



INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS

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10 April 2011

[Docket Number DHS-2011-0015]

U.S. Department of Homeland Security
Office of the General Counsel
245 Murray Lane, Mail Stop 0485
Washington, DC 20528-0485
ATTN: DHS Retrospective Review

Via e-mail: Regulatory.Review@dhs.gov

Re: Reducing Regulatory Burden; Retrospective Review under Executive Order 13563

To whom it may concern:

The International Association of Drilling Contractors is a trade association representing the interests of drilling contractors, onshore and offshore, operating worldwide. Our membership includes all drilling contractors currently operating mobile offshore drilling units (MODUs) in the areas subject to the jurisdiction of the United States, as well as all MODUs registered in the United States.

The purpose of this letter is to respond to the Department's 14 March 2011 Notice and request for comments issued pursuant to Executive Order 13563 "Improving Regulation and Regulatory Review" and they relate specifically to the regulatory process of the United States Coast Guard (Coast Guard) and 33 Code of Federal Regulations (CFR) Chapter I and 46 CFR Chapter 1.

Our comments do not lend themselves to the questions posed in the Federal Register notice, as they primarily relate to reducing the burden of "regulation" imposed by the Coast Guard **without** codification in the Code of Federal Regulations.

The United States is a State Party to numerous Conventions developed under the auspices of the International Maritime Organization (IMO), including, but not limited to:

- International Convention for the Safety of Life at Sea (SOLAS), 1974
- International Convention for the Prevention of Pollution from Ships (MARPOL)
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)
- International Convention on Load Lines (ILLC)

As a State Party, the United States is obligated to implement the provisions of these Conventions. Each Convention differs in its scope and applicability, with some having applicability, at least in part, to activities wholly within the jurisdiction of the United States, and absent the obligation created by acceding to the Convention, wholly subject to the sovereignty of the United States.

This has been further complicated by the fact that as the Conventions grew in technical complexity, various Codes (*e.g.*, the Lifesaving Appliances Code) were developed and made mandatory under the terms of the Conventions.

Various statutes provide the Coast Guard with the legal authority to implement these Conventions. In some cases the legislation is quite specific and refers directly to the Convention. In other cases, the Coast Guard has relied on general authority provided under what would otherwise be considered domestic legislation to implement these Conventions. This, in itself, causes confusion, and IADC believes is deserving of examination for purposes of legislative streamlining, but this is a long-term issue and likely beyond the scope of this Regulatory Review.

As the United States became a State Party to these Conventions, the Coast Guard issued implementing regulations in 33 CFR Chapter I and 46 CFR Chapter 1.

In their early years, these Conventions were fairly static, and were rarely amended due to constraints imposed by cumbersome amendment procedures and entry-into-force provisions. The delays inherent in this process generally allowed the Coast Guard to keep pace with the amendments to these Conventions by amending the CFRs.

Because the international community recognized a need to amend these Conventions on a more frequent basis without the delays imposed by the cumbersome amendment and entry-into-force provisions, the Conventions were amended to allow for a tacit amendment procedure. The tacit amendment procedure took a process that was truly indefinite in duration and reduced it, in most cases, to two years or less.

In most cases, but not all, the Coast Guard has the necessary legislative authority to implement new obligations imposed by the amendment of these Conventions through the operation of a tacit amendment procedure without seeking additional legislation.

Among the difficulties that have arisen are:

- For a variety of reasons (delays inherent to the rulemaking process, competing priorities, lack of resources, etc.) the Coast Guard has not been able to keep pace with the amendments to the Conventions by amending the CFRs. The current backlog of needed amendments to the CFRs is extensive and extends over decades of Convention amendments. Thus, the CFRs do not provide the regulated community with a clear understanding of the requirements they must meet under the terms of these Conventions.
- Because the CFRs have not been amended, the Coast Guard has relied upon a variety of administrative means to attempt inform the public and impose the Convention requirements. These have included the use of Navigation and Vessel Inspection Circulars (NVICs), *Federal Register* notices, directions given to the classification societies acting on the Coast Guard's behalf (Recognized Organizations) in issuing Convention certificates, and administratively withholding Convention certificates until the requirements of the amended Convention were met. This haphazard approach lacks consistency and transparency and imposes unnecessary costs when 'requirements' are imposed, often without due notice.
- Many of the Convention requirements permit, or indeed require, some degree of interpretation by the Administration (*i.e.*, the Coast Guard) to determine if they are, in fact, applicable, and if so, how they should be applied.
- Because of the haphazard process, accurate information is often not broadly available, is inconsistently provided, and is inconsistently enforced by Coast Guard field offices that are unfamiliar with the Conventions and their requirements.

Unfortunately, because of the likelihood of continued resource constraints and conflicting priorities placed on the Coast Guard, along with delays inherent to the regulatory process in

the United States, IADC does not see a “regulatory” solution to this problem. However, we would recommend that the following steps be undertaken to ameliorate the adverse effects:

- The Coast Guard should create a dedicated website for each Convention for which it acts as Administration.
- The website should contain an authenticated text of the Convention and all amendments that are in force internationally.
- With *each* amendment, there should be a link to basic information necessary for the regulated community to understand the effect of the amendment, including:
 - Whether or not the Coast Guard believes it has the authority to enforce the amendment under existing legislative authority;
 - The date on which compliance is required, whether the amendment is retrospective in its application (*e.g.*, does it apply only to “new” ships or does it apply to both new and existing ships), and any necessary interpretations related to the amendment;
 - A contact point where expert information regarding the requirements of the amendment to the Convention can be obtained.
- A similar website should be developed for each Code that is made mandatory by one of these Conventions.
- The websites should be updated in a timely manner to reflect new amendments to the Convention.
- RSS feeds or another means to “push down” notification of any changes to the website should be provided.

IADC appreciates the opportunity to provide a response to this Notice and requests that our comments be given due consideration. If you have any questions about these comments or recommendations, please contact me by phone at (713) 292-1945, ext. 207.

Sincerely,



Alan Spackman
Vice President, Offshore Technical and Regulatory Affairs