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G-MOC POLICY LETTER 4-00, REV-1

Subj: WATCHKEEPING AND WORK-HOUR LIMITATIONS ON TOWING VESSELS, OFFSHORE SUPPLY VESSELS (OSV) & CREW BOATS UTLIZING A TWO WATCH SYSTEM

Ref: (a) Title 46 United States Code (46 USC) Part F – Manning of Vessels
(b) Title 46 Code of Federal Regulations (46 CFR) Part 15 – Manning Requirements
(c) USCG Marine Safety Manual, Volume III, Chapters 20 through 26 – Marine Industry Personnel
(d) Title 46 United States Code (46 USC) §2114 – Protection of Seamen Against Discrimination
(e) Title 46 United States Code (46 USC) §3315 – Disclosure of Defect & Protection of Informants

1. The purpose of this policy letter is to, in one document, summarize and clarify references (a) – (e) as they pertain to work-hour limitations and watchkeeping for licensed operators and other mariners on towing vessels, offshore supply vessels and crew boats utilizing a two watch system. Related to this subject is the concern that exceeding work-hour limitations leads to the diminution of crew alertness that could contribute to human factors type accidents. The problems associated with diminution of crew alertness are of particular concern even when operating within the constraints of the law. The Coast Guard is currently conducting research on improving crew alertness by identifying the extent to which various aspects of shipboard life/operations may be contributing to the diminution of crew alertness and subsequent unsafe conditions. This policy will further clarify the responsibilities of mariners, vessel owners, operators, masters and the Coast Guard concerning crew alertness and actions necessary to prevent casualties as a result of fatigue. Finally, this policy summarizes the protections afforded to individuals who report to the Coast Guard on violations of the applicable statutes.

2. Definitions

The following definitions are consistent with previous Coast Guard policies or Coast Guard regulations.

a. *Emergency* is an unforeseen development that imposes an immediate hazard to the safety of the vessel, the passengers, the crew, the cargo, property, or the marine environment, requiring urgent action to remove or mitigate the hazard.

b. *Overriding operational conditions* are circumstances in which essential vessel work cannot be delayed for safety or environmental reasons, or could not reasonably have been anticipated at the commencement of the voyage.

c. *Rest* means a period of time during which the person concerned is off duty, is not performing work, including administrative tasks such as chart corrections or preparation of port entry documents, and is allowed to sleep without being interrupted.

d. *Travel time* to a vessel is considered to be neutral time as it is normally not considered to be "rest," "off-duty," or "work" time, but all relevant circumstances should be considered in evaluating whether a mariner complies with the applicable "rest" required by STCW or "off-duty" requirements specified in 46 U.S.C. §8104(a).

e. *Watch* is activity related to the direct performance of vessel operations, whether deck or engine, where such operations would routinely be controlled and performed in a scheduled and fixed rotation. The performance of maintenance or work necessary to the vessel's safe operation on a daily basis does not in itself constitute the establishment of a watch. However, the latter does count towards the hours of work that can be required by an employer.

f. *Work* is any activity that is performed on behalf of a vessel, its crew, its cargo, or the vessel's owner or operator. This includes standing watches, performing maintenance on the vessel or its appliances, unloading cargo, or performing administrative tasks, whether underway or at the dock.

The definitions above for "overriding operational conditions" and "rest" are used in situations where the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW), 1978, as amended in 1995, applies.

3. Watchkeeping, Work-hour Limitations and Manning Requirements

a. Watchkeeping requirements, work-hour limitations and manning requirements for mariners on towing vessels, offshore supply vessels and crew boat, as applicable, are comprehensively addressed in references (a) – (c). As a ready reference, enclosure (1) summarizes these requirements.

b. In establishing the safe manning level for an inspected vessel, the Coast Guard Officer in Charge, Marine Inspection (OCMI) must consider many factors in addition to the statutory and regulatory requirements, including reasonable work-hour limits. Owners and operators who establish manning levels on uninspected vessels must consider such limits as well. These factors are specifically outlined in reference (c). In addition, OCMIs may increase the manning of a particular vessel if, through the course of a casualty or other type of investigation, an increase is deemed necessary for the safe operation of the vessel.

c. The law that addresses watchkeeping and working hours on the subject vessels is found in reference (a), specifically 46 U.S.C. §8104. This section of the law includes requirements for officers to have an off-duty period before taking charge of the deck watch prior to departing port, watch rotations on vessels, and specific work-hour provisions for various types of vessels.

d. 46 U.S.C. §8104(d) requires merchant vessels of 100 gross tons and above, when at sea, to be manned for a three-watch system, and mariners shall be kept on duty successively to perform ordinary work incident to the operation and management of the vessel. This section of the law also states that a mariner cannot be required to work for more than 8 hours in one day. There are certain exceptions to the work-hour limitations relevant to the docking/undocking, conducting emergency drills, actual emergency situations or overriding operational conditions that compromise the safety of the vessel and its passengers and crew (See 46 U.S.C. §8104(f)) in which a mariner can be required to work more than 8 hours in a day. Mariners subject to 46 U.S.C. §8104(d) can consent to work in excess of 8 hours in a day.

e. 46 U.S.C. §8104(g) permits licensed individuals and crewmembers of towing vessels, offshore supply vessels, and barges, when engaged on voyages of less than 600 nautical miles, when at sea, to be divided into at least 2 watches. The Coast Guard interprets this section of the law to mean that a mariner can be scheduled to work 12 hours in any consecutive 24-hour period, provided the mariner consents to work more than 8 hours in a day.

f. 46 U.S.C §8104(h) establishes that licensed operators of towing vessels subject to 46 U.S.C. §8904 may not work in excess of 12 hours in any consecutive 24-hour period, except in an emergency.

4. STCW

In addition to the work-hour limitation requirements outlined above, STCW adds specific rest requirements for vessels operating outside the boundary line (12 miles in the Gulf of Mexico). As a general matter, U.S. regulations impose the STCW requirements on all commercial seagoing vessels (as defined in 46 CFR 15.1101(a)(3)) in international service and to all commercial seagoing vessels of 200 gross register tons and above on domestic and international voyages. The STCW addresses both short-term and long-term rest requirements for watchkeeping personnel.

a. Persons assigned to navigational or engineering watches shall receive a minimum of 10 hours rest in any 24-hour period.

b. The hours of rest may be divided into no more than two periods, of which one must be at least 6 hours in length.

c. Rest periods may be interrupted in case of emergency, drill, or other overriding operational conditions.

d. The minimum 10-hour rest period may be reduced to not less than 6 consecutive hours as long as no reduction extends beyond 2 days and not less than 70 hours of rest are provided in each 7-day period.

e. The minimum period of rest required may not be devoted to watchkeeping or other duties.

f. Watchkeeping personnel remain subject to the work-hour limits and exceptions found in reference (a).

5. Responsibilities

Mariners, owners/operators, and the Coast Guard have separate responsibilities for compliance with, and enforcement of, the work-hour limitation laws. The subparagraphs below provide general guidance regarding the responsibility of each party.

a. Mariners have an individual responsibility to obey the law and are also responsible for reporting suspected watchkeeping and work-hour violations to the Coast Guard. The master of a vessel is ultimately responsible for the safety of the vessel, passengers and crew, cargo, and the environment. To carry out this responsibility the master must ensure that he/she and the crew are properly rested and complying with the law. The master must communicate with the owner/operator to ensure realistic goals are set. If management exerts pressure to exceed the law, the mariner is encouraged to report this situation to the local Coast Guard OCMI. Paragraph 6 of this policy letter describes protections afforded to mariners when reporting violations to the OCMI. While the definition of work includes activities which are required for the vessel to be operated safely, a minimal amount of *de minimis* activities would generally not be considered a violation of this rule. Examples of such *de minimis* activities include: those which are necessary to ensure continued safe operation of the vessel (i.e. information exchange at watch change); safety meetings; and drills and training which can only be conducted underway.

b. Owners/operators, like mariners, are responsible for obeying the law. Companies should ensure employees are informed of the law and educated regarding safety concerns of not getting adequate rest. They should be aware of operational demands and work hours required to complete expected tasks on board their vessels. 46 U.S.C. §8104(j) states that "the owner, charterer, or managing operator of a vessel on which a violation of subsection (c), (d), (e) or (h) of this section occurs is liable to the government for a civil penalty…" thus pointing out their responsibility to ensure compliance. They should provide unambiguous guidelines to the master regarding expectations to comply with safety requirements and the law when these are in conflict with operational demands.

c. Finally, the Coast Guard is charged with enforcement of the law. The Coast Guard can initiate an investigation based on confidential information provided by mariners during the vessel inspection process, anonymous tips called into a Coast Guard Marine Safety Office, or through the findings of a Coast Guard marine casualty investigation. The latter may also bring consequences for the mariners involved or the vessel's owner/operators. When the Coast Guard determines that a casualty occurred because of a violation of law, an appropriate action, a suspension and revocation proceeding, and/or a civil penalty may be recommended. However, as described below, protections exist for the mariner reporting deficiencies or illegal operations. OCMIs should ensure that all responsible parties within their area of responsibility are aware of

the requirements of the law and particularly the importance that rest plays in ensuring safe operations.

It should be noted that the Coast Guard, by 46 CFR 5.71, is prohibited from exercising its authority for the purposes of favoring any party to a maritime labor controversy. However, if a situation is encountered that affects the safety of a vessel or persons on board, the Coast Guard will initiate an investigation and pursue appropriate action when a violation of statute or regulation is discovered. A particular situation that has generated confusion and concern involves the requirement found in 46 U.S.C. §8104(a), which states that an officer taking charge of the deck watch on a vessel leaving port must have at least 6 hours of off-duty time in the 12 hours immediately before leaving port. While an owner/operator cannot be held accountable for the time a mariner has off, they are responsible for the time that an individual is on the dock or on the vessel while in port, and can be expected to verify that the individual has had an opportunity for rest regardless of where he/she has been prior to performing the assigned duties. The owner/operator cannot expect a mariner to participate in extensive preparations for getting underway and also be rested enough to take the navigation watch without providing an opportunity for the minimum off-duty time required by 46 U.S.C. §8104(a). Similarly, the mariner is responsible for arriving at the vessel properly rested.

6. Protections

The Coast Guard has historically depended on individuals involved with the maritime industry to report violations or unsafe vessel conditions when they occur. In the absence of mariner reporting, the Coast Guard is limited to discovering these types of violations through casualty investigations, or by chance during a scheduled inspection. To prevent retaliation for reporting violations to the Coast Guard, Congress enacted specific protections for mariners that make reports of violations to the Coast Guard. The following cites represent the obligation and protections afforded to mariners for reporting violations of the law or regulations to the Coast Guard.

a. 46 U.S.C. §2114 provides protection to seamen against any form of discrimination, including discharge, for reporting a violation of any law or regulation issued under the authority of Title 46.

b. 46 U.S.C. §3315(a) requires licensed officers serving on inspected vessels to assist the Coast Guard in the inspection of their vessels as well as point out defects and imperfections known to them. This includes any violations of work or watch standing limitations.

c. 46 U.S.C. §3315(b) prohibits any official of the Coast Guard from disclosing the identity of any individual that provides information on vessel defects, imperfections, and overall safety of an inspected vessel on which he or she is serving. This includes information on watchkeeping and work hours.

d. The identity of any mariner who reports an unsafe condition on any vessel, inspected or uninspected, is also protected in accordance with the Freedom of Information Act (FOIA) exemptions and Department of Transportation (DOT) regulations (49 CFR 7).

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