

IMPACT OF UNITED STATES COAST GUARD REGULATIONS
ON UNITED STATES FLAG REGISTRY

Statement of

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and

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before the

Subcommittee on Coast Guard and Maritime Transportation
Committee on Transportation and Infrastructure
U.S. House of Representatives

April 14, 2016

TRB Committee Report, *Impact of USCG Regulations on U.S. Flag Registry*

Testimony – April 14, 2016

Hearing on “Maritime Transportation Safety and Stewardship Programs”

Good morning, Chairman Hunter, Mr. Garamendi, and members of the Committee. My name is Keith Michel. I am President of Webb Institute; and served as chair of the Committee to Review Impediments to United States Flag Registry of the National Academies of Sciences, Engineering, and Medicine. The National Academy of Sciences was chartered by Congress in 1863 to advise the government on matters of science and technology and later expanded to include the National Academies of Engineering and Medicine. The committee was tasked by the United States Coast Guard to assess whether the United States Coast Guard regulatory process impedes the ability of U.S. flag registered vessels to effectively compete in international commerce. Because of the limited time provided for this Congressionally-mandated review, the committee that produced the report reviewed two reports (one by the U.S. Coast Guard and the other by the U.S. Maritime Administration), and gathered information from stakeholders.

This testimony provides an overview of the findings and recommendations contained in the letter report, *Impact of United States Coast Guard Regulations on United States Flag Registry*, which was released on February 25, 2016. The report, which can be accessed online via <http://www.trb.org/Main/Blurbs/173981.aspx>, was prepared under the auspices of the Transportation Research Board of the National Academies.

Over the last decades the cost for USCG regulatory compliance has been significantly reduced through the Alternative Compliance Program (ACP) and other USCG initiatives. The committee finds that the increased cost of U.S. regulatory compliance is now relatively small and not a significant impediment to the competitiveness of U.S. registered vessels. However, the committee believes that further steps can be taken to mitigate regulatory burden without reducing the safety of U.S. flag vessels. The letter report contains nine recommendations on steps that can be taken to further reduce the cost of compliance under U.S. registry.

In conducting its work, the committee was requested “to conduct an assessment of authorities under subtitle II of title 46, United States Code, that have been delegated to the Coast Guard and that impact the ability of vessels documented under the laws of the United States to effectively compete in international transportation markets.” The assessment was to include review of two reports: (a) a September 3, 2013, USCG report entitled *Impediments to the United States Flag Registry, Report to Congress*; and (b) a September 2011 U.S. Maritime Administration (MARAD) report entitled *Comparison of U.S. and Foreign-Flag Operating Costs*.

The MARAD report examines some of the major cost drivers that affect vessel owners’ decisions on whether to register their vessels under the U.S. flag or a foreign flag. The cost factors examined in the MARAD report include crew, stores and lubricating oils, maintenance

and repair (M&R), insurance, and overhead costs. The committee used the MARAD data supplemented by industry-supplied data to assess U.S. flag vs. international costs, including the costs of complying with USCG regulations.

The committee estimates that the annual increased cost related to USCG regulatory compliance to be \$60,000 per year, less than 1% of typical operating costs of a U.S. flag containership. The higher operating cost associated with U.S. flag is dominated by crew costs. Although there is considerable uncertainty in this estimate, the increased cost of compliance will remain a very small portion of the higher operating costs associated with U.S. flag vessels.

Assessment of Increased Operating Costs for a U.S. Flag Containership for 2010

	Cost Difference (U.S. - Foreign)	Percentage of Annual Operating Cost
Crew costs	\$4,443,510	57.4%
P&I insurance	\$380,184	4.9%
50% ad valorem duty	\$78,230	1.0%
USCG regulatory cost	\$60,000	0.8%

Recommendations related to USCG Certification and Inspection of Maritime Security Program (MSP) Vessels

MSP vessels represent the majority of U.S. flag vessels competing internationally and are, therefore, of primary relevance to the committee's work. The intent of MSP legislation was to allow a seamless transfer of international flag ships to U.S. flag. However, based on industry input, the committee estimates the initial cost to convert to U.S. flag under MSP at \$500,000 to \$1,000,000, including about \$250,000 for periodically unmanned machinery space (PUMS) upgrades.

MSP vessels were subject to CFR requirements rather than the Alternative Compliance program procedures. In NVIC 01-13 Change 1, dated May 26, 2015, USCG partially addressed this issue by offering MSP Select after 3 years of operation under MSP. Change 1 states that inspections by USCG for MSP Select vessels should be "of similar scope and frequency afforded ACP vessels." Some relief is offered to MSP vessels relative to the USCG requirement that all changes and replacements not exactly in kind should be in compliance with CFR requirements and approved by USCG. For MSP Select vessels, USCG allows the operator to request that class determine equivalency of the new equipment to existing CFR or alternate standards. The committee recommends MSP Select be available immediately upon entry in MSP for companies with proven safety records rather than after three years, and that ACP procedures for acceptance of replacement equipment on MSP vessels be applied.

The USCG requires that upon reflagging to U.S. registry, a MSP vessel operate with engine room watchstanding for up to 3,000 hours. Under international flag, these vessels would be operating with unattended engine rooms enabling the engineer to be utilized for maintenance.

This imposes a significant cost burden on operators. The committee recommends that USCG allow PUMS operation after 1,000 hours, and to consider allowing PUMS operation immediately upon reflagging should the ship's crew have prior experience with similar ships with similar control and alarm systems.

The committee offered three recommendations specifically addressing the regulatory burden on MSP vessels:

Recommendation 1: The committee recommends that MSP vessels from operating companies with proven safety records in MSP be allowed to enroll in MSP Select at the time of reflagging. Navigation and Vessel Inspection Circular (NVIC) 01-13 Change 1 indicates that MSP Select vessels may be reviewed by a classification society (class), similar to the ACP procedures, without categorically stating the ACP procedure should be applied. A formal tie should be established between the ACP supplements and MSP for modifications and upgrades of vessels enrolled in MSP Select such that MSP vessels are required to meet a standard no higher than that required for ACP vessels.

Recommendation 2: The committee recommends application of ACP procedures for acceptance of replacement equipment for MSP vessels. In the interest of providing flexibility in selecting equipment suited to existing vessel arrangements, consideration should be given to allowing type approvals in accordance with ACS rule requirements and international standards only.

Recommendation 3: The committee recommends that vessels with a documented history of safe and reliable operation using periodically unmanned machinery space (PUMS) at the time of reflagging should be permitted to continue such operations after about 1,000 hours of operation. If the crew has prior experience operating similar ships with similar control and alarm systems, consideration should be given to eliminating the waiting period.

USCG Regulations (Title 46 CFR Shipping and ACP U.S. Supplements)

Notwithstanding prior efforts to harmonize USCG regulations with international regulations and classification society rules, the committee believes a comprehensive risk-based assessment of the costs and benefits of CFR regulations would identify possible reductions in the scope of regulations without sacrificing safety and environmental protection. MSP vessels, almost all of which meet class rules and international regulations but are operated under U.S. flag with U.S. mariners, can serve as a source to compare safety records with those of ACP vessels with comparable service.

Recommendation 4: The committee recommends that USCG perform a risk-based assessment of the costs and benefits of each regulation in the CFR that exceeds international requirements, eliminating those regulations that cannot be justified on a cost-benefit basis. The committee recognizes the recommended risk-based assessment is a major, long-term effort that may require additional resources for USCG. Therefore, priority should be given to the review of those regulations included in the ACP supplements that apply to vessels with International Convention for the Safety of Life at Sea (SOLAS) certification. The first step in this process should be a comprehensive review of the ACP supplements by USCG in collaboration with ACS

and the maritime industry to identify regulations that ACS and/or industry consider redundant or unjustifiable.

USCG Type Approvals

The committee finds that ship owners incur significant costs obtaining certain equipment that is required to be USCG type approved. Due to the limited size of the U.S. market, USCG type approval requirements can also limit access to the newest and best equipment.

Recommendation 5: The committee recommends that USCG accept type approval through approved class societies in lieu of USCG-specific approval. This action will build on existing USCG policy that recognizes European Union (EU) type approvals for certain equipment.

USCG Auditing, Review, Inspection, and Appeals Processes

The committee finds overlap between the USCG vessel inspection and plan review processes and those administered by ACS. The partnership with ACS has worked well. The committee believes it is now time to build on this relationship and transfer further responsibilities to ACS. Following committee deliberations and report development, the El Faro accident and the subsequent investigations by the USCG into their audit practices and ACS inspection has raised issues that will influence how the USCG moves forward on this recommendation.

Recommendation 6: It is the opinion of the committee that ACS design review and survey personnel can effectively execute their plan review and vessel inspection responsibilities and that USCG can meet its responsibilities by serving in a safety, quality assurance, and oversight role rather than in a project and vessel oversight role. USCG's goal should be to monitor ACS while allowing ACS to perform the vessel inspection role with minimal redundancy between ACS and USCG. With this approach, USCG would still periodically inspect vessels as part of process oversight checking. Current USCG ACS plan review and inspection oversight actions outlined in NVIC 02-95 should be evaluated and streamlined. Application of modern information systems and auditing techniques should be employed to enhance the effectiveness and efficiency of ACS oversight.

Recommendation 7: A streamlined process for exemptions, interpretations, and appeals is needed. The current process, as outlined in NVIC 16-82, does not always work as planned, particularly with respect to timeliness.

Harmonization of USCG Regulations with International Regulations

The committee finds that USCG leadership presence at IMO has been instrumental in bringing about higher international standards applicable to all SOLAS-certified and International Convention for the Prevention of Pollution from Ships (MARPOL)-certified vessels, both of U.S. registry and the international fleet.

Recommendation 8: The committee commends the continued strong U.S. presence at IMO, which is critical to reducing the number of U.S.-specific regulations and raising the safety and

environmental performance of the world fleet. USCG should maintain its commitment to raising the standards of international regulations. This goal is most effectively achieved through partnership with ACS and the maritime industry. Thus, USCG should continue to partner with and proactively seek technical expertise from industry experts to serve as advisors on the USCG IMO delegations.

Regulatory Development Process

The committee finds that the USCG process for developing new regulations is robust and well documented. However, regular assessment of the impact of the regulations against pre-established metrics and through comparisons to the world fleet is needed. Performance metrics could include response time for applications, number of vessels enrolled, number and frequency of stakeholder consultations, and regulatory effectiveness.

Recommendation 9: USCG should promote continuous, effective, and inclusive communication through periodic scheduled consultation with stakeholders regarding both existing and proposed regulations. Metrics should be established and performance monitored, with regular and timely reporting of results. Whenever practical, regulations should be descriptive and performance based rather than prescriptive.