

324819



U.S. House of Representatives
Committee on Transportation and Infrastructure

Don Young
Chairman

Washington, DC 20515

James L. Oberstar
Ranking Democratic Member

Lloyd A. Jones, Chief of Staff
Elizabeth Meggison, Chief Counsel

March 23, 2005

David Heymsfeld, Democratic Chief of Staff

Re: Docket #USCG-2004-19977-129

Admiral Thomas H. Collins
Commandant
United States Coast Guard
2100 Second Street, S.E.
Washington, D.C. 20593-0001

Dear Admiral Collins:

Section 415 of the Coast Guard and Maritime Transportation Act of 2004 (P.L. 108-293) brought towing vessels under the vessel inspection laws administered by the Coast Guard. As the Ranking Member of the Committee on Transportation and Infrastructure which authored that legislation, I applaud the Coast Guard in moving so quickly to initiate this rulemaking. To understand the inspection of towing vessels and how it must be implemented it is appropriate to briefly review of the history of vessel inspection by the Coast Guard and its predecessor organizations.

On July 7, 1838, Congress approved the first law providing for the inspection of vessels – in this case steam vessels. This law required hulls to be inspected every 12 months and boilers to be inspected every 6 months. The inspectors were to be appointed by the U.S. District Courts on application by the vessel owners. This system failed to improve the safety on vessels to an acceptable level. Therefore, on August 30, 1852, Congress approved the Steamboat Act that provided the basis for establishing the Steamboat Inspection Service, the predecessor to today's United States Coast Guard. Over the years, Congress required other types of vessels to be inspected and required other vessel systems to be inspected. In 1871, Congress required the Steamboat Inspection Service to set the number of crewmembers in the ship's complement necessary for the safe operation of the inspected vessel.

The Federal Government has been inspecting vessels for over 150 years. Nothing in the Coast Guard and Maritime Transportation Act of 2004 (P.L. 108-293) changed those items that are subject to inspection by the Coast Guard. It simply added "towing vessels" as a new class of vessels that are required to be inspected. Congress supplemented the traditional inspection system by allowing the Coast Guard to develop a "safety management system" for towing vessels. As the Conference Report on this law stated:

Admiral Thomas H. Collins

March 23, 2005

Page 2

“Safety management systems allow the Coast Guard to oversee the maintenance and repair of vessel equipment and ship systems subject to inspection through an approved safety management plan that includes maintenance schedules and system tests. The Coast Guard may enforce the plan through audits of the vessel's logs and vessel operator's records rather than having to directly oversee the repair or maintenance work conducted on a particular piece of equipment or ship system.”

I understand that in public meetings some individuals have indicated that safety management could be used to fulfill the requirements for inspection of vessels by Coast Guard personnel. However, chapter 33 of title 46, United States Code and historical precedent regarding the implementation of the vessel inspection laws for all other types of vessels require vessels to be physically inspected by Coast Guard personnel. Safety management will supplement the inspection of towing vessels by the Coast Guard personnel to help ensure that the vessel is maintained in compliance with the inspection requirements in between Coast Guard inspections. Congress did not intend for safety management to be the basis for an inspection mechanism for towing vessels.

Since 1992, towing vessels have been involved in more than 607 sinkings, 593 floodings, 494 fires, 115 capsizings, 41 explosions, and 103 abandonments. I believe that these numbers can be significantly reduced by having these vessels inspected by Coast Guard personnel pursuant to the vessel inspection laws and manned in conformance with the manning and licensing requirements under section 8101 of title 46, United States Code..

QUESTIONS:

(1) Towing vessels of a certain size (300 or more gross register tons) are already inspected vessels and are subject to a variety of existing requirements. Should the Coast Guard use any of these existing standards (or standards for other types of inspected vessels) for incorporation into the new regulations regarding the inspection of towing vessels? If so, which regulations or standards should be incorporated into these new regulations?

The American Bureau of Shipping (ABS) has current standards for the classing of towing vessels. These standards could be adopted insofar as they address portions of a vessel that are within the scope of a Coast Guard inspection under sections 3305 (scope and standards of inspection) and 3306 (regulations) of title 46, United States Code. These standards are widely

known by the shipbuilding and ship repair industry and would make it much easier for the Coast Guard to inspect towing vessels. The Coast Guard should establish supplementary standards for those items that do not fall within the scope of current ABS standards, such as for lifesaving

equipment, crew accommodations, potable water, and training and drills for use of lifesaving and firefighting equipment.

Inspection standards provide engineering level detail regarding the design and construction for all vessels, including towing vessels. The Coast Guard should draw on its vast experience in setting safety standards for vessels when establishing the inspection standards for towing vessels. For example, the Coast Guard will need to decide whether or not it is good marine practice for the cooling water system on a towing vessel to be made out of plastic pipe. Conversely, the Coast Guard must examine the unique characteristics of towing vessels when setting these engineering standards. For example, is the bridge high enough for bridge personnel to see over all of the barges being pushed and does the towing vessel have sufficient horsepower to safely navigate the number, size, and draft of barges that it will be pushing. If not, then operational restrictions may need to be placed in the certificate of inspection for the vessel.

(2) Title 46, United States Code, specifies the items covered with regard to inspected vessels including lifesaving, firefighting, hull, propulsion equipment, machinery and vessel equipment. However, the legislation that added towing vessels to the list of inspected vessels, authorized that the Coast Guard may prescribe different standards for towing vessels than for other types of inspected vessels. What, if any, different standards should be considered with regard to inspected towing vessel requirements from other inspected vessels?

Section 3305 of title 46, United States Code, is very specific with regard to the scope of a vessel inspection by Coast Guard personnel. This section states:

“(a) The inspection process shall ensure that a vessel subject to inspection –

“(1) is of a structure suitable for the service in which it is to be employed;

“(2) is equipped with proper appliances for lifesaving, fire prevention, and firefighting;

“(3) has suitable accommodations for the crew, sailing school instructors, and sailing school students, and for passengers on the vessel if authorized to carry passengers;

“(4) has an adequate supply of potable water for drinking and washing by passengers and crew;

“(5) is in a condition to be operated with safety to life and property; and

“(6) complies with applicable marine safety laws and regulations.”

In addition, section 3306 of title 46, United States Code, is very specific regarding the areas that Coast Guard inspection regulations must cover. This section states:

“(a) To carry out this part and to secure the safety of individuals and property on board vessels subject to inspection, the Secretary shall prescribe necessary regulations to ensure the proper execution of, and to carry out, this part in the most effective manner for -

“(1) the design, construction, alteration, repair, and operation of those vessels, including superstructures, hulls, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, boilers, unfired pressure vessels, piping, electric installations, and accommodations for passengers and crew, sailing school instructors, and sailing school students;

“(2) lifesaving equipment and its use;

“(3) firefighting equipment, its use, and precautionary measures to guard against fire;

“(4) inspections and tests related to paragraphs (1), (2), and (3) of this subsection; and

“(5) the use of vessel stores and other supplies of a dangerous nature.”

Section 8101 of title 46, United States Code, also requires the Coast Guard to set the minimum manning levels for all inspected vessels necessary for the safe operation of the vessel. This now includes towing vessels. Section 8101 states:

“(a) The certificate of inspection issued to a vessel under part B of this subtitle shall state the complement of licensed individuals and crew (including lifeboatmen) considered by the Secretary to be necessary for safe operation.”

“(g) A person may not employ an individual as, and an individual may not serve as, a master, mate, engineer, radio officer, or pilot of a vessel to which this part applies or which is subject to inspection under chapter 33 of this title if the individual is not licensed by the Secretary. A person (including an individual) violating this subsection is liable to the Government for a civil penalty of not more than \$10,000. Each day of a continuing violation is a separate offense.”

In addition, section 8904(c) of title 46, United States Code, states:

“(c) The Secretary may prescribe by regulation requirements for maximum hours of service (including recording and recordkeeping of that service) of individuals engaged on a towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding the sheer).”.

Under section 8101, the Coast Guard will have to determine whether or not, for example, there should be more than one individual on a bridge watch or more than one engineer on the vessel. In calculating manning levels the Coast Guard should take into account the number of people necessary for safe operation of towing vessels given “hours of service” limitations designed to prevent fatigue from causing marine casualties. These “hours of service” limitations will factor in the hours of continuous rest that mariners will need using circadian rhythm cycles.

The manning levels also may vary depending upon the type of towing vessel involved. The Coast Guard may decide that the manning level on an inland towing vessel does not have to be the same as for a coastal integrated tug-barge (ITB).

It may be appropriate to develop different standards for towing vessels based on their size or type of operation as long as those standards address the areas subject to inspection under sections 3305 and 3306 of title 46, United States Code in much the same way that the Coast Guard has already developed different standards for two types of small passenger vessels, so called “T” and “K” vessels. For example, different standards for the following four categories of towing vessels could be established: (1) towing vessels used exclusively on rivers and bays in conjunction with barges; (2) towing vessels used exclusively for docking or towing assistance to self-propelled vessels; (3) coastal and seagoing towing vessels; and (4) towing assistance vessels that aid recreational vessels in an emergency.

(3) Towing vessels vary widely in terms of size, horsepower, areas of operation, and type of operation. Under what circumstances, if any, should a towing vessel be exempt from the requirements as an inspected vessel?

The Coast Guard has no authority to exempt a vessel from inspection under chapter 33 of title 46, United States Code. The only exemptions from inspection are those prescribed by Congress in section 3302 of title 46. None of these Congressional exemptions apply to towing vessels. However, as noted above, the Coast Guard may prescribe different standards for the various types of towing vessels so long as those regulations address the items subject to inspection under sections 3305 and 3306 of title 46, United States Code.

(4) Should existing towing vessels be given time to implement requirements, be “grandfathered” altogether from them, or should this practice vary from requirement to requirement?

Section 3307 of title 46, United States Code, requires a vessel subject to inspection (including a towing vessel) to be inspected before it is put into service and at least once every five years. There may be more than 5,000 towing vessels that will now be subject to inspection and have to be drydocked in order to determine if their hulls and fittings meet the inspection standards. To accommodate the transition to full inspection, the Coast Guard may want to consider phasing in the system by using the construction date in the builders certificate issued when the towing vessel was built. The Coast Guard could require a towing vessel to be inspected before the vessel hits its next anniversary date that is divisible by 5. For example, if the towing vessel is currently 12 years old, it would have 3 years to become inspected. This would allow for the workload to be spread out over a manageable time period and begin a cyclical process for subsequent reinspections.

Regarding the grandfathering of towing vessels, the Coast Guard may want to consider exempting a towing vessel from an individual requirement if that requirement would require a major structural or major equipment change to the vessel unless that change is necessary to remove an especially hazardous condition. This approach was used when offshore supply vessels were brought under inspection. However, as stated before, no towing vessels may be exempted from inspection and the issuance of a certificate of inspection.

(5) Should existing towing vessels be treated differently from towing vessels yet to be built?

See recommendations in response to question #4.

(6) The same act that requires inspection of towing vessels authorizes the Coast Guard to develop a safety management system appropriate for the towing vessels. If such a system is developed, should its use be required for all inspected towing vessels?

As stated in the Conference Report for the Coast Guard and Maritime Transportation Act of 2004 (H. Rpt. 108-617) "Safety management systems allow the Coast Guard to oversee the maintenance and repair of vessel and ship systems subject to inspection through an approved management plan that includes maintenance schedules and system tests". Safety management systems will improve vessel maintenance and repairs and therefore should be required of all towing vessels. However, safety management systems are a supplement to the traditional Coast Guard inspection and are in no way a substitute for the inspection of a towing vessel by Coast Guard officials. As stated in section 3307 of title 46, United States Code, "Each vessel subject to inspection under this part shall undergo an initial inspection for certification before being put into service. After being put into service Any other vessel shall be inspected at least once every 5 years." Therefore, a towing vessel must be inspected by Coast Guard personnel or a classification society (if the Coast Guard chooses to delegate inspection authority under section 3316).

(7) Examples of existing safety management systems include the international safety management (ISM) code and the American Waterways Operators Responsible Carrier Program. If a safety management system is used, what elements should be included in such a system?

The only components of the international safety management (ISM) Code or the American Waterways Operators Responsible Carrier Program that the Coast Guard may include in the towing vessel safety management plans approved under this chapter are those elements that address the parts of a vessel subject to inspection that are detailed in sections 3305 and 3306 of title 46, United States Code, which sets out the parameters for Coast Guard regulations prescribed under chapter 33 of that title. As stated in the Conference Report to the Coast Guard and Maritime Transportation Act of 2004:

“Safety management systems allow the Coast Guard to oversee the maintenance and repair of vessel equipment and ship systems subject to inspection through an approved safety management plan that includes maintenance schedules and system tests. The Coast Guard may enforce the plan through audits of the vessel's logs and vessel operator's records rather than having to directly oversee the repair or maintenance work conducted on a particular piece of equipment or ship system.”

I commend the Coast Guard for making this regulatory project a high priority and believe that it can significantly improve safety on our nation's waterways.

Sincerely,

A handwritten signature in black ink that reads "James L. Oberstar". The signature is written in a cursive, flowing style.

James L. Oberstar
Ranking Democratic Member

326394

USCG-2004-19977-130



Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: G-ICA
Phone: (202) 366-4280
Fax: (202) 366-7124

5730

APR 12 2005

The Honorable James L. Oberstar
House of Representatives
Washington, DC 20515

Dear Representative Oberstar:

Thank you for your detailed letter of March 23, 2005 commenting on the Coast Guard's task to develop regulations for the inspection of towing vessels as called for by Section 415 of the Coast Guard and Maritime Transportation Act of 2004 (P.L. 108-293). You are the first member of Congress to provide us with written input on this very important matter.

I share your concerns about safety of towing vessels, both for the mariners working onboard and for the safe operation of these vessels as part of our maritime transportation system. We will make sure we carry out the law as Congress intended. As part of the regulatory effort we will identify all the statutes and regulations that will apply to towing vessels since they now fall under the category of inspected vessels listed in 46 USC 3101. We will use your letter to double-check our research and will enter your comments and our response into the docket.

I enjoyed the towing vessel history in your letter. I find it remarkable how history repeats itself. In 1864, with our country in the midst of war, towing vessels were added to the list of steam-powered vessels subject to inspection. One-hundred and forty years later, with our country again at war, Congress once again added towing vessels to the list of vessels subject to inspection for certification. We look forward to your continued support on this issue.

I am happy to answer any further questions you may have, or you staff may contact my House Liaison Office at (202) 225-4775.

Sincerely,

THOMAS H. COLLINS
Admiral, U.S. Coast Guard
Commandant