



Office of Information and Regulatory Affairs
Ms. Shannon Joyce
725 17th
Street NW,
Washington DC 20503

30 August 2018

Re: *Maritime Regulatory Reform Request for Information (Docket: OMB-2018-0002)*

Via electronic submission to: <https://www.regulations.gov>

Dear Ms. Joyce:

The American Petroleum Institute (API), the International Association of Drilling Contractors (IADC), and the Offshore Operators Committee (OOC), hereinafter referred to as the Joint Trades, appreciate the opportunity to provide comments on the OMB's 17 May 2018 request for information regarding maritime regulatory reform.

API is a national trade association that represents nearly 620 members involved in all aspects of the oil and natural gas industry, including producers, refiners, suppliers, pipeline operators and marine transporters, as well as service and supply companies that support all segments of the industry. API members are deeply committed to safe, secure, and environmentally responsible operations which eliminate or reduce potential risks to the public, as well as employees, contractors, and operations. Safety and security are key elements in all operations and we continue to work with regulators across government to ensure we are operating in a manner that protects our workers and communities, promotes safe practices, meets regulatory requirements, and improves our country's access to reliable energy, while delivering oil and natural gas products over water efficiently and safely worldwide.

IADC is a not for profit organization with approximately 1,500-member companies representing the worldwide drilling industry. Pertinent to these comments, IADC's membership includes drilling contractors currently operating mobile offshore drilling units (MODUs) in the areas subject to the jurisdiction of the United States, and the vast majority of drilling contractors offering MODUs in the competitive market, worldwide.

The OOC is an offshore oil and natural gas trade association that serves as a technical advocate for companies operating on the U.S. OCS. Founded in 1948, the OOC has evolved into the principal technical representative regarding regulation of offshore oil and natural gas exploration, development, and producing operations. The OOC's member companies are responsible for approximately 99% of the oil and natural gas production from the GOM.

The below comments are offered as recommendations to improve upon existing maritime regulations, including currently proposed rules yet to be finalized. These Joint Trades' comments are offered without prejudice to any of our members who may elect to address this request for comments directly, or to any of our members who may offer differing or opposing views.

The Joint Trades applaud the OMB for taking an interest in existing maritime compliance requirements and its effort to facilitate a pragmatic approach to reforming these regulations. The maritime industry has experienced a profound transformation in technology and capacity across all manner of vessel and facility types. Nowhere else has the industry been more substantially impacted in this way than in the offshore oil and natural gas sector. The persistent enhancement and improvement of "surface" and "subsea" capabilities in the form of, *inter alia*, highly specialized vessels, commercial diving activities, submersible equipment, and novel industrial systems have conspired to provide ready access to sources of offshore oil and natural gas long thought inaccessible until a few short years ago. Ultra-deep water drillships now undertake drilling campaigns in water depths exceeding 10,000 feet. Heavy transport vessels routinely transport production facilities substructures from origins far beyond the Gulf of Mexico for onsite assembly with topside structures in their final offshore installation locations. The marriage of "information technology" (IT) and "operational technology" (OT) have instigated unprecedented capabilities for monitoring equipment health and data analysis that have leveraged the safety and efficiencies of offshore activities in virtually unimaginable ways.

The above examples provide a simple illustration of a few present-day capabilities and demonstrate how far the offshore oil and natural gas industry has advanced since the late 1990s when "deepwater" exploration and production began its proliferation in the U.S. Gulf of Mexico. Unfortunately, as this steady progression of technology and know-how transpired, the evolution of maritime regulations languished and/or have become outmoded. The following comments provide examples of areas in which U.S. maritime offshore regulations have not kept pace with the progress of the industry.

Regulatory Consistency/Federal Preemption

The administration should provide certainty and consistency to the maritime industry by limiting the ability of state and local governments to regulate the industry in areas already adequately addressed by Federal law or regulation, covered by international convention or treaty, or adopted by the industry itself as a best practice. The administration should also ensure that regulations at the federal level are neither conflicting, nor duplicative. Operating a vessel, both domestically and internationally, is similar in many respects to other forms of common carriage, including rail, trucking and air transport. In each of these non-maritime transportation areas, the Federal government has time and again asserted the concept of Federal primacy in the area of interstate and international commerce. When individual states and local governments attempt to regulate rail, trucking or air in areas such as crew size, sleep rules, equipment and training, the Federal government has relied on Federal primacy to invalidate those rules in order to ensure commerce is not impeded. The administration should do the same for the maritime industry, by disallowing rules that limit or hinder commerce or development, including in areas of safety, security, training, manning, and the environment.

Additionally, the administration should attempt, whenever possible within the existing statutory scheme, to align federal regulations and policies with international requirements, especially where current federal regulations and rulemaking initiatives are outdated, no longer effective, and have lingered well beyond the point of obsolescence as a way to increase certainty and consistency within the industry. By aligning US regulation with international rules and customs, the administration will provide a well-regulated maritime industry with the ability to operate world-wide, without concern for compliance with a patchwork of various regulations or implementation dates. In particular, the administration should align ballast water and air emission regulations and implementation dates with international standards, allowing the industry to carefully plan for and implement these challenging solutions by taking into consideration internationally adopted standards, industry best practices and world-wide technical solutions. Furthermore, the administration should align its standards for Mobile Offshore Drilling Units (MODUs) with the three existing editions of the IMO MODU Code which would again further certainty and consistency within the industry.

Codifying Guidance in Regulation

The administration should initiate rulemaking to incorporate the myriad of Coast Guard policy documents that have been issued over the years in an attempt to clarify published regulations. These policy documents purport only to clarify existing regulations, but often times create new regulatory burdens on the industry without the full, transparent benefit of notice and comment development, and at times inadvertently conflict with existing regulations.

Maritime Transportation Security Act of 2002

The Joint Trades members with OCS facilities and vessels operating under the regulatory requirements of the Coast Guard's Maritime Transportation Security Act of 2002 (MTSA), PUBLIC LAW 107-295, are supportive of continuing the idea of these provisions. However, it is earnestly recommended that further consideration be given regarding these existing measures as the Coast Guard seeks to review and determine the value of existing regulations. Created as a result of the threats acknowledged after the tragic events of September 11, 2001, MTSA provided a fundamental framework upon which industry and the Coast Guard have built to identify risks, prevent transportation security incidents, and ensure the safety of personnel, passengers and goods at ports around the country. We agree with the General Accountability Office's findings that DHS, through USCG and Customs and Border Protection, "have made substantial progress in implementing various programs that, collectively, have improved maritime security."¹ Specifically, we concur with the following improvements:

"DHS has, among other things, developed various maritime security programs and strategies and has implemented and exercised security plans. For example, the Coast Guard has developed Area Maritime Security Plans around the country to identify and coordinate Coast Guard procedures related to prevention, protection, and security response at domestic ports. In addition, to enhance the security of U.S. ports, the Coast Guard has implemented programs to conduct annual inspections of port facilities. To enhance the security of vessels, both CBP and the Coast Guard receive and screen

¹ <http://www.gao.gov/products/GAO-12-1009T>

advance information on commercial vessels and their crews before they arrive at U.S. ports and prepare risk assessments based on this information. Further, DHS and its component agencies have increased maritime domain awareness and have taken steps to better share information by improving risk management and implementing a vessel tracking system, among other things... DHS and its component agencies have also taken actions to improve international supply chain security, including developing new technologies to detect contraband, implementing programs to inspect U.S.-bound cargo at foreign ports, and establishing partnerships with the trade industry community and foreign governments.”

While the Joint Trades members do support the intent and principles of the MTSA, the implementation and evolution of the Transportation Worker Identification Credential (TWIC), has been somewhat problematic. Over time, the validity of the card as a trustworthy credential has lessened, largely due to bureaucratic complexity and bifurcated management. While Coast Guard requires a TWIC for workers at MTSA regulated facilities and for all mariners holding a credential issued by the USCG, the program is administered through DHS’ Transportation Safety Administration (TSA). This is counter-productive to sustaining overarching National Security concerns via a bolstering of the U.S. merchant mariner pool because a USCG licensed (credentialed) mariner not in possession of a valid TWIC effectively renders that credential invalid. This point is considered noteworthy and ripe for further consideration due to the fact that authority for TWIC ultimately resides outside of the Coast Guard, the agency component responsible for administering oversight of affected credentialed mariners. Over the years, the program has gone through multiple changes, including funding levels, user fees, background screening requirements, and adjudication of complaints. At this stage, there is waning confidence among industry stakeholders as to the validity of the TWIC card as a trusted credential. Industry supports the use of a credential that is based on trusted processes, is routinely vetted, and can be effectively withdrawn or cancelled when a cardholder violates the stated requirements. The Joint Trades members are willing to work with USCG and DHS to better identify what improvements can be made to the existing program or to explore what type of credentialing could be acceptable to both the USCG and industry.

CBP interpretation of the Jones Act as applied to natural gas and oil activities on the OCS

Another opportunity for maritime regulatory reform is the U.S. Bureau of Customs and Border Protection’s (CBP’s) interpretation of the Jones Act as applied to natural gas and oil activities on the U.S. Outer Continental Shelf. CBP expresses its interpretation of the Jones Act through letter rulings issued to individual parties, and our industry’s current understanding of the Jones Act is significantly informed by such rulings. Domestic maritime interests have raised concerns about many of the letter rulings that address our industry’s operations, advocating against these rulings within the executive and legislative branches of the federal government and in an ongoing federal court lawsuit, *Radtke v. U.S. Bureau of Customs and Border Protection*, 1:17-cv-2412 (D.D.C.). While the Joint Trades support CBP’s interpretation of the Jones Act in general, some other CBP letter rulings have raised serious concerns for our members. Most notably are the letter rulings interpreting the Jones Act as it applies to heavy lift and other specialized OCS construction activities for which the Jones Act was never intended and, in any event, for which there are no Jones Act qualified vessels capable of doing the work in a manner that prioritizes safety and efficiency with our OCSLA obligations.

To provide clarity and certainty to the entire regulated community, the Joint Trades support a rulemaking that would define the Jones Act terms “merchandise,” “transportation,” and “points in the United States” as applied to natural gas and oil activities on the U.S. Outer Continental Shelf. Such a rulemaking, conducted pursuant to the notice-and-comment requirements of the Administrative Procedure Act and subject to the requirements of Executive Orders 12866 and 13771, would allow for engagement by all stakeholders, interagency review, cost offsetting, and consideration of the potential impacts of a proposed rule, including an economic impact analysis. A rulemaking would also ensure that any final action on this issue is consistent with the President’s policy to encourage energy exploration and production on the Outer Continental Shelf, as stated in Executive Order 13795.

Withdrawal of 33 CFR Subchapter N Notice of Proposed Rulemaking

On 8 June 2017, the U.S. Coast Guard issued its Request for Comments (RFC) (Docket No. USCG-2017-0480) on *Coast Guard maritime regulations, guidance documents, and interpretative documents* that possibly lend themselves to being repealed, replaced, or modified. Related to this RFC was the Coast Guard’s specific invitation to the National Offshore Safety Advisory Committee (NOSAC) to provide its recommendations and comments regarding these provisions as they relate particularly to maritime compliance on the U.S. Outer Continental Shelf (OCS). On 28 March 2018, those requested comments/recommendations were delivered to the Coast Guard at NOSAC’s 2018 Spring meeting in New Orleans. Since the submission of these recommendations, it has come to the attention of NOSAC and other U.S. offshore stakeholders that a particularly important issue, as outlined in the NOSAC recommendations, is not receiving due consideration by the Coast Guard. This issue involves the Notice of Proposed Rulemaking regarding *33 Code of Federal Regulations – Subchapter N; Outer Continental Shelf Activities [Docket No. USCG-1998-3868]*, a regulatory effort that has languished since 1999.

In 1999, the Coast Guard published an NPRM to update 33 CFR subchapter N to reflect the advances in the technology and operational capabilities that had emerged since previous regulatory action on 33 CFR Subchapter N was completed in 1982. In the period that has elapsed since 1999, the Coast Guard proceeded to experience a variety competing demands for its resources, most notably were the abrupt exigencies resulting from the tragic events of September 11, 2001. Consequently, as the Coast Guard’s organizational approach was refocused in its transition from the Department of Transportation to the Department of Homeland Security in 2003, the priority of this and other maritime safety rulemakings had arguably diminished. In the remaining period leading up to the present, the Coast Guard was never able to garner the resources to “jump start” this effort and see it through to a final rule. Over this same period, technology and offshore operations continued to evolve at an increasing rate bringing about the fundamental obsolescence of this almost 20-year-old proposed rulemaking. The Joint Trades believe the only way to adequately revisit the issue of addressing the Coast Guard’s maritime regulations for the U.S. OCS is the wholesale withdrawal of this antiquated proposed rulemaking that no longer reflects a relevance to the present-day offshore activity. A withdrawal of this rulemaking in its entirety would remove the strictures of the Administrative Procedures Act such that a more meaningful dialogue could subsequently be undertaken between offshore stakeholders and the Coast Guard to begin anew - the framework upon which relevant provisions could be progressed via a completely new, modern, and effective rulemaking. As long as this

current 33 CFR Subchapter N NPRM remains “active” on the docket, further progress on this issue will clearly not be possible as substantial interface with key Coast Guard staff will continue to be precluded. Most importantly, the safety of the offshore environment and persons working on the OCS will not be improved nor enhanced.

Development of design, equipment, and operational regulations for floating OCS production facilities

Along with the need to revise the OCS regulatory framework described above, there is a need for regulations more suitable for floating OCS production facilities. As it currently exists, the dated and deficient regulations in 33 CFR Subchapter N merely invoke certain parts of current Coast Guard regulations for MODUs and other traditional vessels to address the compliance provisions of production facilities. No effort has ever been made by the Coast Guard to promulgate a suite of regulations more appropriate for floating OCS production facilities since the first one was installed in the Gulf of Mexico almost 30 years ago. The application of traditional vessel-based regulations on structures that are not vessels is problematic at best and leads to applications and practices that can pose increased risk.

The Joint Trades look to OIRA to exercise its authorities/responsibilities to encourage or otherwise mandate that the Coast Guard and CBP take up the necessary actions to address these aforementioned issues. In particular, offshore stakeholders consider the withdrawal of the 33 CFR Subchapter N NPRM a top priority. Withdrawal of this proposed rulemaking will lend itself to a series of follow-on actions that will beneficially affect all other maritime regulation as applicable to the U.S. OCS. **This action will in no way reduce the efficacy of regulations and polices already in force.** It will, however, be a vitally important step to “value added” regulatory reform for the U.S. OCS.

We look forward to continued engagement with OIRA on these vitally important matters to assure the safe and efficient production of the energy that is fundamental to our society and its economic prosperity. It is important that safety regulations indeed enhance safety, rather than hinder it.

Thank you for your consideration of these comments, please do not hesitate to contact us if you have any questions.

Sincerely,

Holly Hopkins, API



Jason McFarland, IADC



Evan Zimmerman, OOC

