International Chamber of Shipping
Shaping the Future of Shipping

38 St Mary Axe London EC3A 8BH

Tel +44 20 7090 1460
Fax +44 20 7090 1484

info@ics-shipping.org | ics-shipping.org

16 July 2018

Ms. Neomi Rao
Administrator
Office of Information and Regulatory Affairs (OIRA)
Office of Management and Budget (OMB)
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500
United States

Via: http://www.regulations.gov

Dear Ms Rao,

RE: Docket ID Number OMB-2018-0002 – OMB 'MARITIME REGULATORY REFORM' CONSULTATION – REQUEST FOR INFORMATION (RFI)

COMMENTS BY THE INTERNATIONAL CHAMBER OF SHIPPING (ICS)

The International Chamber of Shipping (ICS) welcomes the opportunity to submit comments to the consultation by the U.S. Office of Management and Budget (OMB) regarding 'Maritime Regulatory Reform', in accordance with Executive Order 13771 on 'Reducing Regulation and Controlling Regulatory Costs' (January 2017).

ICS is the principal global trade association for shipowners, representing all sectors and trades. Our membership comprises 37 national shipowners' associations from Asia, the Americas and Europe, including the Chamber of Shipping of America (CSA).

A significant majority of U.S. imports and exports are transported on board ships of all flags, making domestic and international maritime trade indispensable to the economy of the United States. As a result, the U.S. regulatory structure should take into account the need for a competitive, flag neutral, safe, secure and environmentally conscious maritime transportation system.

In this context, kindly consider the comments from ICS below, submitted on behalf of the global shipping industry. Insofar as possible, we have endeavoured to frame our comments within the context of some of the information requested by OMB. However, for the sake of efficiency, our comments represent a summary of information and supplementary information can be provided upon request.

(1) Are there regulations that have become unnecessary, ineffective, or are no longer justified, and if so what are they (e.g., vessel equipment, manning, or reporting requirements)?

Regulatory Alignment: Overview

There is a pressing need for full alignment of some United States regulations with standards adopted internationally by bodies such as the International Maritime Organization (IMO). As a result, amendments to a number of national requirements would be necessary for complete alignment to be achieved.

International regulatory bodies such as IMO regulate shipping across a broad range of issues, including safety, security and environmental protection. We therefore suggest that the primacy and work of such bodies on regulating the global maritime industry should be recognised, in light of their global scope in application and technical expertise.

This is essential for an efficient global and national transportation system with a clear and consistent set of requirements relating to marine vessel operations. It is also of vital importance that the U.S. supports regulatory initiatives which create a level playing field for ships calling in U.S. ports, regardless of flag. We also note that implementation of global regulations and standards minimise the operational costs of international shipping, which in turn leads to lower transport costs of imported goods carried by ships to and from the United States, for the benefit of the U.S. economy.

To this end, ICS suggests that the United States Coast Guard (USCG) should conduct a thorough analysis of all U.S. regulations for alignment with IMO instruments e.g. International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention); International Convention for the Prevention of Pollution from Ships (MARPOL), Annex VI; the International Convention on the Control of Harmful Anti-fouling Systems in Ships (AFS Convention); and the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (Hong Kong Convention).
This assessment should identify U.S. requirements which are different to those agreed by IMO in order to align them to the existing international standards.

We also note that the United States is not yet a Party to some of the above mentioned instruments, as well as the United Nations Convention on the Law of the

Sea (UNCLOS). It is therefore highly recommended that the United States ratify these regulations. Where the U.S. is unable to ratify international instruments due to conflicts between existing national requirements and a particular international instrument, an assessment and recommendation should be made for alignment of U.S. statutes in order to enable ratification as soon as possible.

Moreover, in April 2018, the IMO Marine Environment Protection Committee (MEPC) adopted a comprehensive initial strategy for the further reduction of the international shipping sector's total greenhouse gas emissions, with full support of the shipping industry. In view of the complex politics involved, agreement by IMO upon such an ambitious strategy is a truly significant achievement.

The above notwithstanding, substantial challenges remain and active engagement by the United States in these ongoing discussions would be crucial to ensure success. We therefore suggest that the U.S. should consider removing its reservation on the recently agreed IMO Strategy and actively participate in future IMO work on further development of the strategy, including the upcoming discussions on short, medium and long term measures later this year.

Regulatory Alignment: Ballast Water Regulations

A clear example of discrepancies between U.S. and IMO standards are the U.S. ballast water regulations (including 33 CFR Part 151), which are different from the requirements set out in the BWM Convention. It is vital to identify a pragmatic solution to this especially now that the BWM Convention has entered into force, otherwise the maritime industry will continue to be faced with serious uncertainty.

In the context of ballast water regulations, specific issues to be addressed and in need of harmonisation include differences in the type approval processes for ballast water management systems (BWMS) – i.e. U.S. ETV programme vs. IMO BWMS Code – and the scientific validity of the Most Probable Number (MPN), which is accepted in the national type approval process of other IMO Member States but rejected by the United States; and discrepancies between the IMO and U.S. regulations regarding implementation schedules governing the dates that ships are required to conduct ballast water treatment and thereby have to install BWMS.

Regulation of vessel discharges

We note that currently there are duplicative and sometimes conflicting requirements arising from the regulation of vessel discharges (most importantly ballast water) by two separate statutes and two regulatory agencies (USCG and EPA). This overlapping patchwork of federal requirements, along with conflicting individual state regulations, has a very negative impact on jobs, undermines the efficiency of maritime transportation, increases business costs, and places mariners at risk of civil

and criminal prosecution. It also delays investments in treatment technology that would strengthen environmental protection.

Therefore, it is vital that the United States adopt and enact the Commercial Vessel Incidental Discharge Act (CVIDA) as soon as possible, noting that it enjoyed broad bipartisan support in both the Senate and the House of Representatives during the 114th U.S. Congress. CVIDA would eliminate the regulatory burden which currently hinders interstate and international trade by replacing multiple federal and individual state regulations with a single national standard for the regulation of ballast water and other discharges incidental to normal vessel operations. If enacted, CVIDA would also maintain protective measures jointly undertaken by industry and federal agencies to reduce the movement of invasive species on the navigable waterways of the United States.

As it stands, shipowners are expected to spend millions of dollars installing onboard equipment to comply with USCG and EPA requirements, but still face the risk of fines and penalties for breaching individual state requirements that cannot be met by existing technology.

Discharges incidental to normal vessel operations

While not opposed to implementation of regulations to control discharges incidental to normal vessel operations, the shipping industry has serious concerns about the EPA's Vessel General Permit (VGP). This permitting programme for the thousands of ships (regardless of flag) calling in ports of the United States annually, creates significant compliance challenges, conflicting requirements and constitutes a considerable administrative burden for U.S. regulators and the maritime industry alike.

Moreover, the 401 certification programme stipulated under the U.S. Clean Water Act (Section 401) has led to conflicting sets of requirements being imposed by individual U.S. states, many of which are unreasonable and superfluous. We also note that many discharges regulated by the VGP (under the Clean Water Act) are also regulated by the United States Coast Guard through a number of statutes, such as the Act to Prevent Pollution from Oil and the Nonindigenous Aquatic Nuisance Prevention and Control Act (1990), as amended by the National Invasive Species Act (1996).

In essence, discharge regulations (e.g. ballast water) in the United States are governed by two distinctive statutes, each empowering a different Government agency (USCG and EPA) to establish two arguably different and incompatible regulatory frameworks. We therefore reemphasise the need to support the enactment of the Commercial Vessel Incidental Discharge Act (CVIDA) in the U.S.

Congress, as it would establish one set of uniform federal regulations applicable to discharges currently covered by EPA's VGP and by USCG regulations.

Regulatory Alignment: Ship Recycling Regulations

The IMO Hong Kong Convention on ship recycling sets global standards to improve environmental and working conditions in ship recycling yards and requires, among other things, that end of life ships are only sold to recycling yards that meet the standards set out by the Convention, which also stipulates that ships must maintain inventories of hazardous materials from the time of their construction to their final demolition.

This Convention has the full support of the maritime sector, including the shipping industry. However, we wish to note that the objectives of the Hong Kong Convention are hampered significantly by certain provisions of the Basel Convention and U.S. regulations prohibiting the export of certain hazardous materials. Although not a party to the Basel Convention, we understand that the United States Government applies a legal ban on exports of certain hazardous wastes which, in practice, means that U.S. flag/U.S. owned and Non U.S. flag/U.S. owned vessels are compelled to recycle in the few and far more expensive recycling facilities in the United States.

We therefore suggest that the USCG should take the lead in resolving this problem, so that legislative or regulatory amendments are implemented to give full effect to the Hong Kong Convention in the United States and to ensure accessibility of U.S. interests to global recycling facilities, provided that both the facility and the ship are in full compliance with the Convention.

Regulatory Alignment: IMO MARPOL Annex VI

As regards to shipping emissions, the global maritime industry suggests that the U.S. Environmental Protection Agency (EPA) should conduct a gap analysis of the statutory requirements and implementing regulations of the U.S. Clean Air Act in relation to the current IMO MARPOL Annex VI requirements. This should include a cost analysis of these gaps to accurately determine the costs of the more stringent U.S. requirements.

(5) Are there reporting or other information collection requirements imposed by multiple regulatory agencies that involve similar, overlapping reporting that might be consolidated or coordinated to reduce the regulatory burden on the industry?

Federal vs State Regulations

We suggest that concrete measures should be adopted by the United States Government to ensure that Federal regulations will pre-empt State regulations, as this would eliminate multiple and sometimes conflicting regulatory requirements for ships calling in ports of the United States.

Where necessary, existing federal regulations should be amended to clearly emphasise the supremacy of federal regulations. National, State or regional initiatives that create new or conflicting requirements for vessels calling in a particular port are not in the best interests of the United States, the industry or the governmental body implementing these initiatives.

Over the past decade, the global maritime industry has seen the development of national, regional and in some cases sub-national programmes which either conflict with existing IMO requirements or are more stringent in application. One such example are the additional requirements imposed by individual U.S. states regarding 401 certifications filed during the VGP process.

(11) Are there regulations, reporting requirements, or regulatory processes that are unnecessarily complicated that could be made more efficient?

Maintenance of level playing field

ICS believes that it is crucial that a level playing field be maintained globally, in order to avoid providing a competitive advantage to vessels flying the flag of a particular nation(s). Currently, the United States imposes a number of more stringent requirements on ships engaged in trades to and from the U.S. While this is certainly within the sovereign right of the United States, these more rigorous requirements make it more costly to do business in the U.S., including business which is conducted by U.S. flag vessels engaged in Jones Act trade.

Seafarers: U.S. visa requirements

According to the U.S. visa regulations, seafarers in the U.S. are required to hold a C1/D visa. It has been brought to our attention that in the event that a seafarer's visa expires while he/she remains signed in, some northern States (East Coast) appear to apply a more flexible approach when the seafarer applies for repatriation, which is in contrast to cases reported in southern States and in particular Texas, where officials seem to be less flexible whenever such a request is submitted. Similar difficulties are experienced by seafarers holding a B1/B2 visa (Business/Tourism) and seeking repatriation from a U.S. port.

The shipping industry also has concerns regarding the length of shore-leave passes granted to seafarers holding a visa issued by U.S. authorities. These passes are valid for 29 days only and in the event that the ship extends its stay in a U.S. port for

over a month, a shore-pass will not be renewed regardless of whether or not the seafarer's visa remains valid. If the need to repatriate a crew member or the Master arises, the ship is expected to call at a non-U.S. port (e.g. Nassau, Bahamas) to be able to disembark and repatriate the seafarer.

The welfare of seafarers is of vital importance to the industry. It is therefore disappointing that some seafarers – even with a valid visa – in need of medical care or access to a hospital, or requiring urgent repatriation from U.S. territory due humanitarian reasons, must first be issued with a special permit. And the seafarer (regardless of the nationality) must also be accompanied by a law enforcement official.

The U.S. Customs and Border Protection (CBP) and the U.S. Department of State must recognise the unique position of seafarers on board ships of all flags. We believe that the current 29 day limitation on seafarers' visas is unreasonable and that a process for potential visa extensions should be set in place.

It is imperative that U.S. visa requirements for seafarers are enhanced to take into account the significant contributions they make in helping to deliver 90% of world trade, including to and from the United States.

Seafarers: Access to maritime facilities in the U.S.

In December 2014, the USCG began a consultation concerning 'Seafarers' Access to Maritime Facilities', through which it proposes adoption of a rule to require each owner or operator of a facility regulated by the USCG to implement a system that provides seafarers and other individuals with access between vessels moored at the facility and the facility gate, in a timely manner and at no cost to the seafarer or other individual.

This proposed rule was very welcome news for the shipping industry and seafarers in particular, and the efforts by the USCG to draft a comprehensive Notice of Proposed Rulemaking (NPRM) was highly appreciated by the industry, which strongly supported seafarers' access to maritime facilities in a timely manner at no cost to the seafarer. Some official comments in this respect were also provided by the Chamber of Shipping of America (CSA) – a member of ICS – to the docket in question on behalf of the industry, to help ensure the success of this rule proposed by the USCG.

However, we note that since this consultation was initially published in 2014 (Docket ID: USCG-2013-1087), it was reopened on 27 May 2015 for further comments, which were received until 1 July 2015. Disappointingly, despite different rounds of consultations, the USCG is yet to produce the final rule on 'Seafarers' Access to Maritime Facilities'.

We believe this should be a priority for the USCG, noting that it had initially attempted to address this issue in 2013 (5 years ago) and that the lack of a final rule impedes seafarers with proper documentation from gaining access to shore facilities.

--

We sincerely hope our remarks are helpful and appreciate the opportunity to submit comments on behalf of the international shipping industry.

Yours sincerely,

Simon Bennett
Deputy Secretary General