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August 24, 2018

Ms. Neomi Rao
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, N.W.
Washington, DC 20503

Re: Maritime Regulatory Reform Request for Information (Docket No. OMB-2018-0002)

Dear Administrator Rao:

The American Waterways Operators is the national trade association for the tugboat, towboat and barge industry. AWO's more than 320 member companies own and operate barges and towing vessels on the U.S. inland and intracoastal waterways; the Atlantic, Pacific and Gulf coasts; and the Great Lakes. Our industry's 5,500 towing vessels and 31,000 barges comprise the largest segment of the U.S.-flag domestic fleet. The tugboat, towboat and barge industry provides family-wage jobs and ladders of career opportunity for more than 50,000 Americans, including 38,000 positions as mariners on board our vessels, and supports more than 300,000 jobs in related industries nationwide. Each year, our vessels safely, securely and efficiently move more than 760 million tons of cargo critical to the U.S. economy, including petroleum products, chemicals, coal, grain, steel, aggregates, and containers. Tugboats also provide essential services in our nation's ports and harbors, including shipdocking, tanker escort and bunkering.

On behalf of AWO's member companies, thank you for the opportunity to comment on how the federal government can improve its regulation of the maritime sector, in accordance with Executive Orders 13771 and 13777. We applaud the Trump Administration for its initiative to identify and alleviate unnecessary regulatory burdens and we appreciate the Office of Information and Regulatory Affairs' effort to examine the costs associated with maritime regulations across multiple federal agencies to facilitate implementation of these Executive Orders in the maritime sector.

AWO submits that the goals of the federal regulatory regime governing the tugboat, towboat and barge industry should be to ensure high standards of safety, security and environmental protection while also preserving the economic efficiency of barge transportation and the free flow of maritime commerce. This is important because the industry is both an integral part of the U.S. intermodal transportation system and the safest and most fuel efficient of any surface transportation mode. Consequently, regulations that compromise the safety of towing vessels

and their crewmembers, that impose unnecessary costs on companies operating towing vessels or barges, or that result in the diversion of cargo to other modes of transportation are problematic not only for the industry, but for the U.S. economy and marine environment as well. These considerations have informed our previous comments on the Administration's regulatory reform initiative to the U.S. Coast Guard, Environmental Protection Agency and Federal Maritime Commission, copies of which are appended to this letter. These comments include specific suggestions regarding regulations that should be repealed, replaced or modified—including, as OIRA has requested, citations to the Code of Federal Regulations; data and cost information; and examples of outdated requirements, regulatory redundancy, and programs that, as implemented, have posed particular compliance challenges for small- and medium-sized companies. We encourage the Administration to act on these recommendations to reduce regulatory burdens on the maritime sector.

As this work moves forward, AWO also encourages OIRA to make ensuring and improving regulatory certainty a guiding principle of this effort. In order for companies to confidently invest in increasing their capacity, modernizing their equipment or expanding their workforce, they must have a level of certainty about the regulatory playing field that allows them to make long-term decisions. Deregulatory action that undermines or upends longstanding statutory or regulatory approaches to the governance of the maritime industry increases uncertainty and discourages growth. On the other hand, deregulatory action that eliminates regulatory inconsistencies—including state attempts to undermine federal authority over vessel operations or conflicting federal and state requirements for vessel operations and mariners—fosters both certainty and efficiency. With this goal of certainty in mind, we urge the Administration: 1) not to consider or propose changes to the Jones Act and related laws; and 2) to defend and strengthen federal primacy in the regulation of maritime commerce.

## Uphold the Jones Act, Which Is Essential to Economic, National and Homeland Security

Under the coastwise laws of the U.S., collectively known as the Jones Act, only a vessel that is built in the United States, owned by U.S. citizens, documented under U.S. registry and crewed by U.S. mariners may provide any part of the transportation of cargo and passengers between points in the U.S. These laws, which reflect our nation's promotion of a U.S.-flag fleet since its founding, are a cornerstone of our maritime heritage and policy and have fostered the growth of a domestic maritime industry that is a pillar of our nation's economic, national and homeland security. For the following reasons, the Administration should reject any recommendation to reform maritime regulations that would involve changes to regulations implementing the Jones Act and related laws.

### *The Jones Act's Economic Importance*

More than 40,000 U.S. vessels built in American shipyards, crewed by American mariners and owned by American companies operate on U.S. waterways, the preponderance of which are barges and towing vessels. In total, this commerce sustains nearly 500,000 American jobs and generates $29 billion in labor compensation, $11 billion in taxes, and more than $100 billion in annual economic output. The maritime industry is by far the most economical form of domestic transportation, moving nearly 1 billion tons of cargo annually at a fraction of the cost of other modes. Fundamental U.S. industries, including energy, agriculture and manufacturing, depend on the efficiencies and economies of domestic maritime transportation to move raw materials and other critical commodities.

For almost 100 years, the Jones Act has facilitated the domestic maritime industry's growth and economic contributions by providing the certainty necessary for long-term investments in the maritime sector, from building and modernizing vessels in American shipyards to hiring and training American mariners. If that certainty were to be undermined by changes to the Jones Act, these investments would be immediately devalued, and the domestic maritime industry would contract, resulting in losses of American jobs and decreases in U.S. tax revenues and economic output. Without the Jones Act, this core American industry would be transferred overseas, and the U.S. jobs it supports would be outsourced to nations like China and South Korea, which heavily subsidize their shipyards and shipowners and play by a different set of rules. The Jones Act keeps seafaring and shipbuilding jobs in America and ensures that the domestic maritime sector can flourish with the certainty of a level American playing field.

*The Jones Act's Importance to National Security*

In addition, the U.S.-flag fleet, shipyards and mariners are an important part of the national maritime infrastructure that helps ensure there will be ample U.S. sealift capacity to defend our nation – so vital that Defense Secretary James Mattis recently described America's commercial maritime industry and merchant marine as "the Fourth Arm of Defense."[1] American vessels, mariners to crew them, vessel construction and repair yards, intermodal equipment, terminals, cargo tracking systems and other infrastructure can be made available to the U.S. military at a moment's notice in times of war, national emergency, or even in peacetime. In addition, during major mobilizations, American domestic vessels move defense cargoes to coastal ports for overseas shipments.

Reflecting Secretary Mattis' remarks, the military services have consistently endorsed the Jones Act. General Darren McDew, then Commander of U.S. Transportation Command, has said that laws like the Jones Act help "delay the day when U.S. national security interests could no longer be supported by a U.S. mariner base springing from our commercial sealift industry."[2] According to Admiral Paul Zukunft, former Commandant of the Coast Guard, changes to the Jones Act "would put our entire fleet in jeopardy,"[3] and Gen. Paul Selva, Vice Chairman of the Joint Chiefs of Staff, has said, "I can stand before any group as a military leader and say without the contribution that the Jones Act brings to the support of our industry there is a direct threat to national defense."[4]

*The Jones Act's Importance to Homeland Security*

Finally, the Jones Act ensures that the owners, crew members and builders of the 40,000 commercial vessels that ply the nation's 95,000-mile water border and 12,000-mile inland waterways system are Americans. These people work closely with local, state and federal law enforcement agencies, including Department of Homeland Security officials from the Coast

[1] Commencement Speech by James Mattis at the graduation ceremony of the U.S. Merchant Marine Academy, June 16, 2018.
[2] General Darren McDew, "Losing Our Sea Legs," *The Virginian-Pilot* (Jan. 17, 2016).
[3] Mike Schuler, "Senator John McCain Launches New Attack on 'Antiquated' Jones Act," *G-Captain* (Jan. 14, 2015).
[4] "Hunter: Jones Act a Lifeline for Puerto Rico and an Even Bigger Booster for U.S. National Security," *The Hill* (June 8, 2016) (quoting Gen. Selva).

Guard, Immigration and Customs Enforcement and Customs and Border Protection. All licensed U.S. mariners are carefully and thoroughly screened by the U.S. government before receiving their merchant mariner documents. Additionally, U.S. vessel operators work closely with the Coast Guard to ensure that security vulnerabilities are identified and mitigated, and that U.S. waterways remain safe and secure. The Jones Act and related coastwise laws "simplify efforts to ensure that rogue regimes and international terrorists cannot strike this country via its ports and waterways."[5] Without a Jones Act, according to Congressmen Steve Scalise and Duncan Hunter, "vessels and crews from foreign nations could move freely on U.S. waters, creating a more porous border, increasing possible security threats and introducing vessels and mariners who do not adhere to U.S. standards into the bloodstream of our nation."[6]

Again, as the regulatory environment affecting the maritime industry is assessed, AWO urges the Administration not to change the regulations implementing the Jones Act, in order to ensure continued investment in, and the long-term success of, a domestic maritime sector that is critical to U.S. economic, national and homeland security.

## Defend and Strengthen Federal Primacy in the Regulation of Maritime Commerce

A national transportation system cannot function effectively if states impose different requirements on trucks, trains, airplanes or vessels in interstate commerce. It would be absurd to suggest that airlines comply with different safety, navigation or environmental rules for every state in a given flight path, yet the maritime sector is currently subjected to a patchwork of federal and state regulations—and susceptible to state challenges to federal authority over vessel operations—despite clear direction from the Supremacy Clause of the U.S. Constitution, Supreme Court precedent and federal legislation.

Inconsistent, overlapping or conflicting state laws—or a federal regulatory framework that allows states to impose their own differing regulatory requirements—can grind economically critical maritime commerce to a halt. Vessels are constantly crossing state boundaries while moving cargo on the coasts or the inland waterways, and vessel owners and mariners in interstate commerce need the certainty of uniform, consistently applied federal regulations. Therefore, to guide the Administration's initiative to increase efficiency, reduce or eliminate unnecessary regulatory burdens, and simplify regulatory compliance in the maritime sector, AWO makes the following recommendations.

### *The Administration Should Repel Unconstitutional State Attempts to Impede Interstate Commerce*

Federal authority over maritime matters is a founding principle of the United States. In the words of Supreme Court Justice Anthony Kennedy, Congressional authority over maritime commerce "has been manifest since the beginning of our Republic and is now well established." In fact, the Federalist Papers cite the authority of Congress to regulate interstate navigation, without the intervention of individual states, as one of the justifications for adopting the U.S. Constitution. The U.S. Constitution only explicitly grants one power to the Supreme Court: jurisdiction over all maritime and admiralty cases. From the earliest days of

[5] Dr. Daniel Goure, *The Contributions of the Jones Act to U.S. Security*, Lexington Institute (October 2011), pp. 17.
[6] Representatives Scalise and Hunter, "Making Headway with America's Maritime Industry," *Washington Times* (March 25, 2014).

our nation, the Founders clearly intended for maritime matters to be within the purview of the federal government, not the individual states.

Despite founding principle and the U.S. Constitution, individual states and municipalities continue to attempt to dictate the rules of maritime commerce within their borders. Two specific examples demonstrate both the magnitude of this problem, and how the Administration can reassert federal primacy.

First, several states have enacted, or threatened to enact, manning, tug escort and training requirements that duplicate or undercut existing federal regulations promulgated by the Coast Guard under the statutory authority of the Ports and Waterways Safety Act and Oil Pollution Act of 1990. In some cases, states that have adopted such measures have forced vessels to be rerouted or specially equipped to pass through their waters. This is in spite of clear Supreme Court precedent that a federal judgment that a vessel is safe to navigate U.S. waters prevails over contrary state judgement,[7] and that state requirements cannot survive the entry of the federal government into the same subject matter.[8] If the Administration does not support the Coast Guard in the proactive and aggressive defense of its authority over vessel operations, emboldened states will continue to establish state and local deviations from federal regulations, increasing inefficiency and regulatory uncertainty. We urge the Administration to work with the Coast Guard to identify and intervene with states that propose to take actions that will destabilize the uniformity of the federal regulatory regime, and to robustly defend its authority in the courts where necessary.

In the absence of an assertive defense of federal primacy, over the last decade states and cities have also grown bolder in discriminating against the ability of certain industries to access maritime trade. Localities have adopted ordinances that prohibit the bulk loading of crude oil onto tank vessels and have sought to bar coal and oil companies from building or utilizing port facilities and terminals. AWO and other trade associations as well as individual businesses and citizens have fought against these inappropriate interferences in the governance of interstate commerce. But, the costs of doing so are high, and the legal arguments supporting federal supremacy are greatly weakened when the Administration chooses not to engage and allows individual states and municipalities to dictate the rules of the nation's commerce. We urge the Administration to take legal action when necessary to guarantee access to interstate commerce, free from state intervention, as enshrined in the Constitution.

*The Administration Should Support Legislative and Regulatory Reforms to Prevent Patchworks of Conflicting State Requirements*

In addition to state attempts to establish rules outside the clearly defined federal regulatory framework, there are two notable federal regulatory regimes governing the maritime sector that permit states to establish requirements that differ from or conflict with national rules and standards, creating uncertainty and increasing costs for vessel owners and mariners.

AWO has long supported reform of the federal regulatory framework for ballast water and other discharges incidental to the normal operation of commercial vessels. Currently, the

[7] *Ray v. Atlantic Richfield Co.*
[8] *Ray, U.S. v. Locke.*

Coast Guard enforces comprehensive regulations for ballast water at 33 CFR Part 151 under statutory authorities including the Nonindigenous Aquatic Nuisance Prevention and Control Act and the National Invasive Species Act. Additionally, the Environmental Protection Agency regulates vessel discharges including ballast water under the Clean Water Act's National Pollutant Discharge Elimination System permit program. Further, since none of those governing statutes preempt state regulation of vessel discharges, at least 25 states have instituted their own standards for ballast water and other vessel discharges. The result is a dysfunctional regime of duplicative and sometimes conflicting federal and state regulations that severely complicates compliance for vessel operators and mariners, drains American tax dollars to support the administration of redundant federal and state regulatory programs, and increases costs for industry and consumers.

A recent article in the *Detroit News* makes this point clear. In 2005, Michigan created its own ballast water regulation and permitting system separate from the federal framework. As a result, the *Detroit News* reported that vessels avoid Michigan ports and industries that rely on maritime transportation and that these industries have incurred additional costs to truck their products to ports in neighboring states. For Michigan's farmers, that adds at least $0.50/bushel of additional cost on agricultural products like corn or soybeans that are sold for $3.50-$9.00/bushel.[9]

To return certainty and rationality to the patchwork of ballast water and vessel discharge regulations, and to increase efficiency and reduce the cost of maritime transportation, AWO is leading a 300-member coalition seeking enactment of the Vessel Incidental Discharge Act. VIDA would consolidate regulations for ballast water and other commercial vessel discharges under the authority of the Coast Guard, while maintaining EPA's ability to make scientific determinations regarding the efficacy of new ballast water standards and best management practices for other vessel discharges. This bipartisan legislation would uphold the highest standards of environmental protection by retaining the ballast water standard currently enforced by both the Coast Guard and EPA and establishing a process to raise the standard over time as technology improves. This legislation is necessary to provide regulatory relief for vessel operators engaged in interstate and international commerce and afford them the long-term certainty to confidently invest in technology that enhances environmental protection. As those aims clearly align with the intent of Executive Order 13777, we respectfully request that the Administration support the passage of VIDA this year.

Separate and distinct from the regulation of incidental vessel discharges, the Clean Water Act also mandates the regulation of sewage discharges from vessels. In general, such discharges are prohibited unless the vessel is equipped with a marine sanitation device that meets the performance standards set by EPA and the design, construction, installation and operational requirements promulgated by the Coast Guard. In contrast to the NPDES permit program, the Clean Water Act expressly preempts the states from adopting or enforcing their own regulations with respect to the design, manufacture, installation or use of marine sanitation devices—except that states may petition EPA for permission to designate so-called "No Discharge Zones," in which even discharges treated by MSDs are disallowed. Before it can approve a state petition, EPA must affirm that there are adequate pump-out facilities for vessels operating within the proposed NDZ.

[9] Jonathan Oosting, "Michigan ballast water rules face backlash amid invasive species fight," *The Detroit News* (June. 17, 2018).

As NDZs have proliferated, the statutory and regulatory provisions intended to ensure that they are feasible for the vessels operating in them have proved to be insufficient. EPA's regional offices have repeatedly approved state petitions, presented with little justification, for waters where pump-out facilities are inadequate to serve the commercial vessels operating therein. AWO has repeatedly raised objections to EPA documenting the inadequacy of these pump-out facilities, and articulated our concerns about the NDZ designation process, to no avail. AWO urges the Administration to eliminate this source of extreme regulatory uncertainty and arbitrary cost for vessel operators by reforming the NDZ designation process to establish consistent standards for states as they develop NDZ petitions and for regional EPA offices as they review them.

## Conclusion

Thank you again for the opportunity to comment on the Administration's review of the federal regulatory framework for the maritime sector. We would be pleased to answer any questions or provide further information to assist OIRA in the goal of ensuring a federal regulatory regime that provides high standards of safety, security and environmental protection; that provides certainty to business owners and mariners; and that promotes efficiency and cost-effectiveness that protect jobs and stimulate economic growth.

Sincerely,

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July 25, 2017

Mr. Jeffrey G. Lantz
Director of Commercial Regulations and Standards
U.S. Coast Guard
2703 Martin Luther King Jr. Avenue, SE
Washington, DC 20593

Re: Evaluation of Existing Coast Guard Regulations, Guidance Documents, Interpretative Documents, and Collections of Information (Docket No. USCG-2017-0480)

Dear Mr. Lantz:

The American Waterways Operators is the national trade association for the tugboat, towboat and barge industry. AWO's 350 member companies own and operate barges and towing vessels operating on the U.S. inland and intracoastal waterways; the Atlantic, Pacific and Gulf coasts; and the Great Lakes. Our industry's 5,500 towing vessels and 31,000 barges comprise the largest segment of the U.S.-flag domestic fleet. The tugboat, towboat and barge industry provides family-wage jobs and ladders of career opportunity for more than 50,000 Americans, including 38,000 positions as mariners on board our vessels, and supports more than 300,000 jobs in related industries nationwide. Each year, our vessels safely, securely and efficiently move more than 760 million tons of cargo critical to the U.S. economy, including petroleum products, chemicals, coal, grain, steel, aggregates, and containers. Tugboats also provide essential services in our nation's ports and harbors, including shipdocking, tanker escort and bunkering.

On behalf of AWO's member companies, thank you for the opportunity to provide input on regulations promulgated by the U.S. Coast Guard that may be appropriate for repeal, replacement or modification in accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda." We applaud the Trump Administration for initiating this effort to alleviate unnecessary regulatory burdens and seeking feedback from the public to assist the Coast Guard in evaluating its regulations.

It is AWO's highest advocacy priority to ensure that the federal regulatory regime governing the tugboat, towboat and barge industry provides for a high level of safety, security and environmental protection while preserving the economic efficiency of barge transportation and the free flow of maritime commerce. It is also a national imperative. In addition to being an integral part of the U.S. intermodal transportation system, the industry is the safest and

most fuel efficient of any surface transportation mode. Therefore, regulations that compromise the safety of towing vessels and their crewmembers, that impose unnecessary costs on companies operating towing vessels or barges, or that result in the diversion of cargo to other modes of transportation are bad not only for the industry, but for the U.S. economy and marine environment as well.

AWO is committed to being a leader in marine safety, security and environmental stewardship, and to working in partnership with the Coast Guard to advance these shared objectives. We continually seek to manifest this commitment through our constructive engagement in the rulemaking and policymaking process to assist the Coast Guard in producing practical, effective regulations and policy guidance affecting our industry, including the towing vessel inspection regulations at 46 CFR Subchapter M. It is in this spirit that we offer the following recommendations for the Coast Guard's consideration as it works to identify regulations and guidance that should be repealed, replaced or modified.

## Safety

*Establish Equivalency Between Electronic and Paper Charts and Permit the Utilization of Electronic Charting Systems*

AWO strongly believes that the requirements to carry paper charts and maps under 33 CFR §164.72(b)(1) and various subchapters of Title 46 are outdated. Software-based, platform-independent electronic charting systems (ECS) are widely utilized throughout the towing industry. These ECS have enhanced navigational safety through their ability to provide mariners with more navigational information, and to update that information more accurately and efficiently. By contrast, paper charts are increasingly time-consuming for mariners to keep up-to-date due to the requirement to maintain "currently corrected editions." Paper charts have become costly since 2014, when the National Oceanic and Atmospheric Administration (NOAA) stopped producing them; they are now only available for purchase from authorized printers.

Coast Guard Navigation and Vessel Inspection Circular (NVIC) 01-16, issued in February 2016, permits vessel operators to utilize ECS that meet the standards set by the Radio Technical Commission on Marine Services (RTCM) to meet the chart carriage requirements of Titles 33 and 46. However, the RTCM standards require ECS (unnecessarily, in AWO's opinion) to integrate software and hardware components and to undergo strict hardware testing. As a result, there are no commercially available ECS that meet the RTCM standards, with the exception of the Electronic Chart Display and Information System (ECDIS). The Towing Safety Advisory Committee (TSAC) has recommended that the Coast Guard permit the use of software-based, platform-independent ECS that can faithfully display official electronic charts produced by NOAA and U.S. Army Corps of Engineers in lieu of paper charts (Task 15-03). AWO strongly supports this recommendation, and urges the Coast Guard to amend its regulations to establish equivalency between official electronic charts and maps and the paper charts and maps prescribed in Titles 33 and 46.

*Eliminate Unnecessary Requirements of the AIS Encoding Guide*

AWO has previously registered with the Coast Guard our concerns about the requirements of the Automatic Identification System (AIS) Encoding Guide, which provides guidance to assist vessel operators in the proper encoding of AIS. The first version of the Encoding Guide, released in 2012, featured a complex encoding protocol for voyage-related data that the towing industry opposed due to its potential to distract wheelhouse personnel from the safe operation of a towing vessel and adversely impact the safety and security of vessel traffic. TSAC made several recommendations in March 2014 to the Coast Guard to reduce AIS encoding demands for towing vessels to the data fields required by regulation (Task 13-01). While the Coast Guard accepted some of these recommendations, the current Encoding Guide, released in 2015, still prescribes the input of estimated time of arrival and destination information for most voyages.

The AIS units with which most towing vessels are equipped are not designed and installed for convenient use by wheelhouse personnel. They have only a small LCD screen and an alpha-numeric keypad that is used to access an array of menus. As TSAC pointed out, entering data into these AIS units is analogous to using a mobile phone with an alpha-numeric keypad to type text messages, and requires the full attention of the operator. TSAC also correctly asserted that the encoding of destination and estimated time of arrival information for towing vessels and barges in tow has implications for vessel and cargo security and confidential business information, and does not serve a navigation safety purpose. AWO encourages the Coast Guard to further amend the Encoding Guide to alleviate unnecessary burdens on towing vessel wheelhouse personnel by eliminating the requirement for them to encode voyage-related data, with the exception of navigation status.

*Implement Improvements to the Mariner Credentialing Process*

AWO encourages the Coast Guard to move expeditiously to implement the statutory requirement of Section 304 of the Coast Guard Authorization Act of 2015 to establish a process to harmonize the expiration dates of merchant mariner credentials (MMCs), medical certificates and radar observer endorsements for eligible mariners. Providing a harmonization option will reduce administrative burdens on mariners and their employers by streamlining the credential renewal process. AWO also recommends that the Coast Guard expedite the promulgation of a rulemaking to repeal the requirement at 46 CFR §11.480(f) for radar observer endorsement refresher training. Not only will this help the Coast Guard to fulfill its statutory requirement, but it will also eliminate a regulation that imposes unnecessary costs on mariners and their employers, with no corresponding benefit to maritime safety. Mariners who hold a radar observer endorsement and serve on a radar-equipped vessel use radar systems daily and do not need refresher training to refamiliarize themselves with the functioning of this equipment.

*Repeal Inappropriate and Unnecessary Firefighting Training Requirements*

AWO believes that the requirement at 46 CFR §11.201(h)(3)(ii) for mariners seeking an officer endorsement as master or mate (pilot) of towing vessels, in all services except oceans, to meet international requirements for basic firefighting training is entirely inappropriate. This requirement was imposed on mariners who began their sea service after March 2014 by the Coast Guard's December 24, 2013 final rule to implement the amendments to the

International Convention on Standards of Training, Certification and Watchkeeping (STCW) for Seafarers, 1978, as amended. As a threshold matter, the STCW Convention is not applicable to inland waters. Further, in practical terms, the STCW Code requires instruction in firefighting equipment that towing vessels in inland service are not required to carry. AWO does not believe that it is prudent to train mariners in the use of firefighting equipment and techniques that will not be available to them in a fire emergency. In addition, in the event of a fire that progresses past the incipient stage, mariners on towing vessels in inland service typically have more options to safely evacuate the vessel than mariners on coastwise and oceans routes, for whom it may be safer to stay on board the vessel and continue to fight the fire.

Working with TSAC and the Merchant Marine Personnel Advisory Committee (MERPAC), AWO has reviewed casualty data and information made available by the Coast Guard and the National Transportation Safety Board (NTSB) to determine whether the growth of fires on board towing vessels, or any damage or injuries, can be attributed to a lack of training. AWO did not find evidence to suggest that current regulations at 46 CFR §27.209 and 46 CFR §142.245 requiring company-provided firefighting instruction and drills are inadequate. In fact, in the preamble to the Subchapter M final rule, the Coast Guard considered comments requesting that the agency mandate formal firefighting training courses for all credentialed towing vessel crewmembers, and concurred with its 2003 and 2004 position that the current level of training provides crewmembers "with adequate knowledge of the procedures and equipment on board their vessels needed to respond to fires" (81 Fed. Reg. 40059). The Coast Guard cited a previous TSAC analysis of casualty data that showed that over 80 percent of reported fires on inland towing vessels had been extinguished by crewmembers with only seven reported injuries, most of which were attributable to the fire outbreak, not firefighting efforts. Therefore, AWO recommends that the Coast Guard repeal 46 CFR §11.201(h)(3)(ii) and alleviate an unnecessary regulatory burden that will require mariners or their employers to pay for inappropriate firefighting training that does not address a demonstrated safety need.

*Update and Reform Marine Casualty Reporting Requirements*

AWO strongly supports the Coast Guard's January 2017 proposal to raise the monetary property damage threshold amounts for reporting a marine casualty and a serious marine incident. We commend the Coast Guard for initiating a rulemaking that will save both the industry and the Coast Guard time and money, and ensure that the Coast Guard can direct its attention and resources to high-consequence incidents. Because the current thresholds were set more than 30 years ago and have not kept pace with the rate of inflation, vessel operators are now obligated to report casualties that result in relatively minor property damage, a regulatory burden that serves no safety purpose. AWO urges the Coast Guard to index the thresholds, or require them to be revisited on a regular basis, to ensure that they continue to keep pace with inflation and with the cost of labor and materials into the future.

AWO also notes its strong support for TSAC's March 2015 recommendations to improve the marine casualty reporting program (Task 13-09). The publication of Coast Guard NVIC 01-15 in 2015 clarified casualty reporting requirements, and in particular, the requirements for reporting low severity incidents, for both the industry and Coast Guard investigating officers. These clarifications, together with Coast Guard changes to improve the accuracy of its data entry, contributed to a significant decline of 34% in all incidents reported to the Coast Guard

from 2014 to 2015, and a 62% decrease in low severity incidents. This decrease reflects time and cost savings for both industry and the Coast Guard, with no adverse impacts on safety. Establishing two categories of marine casualties as TSAC has advised—the first, marine casualties that are recorded according to a vessel operator's safety management system or other means of recordkeeping, and reported to the Coast Guard on an annual summary basis; and the second, serious marine incidents that necessitate an immediate report to the Coast Guard—would further reduce the number of reported incidents, and the corresponding burden on industry and Coast Guard resources. It would also enhance safety by allowing the Coast Guard to take a risk-based approach to the deployment of its investigators' time and attention, and by improving the quality and value of the data Coast Guard investigators collect. For these reasons, AWO strongly encourages the Coast Guard to implement TSAC's recommendations to reform the casualty reporting process.

*Cap Annual Inspection Fees for Towing Vessels that Utilize the TSMS Option*

AWO urges the Coast Guard to expedite the promulgation of a rulemaking to establish user fees for inspected towing vessels, and in particular, to distinguish the fees for vessels that utilize the Towing Safety Management System (TSMS) option to document compliance with Subchapter M from vessels that utilize the Coast Guard option. Due to the continuous oversight of Coast Guard-approved third-party organizations, vessels that utilize the TSMS option will place less of a demand on agency resources than vessels that utilize the Coast Guard option, and should accordingly be charged less. A cap on annual inspection fees is also appropriate to reduce duplicative cost burdens on vessel operators that choose the TSMS option, who are already paying TPOs to conduct external management and vessel audits and possibly vessel surveys. Setting a lower user fee will help to ensure that vessel operators are not discouraged from choosing the TSMS option due to redundant costs; moreover, reducing disincentives to use of the TSMS option will also free up Coast Guard resources to be used in targeted, risk-based ways, thereby promoting the safety and efficiency of towing vessel operations.

*Resolve Industry-Identified Issues with Certain Subchapter M Requirements*

In addition, AWO encourages the Coast Guard to repeal the requirement of Subchapter M, found in Table 141.370 of 46 CFR §141.370, for towing vessels that operate solely on rivers to carry visual distress signals. These vessels operate within very short distances from shore, and are equipped with many other means of communicating and transmitting their location in the event of an emergency. 46 CFR §141.305(d)(3) provides exemptions for such vessels from the requirement to carry survival craft. The requirement that these vessels carry visual distress signals does not advance safety, and therefore imposes unnecessary and unjustified costs on the towing vessel operators that must purchase and periodically replace them.

AWO also recommends that the Coast Guard provide towing vessel operators with greater flexibility to safely store paints and coatings. Under 46 CFR §142.225(c), the Coast Guard requires that paints and other flammable or combustible products be stored in a storage cabinet made of steel. Many towing vessels are equipped with aluminum cabinets for this purpose, which provide a satisfactory level of protection. AWO encourages the Coast Guard to permit the use of suitable aluminum, as well as steel, containers, so that towing vessel operators are not forced to replace aluminum storage cabinets currently in use on their vessels.

*Permit the Use of Universal Fire Extinguisher Brackets*

Under 46 CFR §162.028-3(g), portable fire extinguishers must be supplied with "a suitable bracket which will hold the extinguisher securely in its stowage location" and "provide quick and positive release of the extinguisher for immediate use." While the regulations do not require that only the bracket or brackets listed on the extinguisher's name plate or approval label may be used, there is widespread confusion among towing vessel operators, Coast Guard inspectors and third-party auditors about whether this is the case, and AWO is aware of many instances in which vessel operators have been advised that the use of a specific bracket is required. Many manufacturers now produce high-quality universal brackets. Furthermore, when a fire extinguisher is discharged and needs to be replaced, vessel operators are sometimes unable to find a replacement extinguisher from the same brand and with the same approval number, but are often able to find one with the same dimensions. Under these circumstances, the bracket can continue to be utilized safely. AWO encourages the Coast Guard to clarify in policy that the use of universal fire extinguisher brackets and brackets that are not listed on the extinguisher's approval label, are acceptable as long as the bracket is compatible with the dimensions of the extinguisher and meets the regulatory requirement for secure stowage and quick release.

*Evaluate the Feasibility of Fire Pump Water Pressure Requirements for Towing Vessels*

Subchapter I and Subchapter M require fixed fire pumps on towing vessels to be capable of delivering water from the two highest hydrants at a pitot-tube pressure of 50 pounds per square inch (psi) (46 CFR §95.10-5(c) and 46 CFR §142.325(a), respectively). This can be a challenging requirement for towing vessels to meet as built because of the effects of pipe sizes, routing and fittings on water pressure. By contrast, Subchapter L requires fixed fire pumps on offshore supply vessels to be capable of delivering water at 50 psi only from the highest hydrant. Requiring a higher fire pump performance standard for towing vessels than for offshore supply vessels is not justified by risk, given that offshore supply vessels, by statute and regulation, may carry cargoes that have a higher flammability, as well as many more persons in addition to crew, than towing vessels. AWO encourages the Coast Guard to evaluate the risks associated with fire pump performance and the feasibility of current water pressure standards for towing vessels, and amend its regulations in Subchapter I and Subchapter M accordingly.

*Modify Outdated Policy for Articulated Tug-Barge Units*

Articulated tug-barge units (ATBs) have proliferated and increased in size and sophistication since the publication of NVIC 2-81, Change 1, the Coast Guard's primary guidance on ATB design, operation and manning, over 30 years ago. In mutual recognition of the fact that a policy review was needed, the Coast Guard and AWO formed a working group under the auspices of the Coast Guard-AWO Safety Partnership in 2015, which evaluated current ATB operating and manning practices and recommended a series of changes to existing agency policy and regulations to eradicate outdated terminology and promote consistency. TSAC is currently reviewing the working group's March 2017 report and is expected to make further recommendations this fall (Task #15-02). AWO encourages the Coast Guard to modify

NVIC 2-81 and other related policy and regulations, consistent with the recommendations of the Coast Guard-AWO Working Group on ATB Operations and Manning and the forthcoming recommendations of TSAC, to eliminate out-of-date or inconsistent guidance and ensure the continued safe and efficient operation of ATBs.

*Align Sidelight Screen Policy with Regulations*

According to the codified Inland Navigation Rules at 33 CFR §84.09(a), vessel sidelights need not be fitted with external screens. Only inboard screens must be fitted to meet the requirements of 33 CFR §84.17 to establish horizontal sectors. However, Volume IV of the Marine Safety Manual (MSM), in Chapter 3, Section G.16, states that the International Regulations for Preventing Collisions at Sea, 1972 and the 1980 Inland Navigation Rules "require sidelights on vessels over 20 meters in length to have external screens." This is incorrect, and AWO recommends that the Coast Guard strike the language in MSM Volume IV that is inconsistent with its regulations.

*Repeal the Requirement for Inland Towing Vessels to Carry Day Shapes*

AWO recommends that the Coast Guard repeal the requirement at 33 CFR §84.11 for inland towing vessels to carry day shapes. Technology has rendered day shapes obsolete for communicating navigation status among vessels, and they have not been utilized on the inland waterways for decades. Continuing to require inland towing vessels to be outfitted with obsolete equipment is inconsistent with the Administration's regulatory reform initiative and serves no useful purpose.

*Modify the Requirement for a Physical Bell or Gong*

Towing vessels are required to carry a physical bell or gong that complies with the technical specifications of 33 CFR §§86.21-23 to toll when at anchor. However, many inland towing vessels do not anchor, and are not equipped with an anchor. AWO recommends that the Coast Guard modify 33 CFR Part 86, Subpart B, to exempt vessels that are not equipped with an anchor from the requirement to carry a physical bell or gong.

*Eliminate Outdated Requirement for Bridge-to-Bridge Radiotelephone Certificate*

Under the Vessel Bridge-to-Bridge Radiotelephone Act, which is implemented in Coast Guard and Federal Communications Commission (FCC) regulations at 33 CFR §26.01 et seq. and 47 CFR §80.1001 et seq., respectively, seagoing towing vessels required to have a radiotelephone on board must, with some exceptions, have the radiotelephone station inspected annually by an FCC-licensed technician and carry an endorsed Bridge-to-Bridge Radiotelephone Certificate or certify compliance in the vessel's radio station log. The annual inspection and certificate requirements date from the Communications Act of 1934 and, due to technological advancements, are no longer necessary. Furthermore, the requirement for a certificate is being inconsistently enforced by Coast Guard inspectors. AWO encourages the Coast Guard to work with the FCC and Congress, if needed, to eliminate the requirement for annual inspections of towing vessel radiotelephone stations and for the carriage of an endorsed Bridge-to-Bridge Radiotelephone Certificate.

## Security

AWO member companies continue to be concerned by the costs of compliance with the Maritime Transportation Security Act of 2002, implemented in Coast Guard regulations at 33 CFR Chapter I, Subchapter H, and in particular, with the requirement at §101.514 for persons requiring unescorted access to secure areas of regulated vessels or facilities to possess a Transportation Worker Identification Credential (TWIC). AWO recommends that the Coast Guard review these regulations and reassess their security benefit and economic impact, especially for vessel and facility operations that pose a low risk of serving as a vector or target for terrorist attacks due to their small size or remote location. Where possible, AWO urges the Coast Guard to eliminate or modify maritime security requirements that impose costs that exceed their benefits, and seek Congressional authorization to do so where statutory change is necessary.

## Environmental Stewardship

*Support Congressional Passage of the Commercial Vessel Incidental Discharge Act*

AWO has long supported reform of the federal regulatory framework for ballast water and other discharges incidental to the normal operation of commercial vessels. Today, the Coast Guard's longstanding and comprehensive regulations for ballast water at 33 CFR Part 151, promulgated under statutory authorities including the Nonindigenous Aquatic Nuisance Prevention and Control Act and the National Invasive Species Act, are complicated by the U.S. Environmental Protection Agency's regulation of vessel discharges including ballast water under the Clean Water Act's National Pollutant Discharge Elimination System permit program. In addition, since neither NANPCA nor NISA nor the NPDES permit program preempts state regulation of vessel discharges, some states have independently instituted additional standards for ballast water. This dysfunctional regime of duplicative and sometimes conflicting federal and state regulations severely complicates compliance for vessel operators and mariners and requires American taxpayers to bear the cost of administering redundant federal and state regulatory programs.

The Commercial Vessel Incidental Discharge Act is bipartisan legislation that would rectify this untenable situation by establishing a uniform, national regime for the regulation of ballast water and other vessel discharges. CVIDA would uphold the highest standards of environmental protection by retaining the ballast water discharge standard currently enforced by both the Coast Guard and EPA, which the independent EPA Science Advisory Board has deemed the most stringent standard currently achievable, and establishing a process to raise the standard over time as technology improves. CVIDA would also create complementary rather than duplicative roles for EPA and the Coast Guard. In recognition of the Coast Guard's maritime expertise and enforcement capability, and its long record of ensuring vessel safety, exercising oversight of vessel operations and equipment, and protecting U.S. waterways from pollutants and invasive species, CVIDA would establish the Coast Guard as the lead agency in charge of regulating discharges from vessels. In recognition of EPA's scientific expertise in evaluating and maintaining water quality, CVIDA would require the Coast Guard to consult with EPA in the development and review of discharge standards.

AWO firmly believes that CVIDA is necessary to rationalize the regulatory regime for vessel discharges and provide much-needed certainty for vessel operators engaged in interstate commerce while enhancing environmental safeguards, and we respectfully request that the Coast Guard and the Trump Administration support the passage of CVIDA this year.

*Eliminate Unnecessary Ballast Water Reporting Requirements*

AWO reiterates—as we have argued in previous submissions to the Coast Guard—that the ballast water reporting requirements at 33 CFR Part 151 impose costs that exceed their environmental or informational benefits.

Beginning this year, and for the next two years, an Annual Ballast Water Summary Report must be submitted to the National Ballast Information Clearinghouse (NBIC) for each vessel with ballast tanks operating exclusively within a single Captain of the Port (COTP) Zone. Vessels with such a limited geographic area of operation pose a very low risk of contributing to the introduction or spread of aquatic invasive species. Although an annual reporting requirement limited to three years may seem to present a minimal burden, this information can be challenging and costly for towing vessel operators and crewmembers to compile and submit. These costs are difficult to justify given that much of the data provided has little value—for instance, a vessel operator cannot indicate in the Annual Ballast Water Summary Report whether the vessel uses water from a U.S. public water system as ballast, and is required to submit a report even if the vessel never discharges ballast water. AWO urges the Coast Guard to repeal 33 CFR §151.2060(e) to reduce regulatory burdens for the operators and crewmembers of these vessels.

In addition, AWO again urges the Coast Guard to repeal the requirements at 33 CFR §151.2060 for vessels with ballast tanks bound for ports or places in the United States to submit ballast water reports to the NBIC. These requirements have been in place since 2004. The Coast Guard has therefore collected over 10 years of comprehensive data on the ballast water management patterns and practices of vessels operating in U.S. waters, including where they operate, how often they take on and discharge ballast water, and in what quantities. This information should be sufficient to provide the Coast Guard with an adequate basis for programmatic and regulatory decision-making well into the future. Yet, vessel operators continue to incur costs as a result of these regulations: in addition to the administrative costs of preparing and filing reports, companies must train new vessel crewmembers and shoreside personnel, all of whom have other significant operational and safety responsibilities. Further, there is no exception for vessels that use water from a U.S. public water system as ballast or that never discharge ballast water. Continuing to impose such a large-scale reporting requirement on industry is not justified, nor is it an efficient use of governmental and taxpayer resources to collect, process and analyze additional data that will not meaningfully expand or enhance the Coast Guard's understanding of ballast water management. As the Coast Guard is not statutorily required by NANPCA or NISA to require mandatory ballast water reporting, AWO strongly recommends that these regulations be retired.

*Modify the Requirements for PIC-Fuel Transfers on Inspected Towing Vessels*

AWO has expressed its disappointment in previous submissions to the Coast Guard that the agency did not act on the recommendation of TSAC, AWO, and other commenters on the Subchapter M notice of proposed rulemaking to make changes to 33 CFR §155.710(e) to allow individuals carrying a letter of designation (LOD) to continue to serve as the person in charge (PIC) of fuel transfers on towing vessels inspected under Subchapter M. As we have previously stated, requiring the PIC of fuel transfers on inspected towing vessels to hold a license or MMC endorsed as Tankerman-PIC would have a substantial and detrimental economic impact on the 2,500 to 3,000 towing vessels that will be affected, with no commensurate benefit to safety. The Coast Guard has issued CG-MMC Policy Letter 01-17 to establish a streamlined process by which individuals currently supervising fuel transfers on towing vessels under an LOD may obtain an MMC endorsed as Tankerman-PIC Restricted to Fuel Transfers on Towing Vessels without additional training. While this is a needed stop-gap measure, it is not an effective long-term solution: it adds thousands of individuals to the pool of credentialed mariners, imposing administrative costs on these mariners and their employers and significantly increasing the National Maritime Center's workload. It is also not justified by risk or casualty data. The only reason for the change is the shift in towing vessels' status from uninspected to inspected, and it is therefore unnecessary. AWO urges the Coast Guard to modify 33 CFR §§155.710(e)(1) and (2) to permit individuals carrying an LOD to continue to serve as PIC of fuel transfers on inspected towing vessels.

*Rationalize Requirements for PICs at Tank Barge Cleaning Facilities*

Tank barge cleaning facilities are currently implicated by 33 CFR §155.710(b), which requires tank barges to employ a PIC of cargo-tank cleaning who holds a Tankerman-PIC or Tankerman-PIC (Barge) endorsement. However, tank barges serviced at cleaning facilities are empty to the extent that onboard pumps will allow, usually with only 200 to 500 gallons of cargo remaining. This cargo is then stripped, not utilizing the onboard pumps, but with a vacuum system or with similar equipment, and not following the barge's transfer procedures, but according to facility-specific procedures. Historically, this process has been performed very safely under the supervision of a facility PIC. Employing Tankerman-PICs in cargo-tank cleaning will increase industry costs and delays and exacerbate Tankerman-PIC shortages. AWO recommends that the Coast Guard amend 33 CFR §155.710(b) to remove cargo-tank cleaning from the operations requiring a tank barge PIC, so that cargo-tank cleaning may continue to be conducted under the sole supervision of a facility PIC.

*Reduce Response Plan Exercise Requirements for Inland Nontank Vessel Operators*

Under 33 CFR Part 155, Subpart J, nontank vessels—self-propelled vessels of 400 gross tons or greater that carry oil of any kind as fuel for main propulsion—are required to prepare and submit an oil spill response plan to the Coast Guard. This requirement implements a statutory mandate established by the Federal Water Pollution Control Act (FWPCA), as amended. According to 33 CFR §155.5060, nontank vessels must comply with the same response plan exercise requirements as tank vessels. For nontank vessels that can carry 250 or more barrels of oil, these requirements mandate that the plan holder conduct quarterly Qualified Individual notification and emergency procedures exercises and annual shore-based spill management team tabletop and oil spill removal organization equipment deployment exercises. AWO is concerned that these exercise requirements are excessive for nontank vessels that operate

solely on rivers. Inland towing vessels are largely protected from adverse weather conditions, and to our knowledge, there has never been a situation in which one has been involved in an incident that resulted in a worst-case discharge scenario. While 33 USC §1321(j)(5) requires vessel response plans to describe training, equipment testing and drills, it does not prescribe the frequency or type of drills and exercises to be conducted, nor require that they be the same for tank and nontank vessels. AWO recommends that the Coast Guard reassess the economic impact of its exercise requirements for nontank vessels that operate solely on rivers to determine whether they impose costs that exceed their environmental benefits, and if so, alleviate cost burdens on industry by working within the agency's authority under the FWPCA to establish exercise requirements that are commensurate with environmental risk.

*Repeal the Requirement to Contract with Emergency Towing Resources for Inland Towing Vessels*

When the Coast Guard published the salvage and firefighting requirements in 2008, which included the requirement (33 CFR §155.4030(e)) for vessel owners and operators to identify emergency towing resources in their vessel response plans, both the Coast Guard and AWO recognized that the regulations were written with blue-water operations in mind. The requirement to "identify towing vessels with the proper characteristics, horsepower and bollard pull to tow your vessel(s)" that are "capable of operating in environments where the winds are up to 40 knots" are inappropriate for inland tank barge and towing vessel operations for several reasons, including the facts that: an inland towing vessel of at least 800 horsepower, the smallest towing vessel in routine service on the inland waterways, is capable of pushing the largest inland tank barge, loaded with cargo, or of assisting a towing vessel over 400 gross tons; bollard pull is not relevant to inland towing vessels engaged in emergency towing, which do not pull, but rather push, the barges that they tow and are not equipped with towing bitts or winches; and inland towing vessels are capable of operation without regard to wind velocity. Moreover, there are no towing vessels stationed on the inland waterways for the purpose of emergency towing, and it is neither possible nor desirable to create a fleet of stand-by vessels.

For these reasons, AWO requested and received Coast Guard acceptance of an alternative planning criterion (APC) for emergency towing for inland tank barges and towing vessels over 400 gross tons operating within the Eighth Coast Guard District and limited areas within the Ninth Coast Guard District. The AWO APC is premised on the longstanding mutual assistance approach to emergency response that is a hallmark of the towing industry, and has functioned successfully since its acceptance by the Coast Guard in 2010. AWO has amply demonstrated that the density of inland towing vessel operations in the Western Rivers is sufficient to ensure the availability of emergency towing services on a mutual assistance basis. AWO believes that this is a situation, and not the only one, in which the approach outlined in a Coast Guard-accepted APC is equivalent to, and a better fit for the operational environment than, the national planning criteria. In recognition of this, we recommend that the Coast Guard exempt inland tank barges and towing vessels from the requirement at 33 CFR §155.4030(e) to identify emergency towing resources in their vessel response plans, obviating the need for AWO to maintain and periodically resubmit, and the Coast Guard to reapprove, the AWO APC for emergency towing.

*Publish Guidance to Institute a Standardized Process for the Carriage of Shale Gas Extraction Wastewater in Bulk*

AWO strongly believes that shale gas extraction wastewater (SGEWW) can be safely and efficiently moved by barge, just as millions of tons of other potentially hazardous substances are carried safely and securely by barge every year. Currently, tank barge operators seeking to transport SGEWW must request Coast Guard approval on a case-by-case basis, and are required to provide detailed chemical composition and environmental analysis information for each individual barge load. This costly and extremely burdensome process has effectively foreclosed a potentially viable new business line for tank barge operators, inhibiting job creation.

A standardized process that specifies the conditions under which a tank barge may transport SGEWW in bulk would be entirely consistent with Coast Guard regulations and would offer significant safety, environmental and economic advantages over other modes of transportation. AWO urges the Coast Guard to publish policy guidance, consistent with 46 CFR §153.900(d), to institute a standardized process and specify conditions under which a tank barge operator could request and be granted a Certificate of Inspection endorsement or issued a letter allowing the carriage of conditionally permitted SGEWW in bulk.

## State Regulation of Vessel Operations

In addition to the recommendations above to repeal, replace or modify current Coast Guard regulations or policy, we urge the Coast Guard and the Trump Administration to strongly support the constitutional principle of federal authority over navigation and vessel operations, and vigorously oppose state efforts that infringe upon this authority. The recognized primacy of federal regulation of interstate and international commerce has been a fundamental attribute of America's constitutional system of government since its founding, and clear federal regulations, consistently applied and administered, are necessary to facilitate the safe and efficient movement of interstate and international maritime commerce. We believe the Coast Guard's robust defense of the federal prerogative is completely consistent with the Administration's directive to alleviate unnecessary regulatory burdens. If the Coast Guard allows state laws that undermine federal supremacy over the navigation and operation of vessels to stand without challenge, the agency imperils the safety and efficiency of maritime commerce and enables the proliferation of state-imposed regulatory burdens on vessel operators that are not only unnecessary, but also unconstitutional.

## Conclusion

Thank you again for the opportunity to comment on the Coast Guard's evaluation of regulations that may be appropriate for repeal, replacement or modification. We would be pleased to answer any questions or provide further information as the Coast Guard sees fit.

Sincerely,

Jennifer Carpenter

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Executive Vice President & COO

May 15, 2017

Ms. Samantha K. Dravis
Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Evaluation of Existing Regulations (Docket No. EPA-HQ-OA-2017-0190)

Dear Associate Administrator Dravis:

The American Waterways Operators is the national trade association for the tugboat, towboat and barge industry. AWO's 350 member companies own and operate barges and towing vessels operating on the U.S. inland and intracoastal waterways; the Atlantic, Pacific and Gulf coasts; and the Great Lakes. Our industry's 5,500 towing vessels and 31,000 barges comprise the largest segment of the U.S.-flag domestic fleet. The tugboat, towboat and barge industry provides family-wage jobs and ladders of career opportunity for more than 50,000 Americans, including 38,000 positions as mariners on board our vessels, and supports more than 300,000 jobs in related industries nationwide. Each year, our vessels safely, securely and efficiently move more than 760 million tons of cargo critical to the U.S. economy, including petroleum products, chemicals, coal, grain, steel, aggregates, and containers. Tugboats also provide essential services in our nation's ports and harbors, including shipdocking, tanker escort and bunkering.

On behalf of AWO's member companies, thank you for the opportunity to provide input on regulations promulgated by the U.S. Environmental Protection Agency that may be appropriate for repeal, replacement or modification, in accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda." We applaud the Trump Administration for initiating this effort to alleviate unnecessary regulatory burdens and seeking feedback from the public to assist EPA in evaluating its regulations.

AWO's member companies are proud to be part of an industry that is the safest and most fuel-efficient of any surface transportation mode. We are deeply committed to building on the natural advantages of marine transportation and leading the development of higher standards of marine safety and environmental protection. In 1994, AWO became the first transportation trade association to adopt a code of safe practice and environmental stewardship for member companies; today, compliance with the Responsible Carrier Program is a condition of AWO membership. This commitment informs our view of EPA's request for comment. AWO seeks

to protect the marine environment in which our members operate while ensuring a practicable regulatory framework that allows for the continued safe and efficient movement of crucial maritime commerce, and eschewing costly, infeasible or ineffective regulations that could result in the diversion of cargo to other modes of transportation that pose increased safety and environmental risks.

In order to achieve these goals, towing vessels and barges must be governed by clear and practical federal statutes and regulations, consistently and uniformly applied and administered across the country, to ensure that that interstate maritime commerce moves safely and efficiently and is not disrupted by unworkable or contradictory local or regional requirements. As an overarching recommendation, AWO urges EPA to support the authority of federal lawmakers and regulators over interstate navigation, to view its regulation of discharges and emissions from vessels through this lens, and to promote consistency among its regional offices in decision-making that impacts the movement of interstate commerce by water. Many of the recommendations that we offer in our letter are related to this need.

*Support Passage of the Commercial Vessel Incidental Discharge Act*

EPA currently regulates discharges incidental to the normal operation of vessels, including ballast water, under the Clean Water Act's National Pollutant Discharge Elimination System permit program. The NPDES permit program was designed to regulate discharges from fixed, land-based facilities, and includes a state certification process that allows a state in which a permitted discharge will occur to add requirements to a permit over and above the requirements established by EPA. Recognizing that this is an ill-fitting framework for the regulation of discharges from vessels, which regularly and routinely cross state boundaries, EPA exempted vessel discharges from the NPDES permit program in 1973, when the regulations were originally promulgated. However, litigation brought by environmental advocacy groups led to a 2008 decision by the U.S. Circuit Court of Appeals for the Ninth Circuit requiring EPA to develop an NPDES permit for discharges incidental to vessel operations. In 2008, EPA issued the first Vessel General Permit, which was reissued in 2013. In addition to EPA-imposed discharge limits and recordkeeping and reporting rules, the current VGP[1] includes certification conditions added to the permit by 25 states, creating an overlapping patchwork of regulatory requirements with which vessel operators must comply.

This patchwork is further complicated by the fact that vessel discharges were already heavily regulated by U.S. Coast Guard under numerous other statutory authorities, including the Nonindigenous Aquatic Nuisance Prevention and Control Act, the National Invasive Species Act, and the Act to Prevent Pollution from Ships. In addition, since neither the NPDES permit program nor NANPCA and NISA preempts state regulation of vessel discharges, some states have independently instituted additional standards for ballast water and other vessel discharges. This dysfunctional regime of duplicative and sometimes conflicting federal and state regulations severely complicates compliance for vessel operators and mariners and requires American taxpayers to foot the bill for the administration of redundant federal and state regulatory programs.

The Commercial Vessel Incidental Discharge Act (S. 168/H.R. 1154) is bipartisan legislation that would rectify this untenable situation by establishing a uniform, national regime for the

[1] Final NPDES General Permit for Discharges Incidental to the Normal Operation of a Vessel, 78 Fed. Reg. 21938 (April 12, 2013).

regulation of ballast water and other vessel discharges. CVIDA would uphold the highest standards of environmental protection by retaining the ballast water discharge standard currently enforced by both EPA and the Coast Guard, which the independent EPA Science Advisory Board has deemed the most stringent standard currently achievable, and establishing a process to raise the standard over time as technology improves. CVIDA would also create complementary rather than duplicative roles for EPA and the Coast Guard. In recognition of the Coast Guard's maritime expertise and enforcement capability, and its long record of ensuring vessel safety, exercising oversight of vessel operations and equipment, and protecting U.S. waterways from pollutants and invasive species, CVIDA would establish the Coast Guard as the lead agency in charge of regulating discharges from vessels. In recognition of EPA's scientific expertise in evaluating and maintaining water quality, CVIDA would require the Coast Guard to consult with EPA in the development and review of discharge standards. AWO firmly believes that CVIDA is necessary to rationalize the regulatory regime for vessel discharges and provide much-needed certainty for vessel operators engaged in interstate commerce while enhancing environmental safeguards, and we respectfully request that EPA and the Trump Administration support the passage of CVIDA this year.

The passage of CVIDA is especially urgent due to the approaching expiration of the current VGP on December 18, 2018. In the absence of Congressional action, EPA will need to reissue the VGP for a second time, and AWO understands that work to develop "VGP 3.0" is already underway. This work is impacted by a 2015 decision by the Second Circuit Court of Appeals—again, the result of litigation brought by environmental advocacy groups—that found fault with the way in which EPA developed the current VGP and directed the agency to consider a variety of factors when the permit is reissued. These factors are unrelated to the safe and efficient operation of vessels in the real world, and are likely to result in a VGP 3.0 that will impose costly and infeasible requirements on vessel operators. EPA's work to develop VGP 3.0 will also involve the reassessment of many requirements of the current VGP about which AWO has repeatedly expressed concerns—most notably, its recordkeeping and reporting requirements, which for many vessel operators are the most costly and burdensome aspects of permit compliance, and which add immeasurably to the workloads of towing vessel crewmembers, taking time away from their safety-critical responsibilities. Until the passage of CVIDA, AWO understands that EPA must prepare to reissue the VGP, and we encourage EPA to engage in an inclusive and transparent process of consultation with stakeholders as it develops VGP 3.0 to ensure that these issues are adequately considered and addressed.

*Reform the No Discharge Zone Designation Process*

Separate and distinct from the regulation of incidental vessel discharges, the Clean Water Act also mandates the regulation of sewage discharges from vessels.[2] In general, such discharges are prohibited unless the vessel is equipped with a marine sanitation device that meets the performance standards set by EPA[3] and the design, construction, installation and operation requirements established by the Coast Guard.[4] In contrast to the NPDES permit program, the Clean Water Act expressly preempts the states from adopting or enforcing their own regulations with respect to the design, manufacture, installation or use of MSDs. However, Section 312(f)(3) of the Clean Water Act provides that:

[2] 33 U.S.C. §1322.
[3] 40 C.F.R. §140 et seq.
[4] 33 C.F.R. Part 159, Subparts A-D.

> "if any State determines that the protection and enhancement of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply."

EPA regulations implementing this provision at 40 C.F.R. §140.4(a) require states petitioning for permission to designate a "No Discharge Zone" to include "a certification that the protection and enhancement of the waters described in the petition require greater environmental protection than the applicable Federal standard," as well as a map and description of the location of pump-out facilities within the proposed NDZ and the operating hours and water depths of those facilities, and information on the vessel population within the waters of the proposed NDZ.

Over the past 40 years, NDZs have proliferated, and in practice, the statutory and regulatory provisions intended to ensure that they are feasible for the vessels operating in them have proved to be insufficient. Time and time again, EPA's regional offices have approved state petitions, presented with little justification, for waters where pump-out facilities are inadequate to meet the needs of commercial vessels operating therein. AWO has repeatedly raised objections to EPA asserting our member companies' inability to utilize pump-out facilities identified by states in NDZ petitions, but to no avail. To our knowledge, no EPA regional office has ever rejected a state's NDZ petition.

AWO's concerns are rooted in the unique physical and operational characteristics of towing vessels. Many towing vessels are not equipped to hold sewage onboard and, instead, treat and discharge sewage using MSDs certified by the Coast Guard to meet EPA performance standards. When a No Discharge Zone is designated, the towing vessels operating in or transiting it may no longer utilize these federally approved MSDs, and must be retrofitted to accommodate sewage holding tanks. These retrofits can be costly and difficult, if not impossible, to engineer due to towing vessels' small size.[5] Even if the installation of sewage holding tanks did not pose a serious problem, safely and efficiently disposing of sewage from those holding tanks utilizing existing pump-out facilities would be unworkable. The vast majority of pump-out facilities that AWO has assessed in the course of its work on this issue are not accessible or available to towing vessels, nor compatible with their operations. Many pump-out facilities are reserved for the exclusive use of specific, often government-owned and operated, vessels. Many more are located at marinas that are designed to accommodate small recreational vessels and have berthing, draught and capacity limitations that render their pump-out facilities unusable for towing vessels, as well as daylight or seasonal operating hours that are unsuitable for an industry that operates around the clock. However, these facts have not prevented EPA's regional offices from determining that such pump-out facilities are adequate and reasonably available for the purposes of approving state NDZ petitions.

[5] A 2015 assessment conducted by Herrera Environmental Consultants for the State of Washington's Department of Ecology found the average retrofit cost is $161,500 to $300,000 for a towing vessel, up to $350,000 for a fishing vessel, and up to $650,000 for a passenger vessel.

To address these concerns, AWO respectfully requests that EPA implement reforms, either by regulation or policy, to improve the consistency and practicability of the NDZ designation process. We offer the following recommendations for the agency's consideration:

- Require states to attest in certifications submitted pursuant to 40 C.F.R. §140.4(a)(1) that the waters described in the petition are impaired by the discharge of treated sewage from federally approved MSDs. Because the current certification requirement is not specific, it is up to each state to determine the process by which the certification is made. However, whatever the process, no certification AWO has reviewed has proved (and very few have attempted to prove) that the use of MSDs has caused or contributed to water quality impairments in a proposed NDZ. AWO believes that before a state may petition EPA to prohibit discharges from federally approved MSDs, it should be required to conclusively demonstrate that such discharges cause or contribute to water quality impairments.

- Define the terms "adequate" and "reasonably available" as they appear in 40 C.F.R. §140.4(a): "the Administrator will determine within 90 days whether adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels using such waters are reasonably available." As explained above, EPA's regional offices have routinely affirmed the adequacy and availability of pump-out facilities despite evidence from the affected commercial vessel community that these facilities are inadequate for and/or unavailable to them. AWO believes that the regional offices should be required to base their determinations regarding the adequacy and availability of pump-out facilities on a consistent set of criteria that take the needs of commercial vessels into account.

*Delay Implementation of Tier 4 Engine Emissions Standards*

In 2008, EPA set stringent emissions standards for new marine engines.[6] These included so-called "Tier 4" standards, which mandate reductions in the emissions of sulfur and nitrogen oxides for new marine diesel engines over 800 horsepower. To achieve the required $NO_x$ reductions, higher horsepower engines must utilize exhaust gas recirculation, and lower horsepower engines must incorporate catalytic exhaust after-treatment technology, also called exhaust scrubbing. Beginning this year, no engine manufacturer may manufacture a new marine diesel engine between 800 and 1,300 horsepower—a range into which many towing vessel engines fall—that does not meet Tier 4 standards.

When the supply of engines certified to previous EPA emissions standards runs out, towing vessel operators will need to have ready access to Tier 4 engines in this horsepower range that include exhaust scrubbing technology. However, while engine manufacturers have made investments in the development of Tier 4-compliant technology for larger, higher horsepower marine diesel engines, it is AWO's understanding that there has not been a concentrated effort to scale the technology for smaller, lower horsepower engines, and that such engines are not yet commercially available. We are very concerned that, when the time comes that an AWO member company needs to secure a Tier 4 engine of the correct size and horsepower for a new towing vessel, there may be none on the market, or the few that are may be very costly.

[6] 40 C.F.R. Part 1042.

AWO is also concerned about the costs associated with operating Tier 4 engines on towing vessels. Engines that include exhaust scrubbing technology require the addition of diesel exhaust fluid, a urea solution, to enable the $NO_x$ reduction reaction. The purchase of urea will add significant costs to operators' fuel expenses,[7] and the complexity and maintenance needs of exhaust scrubbing systems may require operators to add engineers to their crews, which have the potential to impede the profitability and growth of AWO member companies. Further, the performance of exhaust scrubbing technology is unproven in the inland operating environment, in which towing vessels often idle for long periods of time.

As a result of these concerns, AWO strongly urges EPA to review and reevaluate the implementation timeline for Tier 4 standards for engines under 1,300 horsepower, and in particular, for engines between 800 and 1,000 horsepower, in consultation with engine manufacturers and vessel manufacturers and operators. Through this review, EPA should aim to ascertain whether the current timeline is practicable and whether lower horsepower Tier 4 engines are technologically feasible and commercially available in sufficient quantities. The review should also include a reassessment of whether the costs of developing, manufacturing, installing and operating Tier 4 engines exceed the environmental and economic benefits for engines in this horsepower category. This review should be conducted before vessel operators find themselves with little or no option to obtain compliant engines.

*Other Concerns*

AWO also notes the following policy issues of concern and would appreciate an opportunity to discuss them further with the relevant offices at EPA:

- Under Subtitle C of the Resource Conservation and Recovery Act,[8] generators of hazardous waste must be assigned a hazardous waste identification number; without an identification number, disposal facilities will not accept hazardous waste. EPA has authorized the states to assign identification numbers to hazardous waste generators. However, AWO member companies have had difficulty securing identification numbers for their vessels, which frequently travel between and among states and may initiate the disposal of hazardous waste in different geographic locations. In 2001, EPA issued a memorandum[9] to RCRA policy managers within its regional offices recommending that cruise ships be assigned a single identification number by the state in which their corporate office or main port of call is located. However, AWO member companies report that many states are unaware of this policy or resistant to its adaptation to towing vessels. AWO encourages EPA to issue new policy directing states to assign a single hazardous waste identification number to vessels that are homeported in that state upon the request of the vessel operator, or directing EPA regional offices to assume responsibility for assigning identification numbers to vessels.

[7] One AWO member company has estimated that the cost of urea necessary to operate a Tier 4-compliant engine will add an additional $7.10 per 1,000 horsepower per hour, totaling an additional annual cost of between $125,000 and $300,000 for a single towing vessel of average size.
[8] 40 C.F.R. Parts 260-273.
[9] "Cruise Ship Identification Numbers and State Required Annual Reporting Components," RCRA Online Number 14580.

- Over the past several years, EPA Region 5 has worked with the State of Illinois' Environmental Protection Agency and the City of Chicago's Department of Public Health to investigate companies for Clean Water Act and Clean Air Act compliance. In particular, EPA Region 5 issued requests for information under Section 308 of the Clean Water Act[10] to several towing vessel companies operating in the Chicago Area Waterways System, requiring them to report on their transportation and management of petroleum coke, or petcoke, over concerns that petcoke may blow from barges into the water. Although this reporting requirement has been lifted, the impacted AWO member companies were subjected to increased recordkeeping and reporting burdens, and AWO was troubled by the region's lack of consultation with the industry prior to the requirement's imposition. Recently, Region 5 has turned its attention to other bulk cargoes and required the installation of air quality monitors at facilities that handle and store manganese. Taken together, these actions by EPA Region 5 have the potential to have a chilling effect on the transportation of very important bulk commodities in the Chicago area. AWO respectfully requests that EPA work with EPA Region 5 to ensure that environmental protection is appropriately balanced with the economic considerations.

Thank you again for the opportunity to comment on EPA's evaluation of regulations that may be appropriate for repeal, replacement or modification. We would be pleased to answer any questions or provide further information as EPA sees fit.

Sincerely,

Jennifer A. Carpenter
Executive Vice President & COO

[10] 33 U.S.C. §1318.

The American Waterways Operators

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Thomas A. Allegretti
President & CEO

July 5, 2017

Rachel E. Dickon
Assistant Secretary
Federal Maritime Commission
800 N. Capitol Street NW, Suite 1046
Washington, DC 20573

Re: Docket No. 17-04, Regulatory Reform Initiative

Dear Secretary Dickon:

The American Waterways Operators is the national trade association for the tugboat, towboat and barge industry. AWO's 350 member companies own and operate barges and towing vessels operating on the U.S. inland and intracoastal waterways; the Atlantic, Pacific and Gulf Coasts; and the Great Lakes. Our industry's 5,500 towing vessels and 31,000 barges comprise the largest segment of the U.S.-flag domestic fleet. The tugboat, towboat and barge industry provides family-wage jobs and ladders of career opportunity for more than 50,000 Americans, including 38,000 positions as mariners on board our vessels, and supports more than 300,000 jobs in related industries nationwide. Each year, our vessels provide essential services in our nation's ports and harbors, including shipdocking, tanker escort and bunkering.

On behalf of AWO's member companies, thank you for the opportunity to provide input on existing Federal Maritime Commission regulations that should be repealed or revised in accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda." We applaud the Trump Administration for initiating this effort to alleviate regulatory burdens and seeking feedback from the public to assist the FMC in evaluating its regulations.

AWO has repeatedly registered our concerns with the FMC's interpretation and enforcement of Section 41105(4) of the Shipping Act of 1984, which prohibits groups of ocean carriers from collectively negotiating with non-ocean carriers "on any matter relating to rates or services provided to ocean common carriers within the United States by those non-ocean carriers, unless the negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this part […]". Despite this prohibition, international ocean carrier alliances have sought the authority to collectively negotiate with U.S. harbor service providers in five agreements filed with the FMC over the past year. In three of these cases, the proposed provisions were later withdrawn by the alliances, but in January 2017, the FMC permitted an amended agreement filed by a group

of foreign roll-on/roll-off operators to take effect that gives the group the ability to jointly negotiate with domestic tugboat operators. FMC Commissioners have asserted that any resulting agreements – in other words, contracts negotiated by the ro/ro group for tug services – must be filed with the FMC for review to ensure there is no anticompetitive effect.

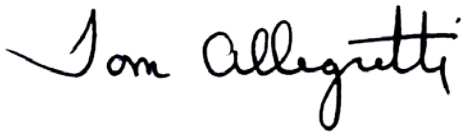
In the spirit of reducing regulatory burdens, AWO reiterates – as we have argued in previous submissions to the Commission – that FMC review of tug service contracts is an inappropriate extension of the FMC's regulatory authority that Congress neither condoned nor contemplated when it passed the Shipping Act. We also reassert that seeking to nullify a contract that is found to violate the antitrust laws after it has been negotiated is much more complex and problematic than simply prohibiting the collective negotiation that facilitates anticompetitive behavior in the first place. We have consistently maintained that the FMC should reject any agreement that gives foreign ocean carriers an advantaged bargaining position over domestic harbor services companies that have no counterbalancing ability to take collective action. If the FMC Commissioners believe that the Shipping Act prevents them from protecting U.S. third-party service providers from the dangers posed by increasing consolidation and projection of market power by international ocean carrier alliances, this suggests that the statute is outdated and should be amended to establish an unequivocal prohibition on collective negotiation by alliances with domestic tugboat operators. In the absence of a statutory change, the FMC should support the Administration's regulatory reform agenda by rejecting provisions in future alliance agreements that permit collective negotiation with harbor service providers to prevent an inappropriate expansion of the FMC's regulatory oversight to contracts with American harbor service providers.

The FMC could further alleviate regulatory burdens on American businesses by ensuring that the public has adequate time to review and comment on ocean carrier alliance agreements filed with the Commission. As we have discussed, the specific terms of alliance agreements may have crucial implications for domestic tugboat operators. However, the interested public has been provided with as few as 12 days to review and respond to recent notices of filed agreements. AWO recommends a modification of 46 CFR §535.602(6) to establish a reasonable minimum period of 30 days for the submission of comments regarding filed agreements.

The FMC should also provide for greater transparency in the Commission's decision-making process. Under Section 41307(b)(1) of the Shipping Act, the FMC must determine that filed agreements will not, by a reduction in competition, produce unreasonable reductions in service or increases in cost. These determinations may have significant impacts on American businesses and jobs, but the information on which they are based is currently completely opaque. AWO recommends that the FMC make the staff market analysis and competition review on which the Commissioners base such determinations reasonably available to the public. Making the so-called 6(g) analysis public would allow those who are impacted the opportunity to understand, and if appropriate, contest, the Commission's rationale.

Thank you again for the opportunity to comment on the FMC's evaluation of regulations that may be appropriate for repeal, replacement or modification. We would be pleased to answer any questions or provide further information as the FMC sees fit.

Sincerely,



Thomas A. Allegretti
President & CEO