



WORLD SHIPPING COUNCIL  
PARTNERS IN TRADE

March 3, 2016

Admiral Paul F. Zukunft  
Commandant of the Coast Guard  
2703 Martine Luther King Jr. Avenue, S.E.  
Washington, D.C. 20593-7000

**Re: SOLAS Chapter VI, Regulation 2 – Cargo Information**

Dear Admiral Zukunft:

I am writing regarding the new position that the U.S. Coast Guard has publicly expressed with respect to the Safety of Life at Sea (SOLAS) Convention's regulation to improve container safety.

The International Maritime Organization (IMO) deliberated about how to best address the problem of inaccurate container weight declarations starting in 2010, and, after almost four years of deliberation and negotiation, it adopted an amendment to Chapter VI, Regulation 2 of the Convention in 2014. The purpose of that amendment is to address the continuing failure of too many shippers of containerized cargo to provide their carriers with accurate weights for loaded containers tendered for international ocean transportation.<sup>1</sup> The SOLAS regulation sets

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<sup>1</sup> The problems resulting from misdeclared container weights extend beyond containers loaded above their maximum carrying capacity and include the following:

- damage to ships and equipment;
- stability and stress risks for ships;
- risk of personal injury or death to seafarers and shoreside workers;
- incorrect vessel stowage decisions;
- re-stowage of containers (and resulting delays and costs), if the incorrect condition is ascertained;
- collapsed container stacks;
- containers lost overboard (both those overweight and containers that were not overweight);
- cargo liability claims;
- impairment of service schedule integrity;
- last minute shut-outs of confirmed, booked and available loads when the actual weight on board exceeds what is declared and planned for,
- impairment of vessels' optimal trim and draft, thus impairing vessel efficiency, suboptimal fuel usage, and greater vessel air emissions; and

forth a clear set of regulatory responsibilities applicable to shippers, port facilities, and vessel operators. The IMO gave governments and the industry more than two years to get ready to implement the regulation. The SOLAS amendment enters into force on July 1 of this year.

On July 20, 2015, the World Shipping Council wrote to you to inquire about the Coast Guard's plans for implementation and enforcement of these new safety measures. On September 7, 2015, Rear Admiral Paul Thomas responded to our letter. We were pleased that Admiral Thomas acknowledged the importance of the issue and the need for implementation of the amended SOLAS regulation, when he stated:

*"I am writing in reply to your organization's letter of July 20, 2015, concerning the recent International Convention on the Safety of Life at Sea (SOLAS) amendment that requires the weighing of shipping containers. This new requirement is significant and it is important to ensure compliance because it addresses safety issues that are associated with loading containers with unverified weights.*

*The Coast Guard fully supports the SOLAS amendment and we did so throughout its development at the International Maritime Organization. We are currently considering how to implement this requirement and are actively discussing a wide range of enforcement options."*

Copies of both letters are attached. Admiral Thomas was correct in his September letter when he stated the Coast Guard had been a full supporter of the SOLAS amendment throughout its development. The Coast Guard co-sponsored several papers at the IMO, which stated that misdeclared container weights are a significant problem, that the former SOLAS regulation needed to be amended to address the problem, and that new regulatory obligations on shippers, marine terminal operators, and vessel operators were the proper solution. The Coast Guard chaired the IMO correspondence group that developed and agreed upon the Implementation Guidelines for the new regulation, which set forth clear guidance for how shippers, vessel operators and terminal operators can meet their regulatory responsibilities. (See, e.g., DSC 17/INF.5; DSC 17/7; DSC 18/5, attached). The U.S. government, represented by the Coast Guard at the IMO, supported the SOLAS regulation that was adopted.

At no time during the four years that the IMO discussed and developed this SOLAS regulation and implementation guidelines, or during the almost two years since the IMO's adoption of the regulation, did the Coast Guard ever say or indicate that the IMO was the wrong forum to address this issue, that the SOLAS Convention did not have adequate or proper jurisdiction or competence to regulate shippers and terminal operators with respect to this

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- misdeclared weights can deprive Customs authorities of revenues and can impair the government's ability to perform accurate advance container risk analysis, as Customs and Border Protection advised the previous Commandant when supporting the IMO SOLAS regulation amendment.

issue, that the regulation did not apply to the parties it said it applied to, or that the United States would not or could not implement the regulation that it supported at the IMO.

At no time did the IMO Secretariat ever state or imply that the SOLAS regulations do not or could not apply to shippers or terminal operators, or that any government had expressed such a view to it. At no time did any government at the IMO make such a statement.

This week, Admiral Thomas publicly announced that:

- the IMO was the wrong place to address the container weight accuracy regulation,
- SOLAS was not an appropriate legal instrument to address the issue,
- notwithstanding the express language of the SOLAS regulation placing mandatory obligations on shippers, that SOLAS regulations do not apply to shippers, and that shippers were not required by the regulation to provide accurate, signed container weights to their carrier pursuant to the two methods specified in the SOLAS regulation,
- that shippers were in compliance with their obligations using whatever weight information they provide today and there was no need for process changes or further regulation on this issue;
- that the Coast Guard would not apply the SOLAS regulation to U.S. marine terminal operators, and
- that, while vessel operators would be subject to flag state enforcement of the new regulation, he believed the industry was in compliance with what was needed for safe navigation and there should be no real problem.

For the ocean carriers, terminal operators, shippers, software companies and others that have been preparing for the July 1 implementation of the new regulation, this announcement has been stunning. People around the world do not comprehend the content or the rationale of the U.S. Coast Guard's announcements this past week. As you might imagine, many people are confused and upset about how we got to this point.

From a practical standpoint, reading shippers out of the SOLAS regulation makes it impossible for carriers to obtain the container weight information that the regulation requires them to have. This is not, as Admiral Thomas' statements this week suggest, simply a commercial matter. It is a regulatory matter, and the effectiveness of the SOLAS solution depends on shippers, carriers, and terminal operators all fulfilling their obligations to make sure that the ship is safely stowed. It is disingenuous and factually incorrect for the Coast Guard to suggest that relieving shippers of their regulatory obligation will not fundamentally undermine the effectiveness of the SOLAS container weight verification requirements. It is not possible to have it both ways.

We can only assume that Admiral Thomas has accurately represented the Coast Guard's position. If he has, then we respectfully request that the Coast Guard reconsider and reverse

that position. If Admiral Thomas' statements do not accurately reflect the Coast Guard's position, then we would expect that a clarification would be issued promptly.

What we find particularly troubling is that, if the Coast Guard thought the IMO was the wrong forum to address this issue, how it could have acted the way it did at the IMO, with the IMO Secretariat, with other governments, and with industry groups who were all working in good faith to address this issue, without articulating its views?

If the Coast Guard thought SOLAS was the wrong instrument to address this issue, why did it not say so during the four years of the SOLAS regulation's development? If this was the Coast Guard's view, how could it agree to cosponsor the various IMO papers that it did? If the Coast Guard thought this way, why did it chair the correspondence group to develop and agree upon the new regulation's Implementation Guidelines?

If the problem were much narrower and simply a matter that U.S. national law and existing Coast Guard regulations do not presently enable the Coast Guard to enforce the new SOLAS regulatory responsibilities of terminal operators and shippers, why did the Coast Guard wait until the eve of implementation to say so? If this is the problem, why did Admiral Thomas say what he did about the IMO and SOLAS and undermine the credibility of the IMO as the appropriate and effective forum to develop international regulatory solutions to international shipping problems? If this narrower U.S. domestic law issue is the problem, why did the Coast Guard not undertake an Administrative Procedure Act rulemaking to establish a domestic implementing regulation after the IMO adopted the regulation in May 2014? If additional statutory authority was needed for the U.S. national implementation of any part of the SOLAS regulation, why did the Coast Guard not inform the Congress that it needed such authority in order to implement the SOLAS regulation it had supported at the IMO? The IMO gave governments over two years to get ready to implement this regulation, yet the Coast Guard took no action and expressed no indication of its intentions until this past week.

Finally, I note that on January 15 of this year, in the U.S. submission to the IMO Secretary General in the IMO's examination of "trends, developments and challenges," the Coast Guard stated the following in its Annex 6 comments on "Implementation of IMO Instruments":

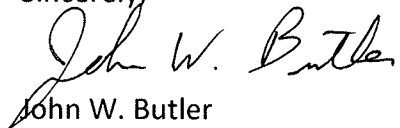
"Ultimately the IMO and the maritime industry, as a whole, will be judged on its overall performance and while we can continue to raise standards, increased implementation with increased compliance with all requirements will improve overall industry performance."

The World Shipping Council agrees.

I respectfully submit that the industry that has worked in good faith with the U.S. Coast Guard, the IMO, and other governments and industry groups around the world to develop this regulation, and that has been preparing for the past two years for its implementation, has more than legitimate reason to be surprised and upset by these recent announcements from the Coast Guard.

I would appreciate the opportunity to meet with you so that our industry clearly and properly understands the posture of the U.S. government on this subject.

Sincerely,

A handwritten signature in black ink that reads "John W. Butler". The signature is written in a cursive style with a large, prominent initial "J".

John W. Butler  
President and CEO

cc: Rear Admiral Paul F. Thomas