditions require very specific local solutions. I, for one, was under the impression that this nation moved away from that approach when it replaced the Articles of Confederation with the Constitution.

Use of laptop computers by pilots

After consultation with state and local pilotage authorities, the Coast Guard would be authorized to require pilots on most vessels to carry and utilize a portable electronic navigation device. This provision is an outgrowth of the COSCO BUSAN oil spill in San Francisco Bay, where the pilot afterwards contended that the installed electronic navigation system on the ship generated confusion. Once again, Congress is trying to legislate an equipment solution to a human factors (e.g., training) problem.

Penalty wages

With regard to claims for unpaid wages by crewmembers of foreign or domestic passenger vessels capable of carrying more than 500 passengers, the award of penalty wages would be capped at ten times the unpaid wages that are the subject of the claims. Such claims

must be filed within three years. The bill provides no explanation as to why penalty wages should be different on different ships.

Coast Guard operations in high latitude regions

The Coast Guard would be required to submit a report to Congress on the need for additional Coast Guard prevention and response capability in high latitude regions (the Arctic and the Antarctic). This is partially in response to global climate change, but is more related to increased oil and gas exploitation and increasing jurisdictional claims in these regions (particularly in the Arctic Ocean).

Port and maritime security

The bill includes a variety of port and maritime security provisions. Most of those related to the Transportation Worker Identification Credential (TWIC) program appear to be overtaken by events. There is an interesting provision, though, that would require facility security plans to include a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen's welfare and labor organizations to board and depart the vessel through the facility in a timely manner at no cost to the individual. Another provision, subtle, but with potentially significant impact, would eliminate the requirement for a mariner to have a TWIC if that mariner does not need unescorted access to a secure area designated in the vessel security plan. For this provision to be meaningful, though, the Coast Guard would have to abandon its long-held position closely linking restricted area on a vessel with secure area. Once that occurred, some mariners, particularly on smaller vessels such as whale watching boats, small passenger vessels, and fishing vessels might not need TWICs (except for the identity feature).

Marine safety

The bill contains some unusual and highly specific provisions regarding Coast Guard personnel assigned to marine safety duties. These sections were inserted at the behest of Representative Oberstar (D-MN), chair of the House Committee on Transportation and Infrastructure. While his intentions are laudable (who could oppose enhancing safety), the measures, if enacted into law, could have unintended adverse consequences. First, it would tie the hands of the chief of one of our five armed services to deploy and reassign personnel. Second, it could place artificial constraints on the ability of the service to grant leave and assign people to temporary duty such as training at a site different than their regular location. Third, it sets an unfortunate precedent of the Congress mucking around in the details of an executive branch agency. Congress does not, by law, limit the services to assigning to flight duty only qualified aviators. It leaves this to each service. There is no good reason that assignment of personnel to marine safety duties need be considered differently.

ALJ hearings

The bill would transfer the function of hearing appeals regarding mariner licenses, certificates of registry, and documents from the Coast Guard to the National Transportation Safety Board (NTSB). The rationale for this change is that there is a perception that the USCG administrative law judges (ALJs) are too closely affiliated with the agency to provide mariners with a fair and impartial hearing. While there has been some highly-publicized grumbling, little actual evidence of such partiality has been presented. It should be noted that the ALJs who hear appeals of decisions of the Social Security Administration (SSA) regarding entitlement to social security benefits are employees of the SSA, just as ALJs who hear Coast Guard licensing matters are employees of the Coast Guard. The same holds true of ALJs who hear matters relating to the Department of Labor, the Securities and Exchange Commission (SEC), the Department of Housing and Urban Development (HUD), and other federal agencies. The NTSB does not seek the transfer of function and is neither staffed nor funded for such transfer. At a minimum, the costs and benefits of such transfer should be carefully analyzed prior to such a significant step.

Veto threat - Security for LNG shipments

Finally, we come to those provisions in the bill that led senior administration officials to threaten to recommend that the President veto the bill if it was enacted as proposed. The April 23, 2008 Statement of Administration Policy asserted that the portion of the bill, as then proposed, that would require the Coast Guard to provide security around liquefied natural gas (LNG) terminals and vessels should be eliminated because it provides an unwarranted and unnecessary subsidy to the owners of private infrastructure that is contrary to the existing assistance framework and would divert finite Coast Guard assets from other high-priority missions, as determined by the Commandant. While the most offensive portion of the bill relating to security for LNG import terminals and facilities was softened prior to adoption by the House, it is unclear if the modification will be sufficient to assuage the Administration. In this regard, it should be noted that the bill contains a long-overdue provision requiring a study of the relative risks presented by a terrorist attack on gasoline and chemical cargo shipments in US waters. For too long, this government has focused inordinate attention on threats posed by LNG, largely ignoring other potential threats. Such a study may place things in a more balanced perspective.

Summary

In conclusion, the House version of the Coast Guard Authorization Act is not perfect, but many of its provisions deserve serious considerations. Action now moves to the Senate for consideration of its version and careful reading of the House version. The nation needs a thoughtful and progressive measure to provide for the Coast Guard in general and for marine safety, security, and environmental protection in particular. The House bill is a move in that direction.