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WEIGHING THE OPTIONS

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With the July 1, 2016 effective date for the SOLAS Regulation VI/2 amendments quickly approaching, many questions remain with regard to implementation. Following months of uncertainty in the U.S. and with other countries announcing their respective guidelines, the Coast Guard has recently determined that existing U.S. laws and regulations for providing verified container weights are “equivalent” to the requirements under SOLAS.

But what does that mean for shippers and shipping companies in the U.S.?

THE IMO AMENDMENTS

Although the original language of SOLAS regulation VI/2 required shippers to provide information on the gross mass of

cargo prior to loading, problems related to incorrect declarations of container weights have remained ongoing issues in the industry, resulting in improper vessel stowage, delays, damaged or lost containers, damage to equipment and vessels, liability issues and increased safety risks.

Such concerns prompted IMO's adoption of the current

What the new SOLAS amendments on container weights mean to U.S. shippers.

amendments with the goal of supplementing the original language by implementing specified procedures by which container gross mass must be “verified.” Specifically, the amendment requires the shipper to verify the gross mass of a packed container by using one of two approved methods:

the packed and sealed container may be weighed using calibrated and certified equipment, or

each package and cargo item loaded into the container, including any pallets or other packing and securing material, may be weighed and added to the tare mass of the container using a certified method approved by the competent authority in the Port State where the packing took place.

The resulting verified gross mass (VGM) must be stated in the shipping document, signed by the shipper, and provided to the master and terminal in advance of loading the container on the vessel. An ocean carrier may then rely on a shipper’s signed verification to be accurate and does not need to verify the shipper’s VGM. If the certified VGM is not provided to the master then, under the SOLAS amendments, it may not be loaded on the ship.

COAST GUARD EQUIVALENCY DETERMINATION

On April 28 the Coast Guard issued a Marine Safety Information Bulletin declaring a “U.S. Equivalency to SOLAS Regulation VI/2,” wherein it was determined that existing U.S. laws and regulations for providing verified container weights are equivalent to the requirements under SOLAS Regulation VI/2. The Coast Guard submitted a letter to the IMO setting forth its determination, specifically noting that the current national regime provides the needed flexibility to ensure that correct verified container weights are provided to the vessel master to facilitate safe loading operations.

In support of its determination, it noted that the industry, including shippers, carriers, terminals and maritime associations, demonstrated multiple acceptable methods for providing VGM and provided two specific examples in the Bulletin:

“(1) the terminal weighs the container, and when duly authorized, verifies the VGM on behalf of the shipper, and

“(2) the shipper and carrier reach agreement whereby the shipper verifies the weight of the cargo, dunnage and other securing material, and the container’s tare weight is provided and verified by the carrier.”

The two approaches have divided support among ocean carriers, shippers, and other industry members with some ocean carriers already declaring the latter method, known as the “rational method,” unacceptable.

SOLAS applies to ships engaged in international trade, and enforcement of the SOLAS amendments is the responsibility of the vessel’s Flag State pursuant to national requirements. In the U.S., the Coast Guard can take various enforcement measures. For example, a container at a terminal with no VGM could be declared unsafe, and the Coast Guard could put a hold on it until a VGM is obtained.

In terms of enforcement action, SOLAS and the International Safety Management (ISM) Code place ultimate responsibility for the safety of the vessel on the owner and the master. As such, the Coast Guard has stated it will not take action against the shipper because it believes it lacks the authority to do so absent a statutory amendment to current U.S. law. Rather, enforcement actions will be against the vessel owner and master, and the shipper would face the economic impact of the resulting delays.

IMPLICATIONS FOR TERMINAL OPERATORS

Despite the Coast Guard’s recent announcement, inconsistency remains on how containers will be handled at U.S. ports. Because the SOLAS amendments require the shipper to provide the VGM to the vessel master and terminal for each container before it can be loaded onto a vessel, certain terminal operators may not accept a container at the terminal gate without a VGM.

In this regard, terminal operators have taken differing approaches due to concerns varying from port congestion, lack of necessary infrastructure to support container weighing services, and terminal disruptions and delays.

While some port authorities and terminal operators, such as those in the Ports of Long Beach, Los Angeles, and Oakland, have maintained that they will not or cannot offer container-weighing services, others such as the Georgia Ports Authority have stated they will provide container-weighing services free of charge in order for a shipper to verify the container weight. Certain terminal operators in the Port of New York & New Jersey and in Baltimore have also confirmed they will offer container-weighing services, but for a fee.

Meanwhile, other ports and terminal operators, such as the Port of Houston, have announced they will implement additional measures, such as only accepting containers where the VGM has been submitted electronically before they will be accepted at the terminal gate, but will provide designating truck holding areas for non-compliant containers.

Finally, in light of the Coast Guard’s equivalency determination approving the use of existing methods of weighing containers, some port authorities and terminal operators are changing their previously stated positions. For example, the Virginia Port Authority, which originally stated it would not accept containers that did not have a VGM prior to arrival at the terminal, has since altered course, stating it will continue to accept containers without a VGM via gate and rail.

According to a May 10 statement issued by the port, the Coast Guard’s recently announced position “allows for The Port of Virginia to provide OSHA-compliant weights to line operators for their potential use in order that they may comply with SOLAS VGM requirements.”

IMPLICATIONS FOR JONES ACT OPERATORS

In addition to managing inconsistencies at domestic terminals, U.S. shippers and vessel owners must also be aware of how the

SOLAS amendments will be enforced in foreign ports for U.S. vessels engaged in international voyages.

If a vessel is engaged in solely domestic trade, it is not subject to SOLAS and will not be required to obtain VGMs from the shipper prior to loading containers for any domestic voyage, regardless of the ultimate destination of the containers. As explained in FAQs posted by RADM Paul Thomas, the Assistant Commandant for Prevention, on the Coast Guard's Maritime Commons blog on March 2, a ship that is strictly engaged in Jones Act trade is not impacted by SOLAS because SOLAS applies only to ships engaged in international trade. However, a Jones Act ship that also engages in international trade is required to comply with SOLAS.

As a practical matter, containers bound for international ports will likely have VGMs because the vessel that will load those containers for transport to a foreign port will be subject to SOLAS and will require VGMs prior to loading. According to IMO guidelines, where a container is transported by a vessel to which the SOLAS regulations do not apply and delivered to a port terminal facility without the VGM, it may not be loaded onto a ship to which the SOLAS regulations apply unless the master and the terminal have obtained the container's VGM on behalf of the shipper.

Thus, although the Coast Guard has given the green light for U.S. shippers to use alternative measures to comply with the

SOLAS amendment, coordination between the various parties involved (shippers, terminal operators, vessel operators) and development of best management practices are essential to ensuring that a container without a VGM that is ultimately bound for a foreign port is not loaded onto a vessel.

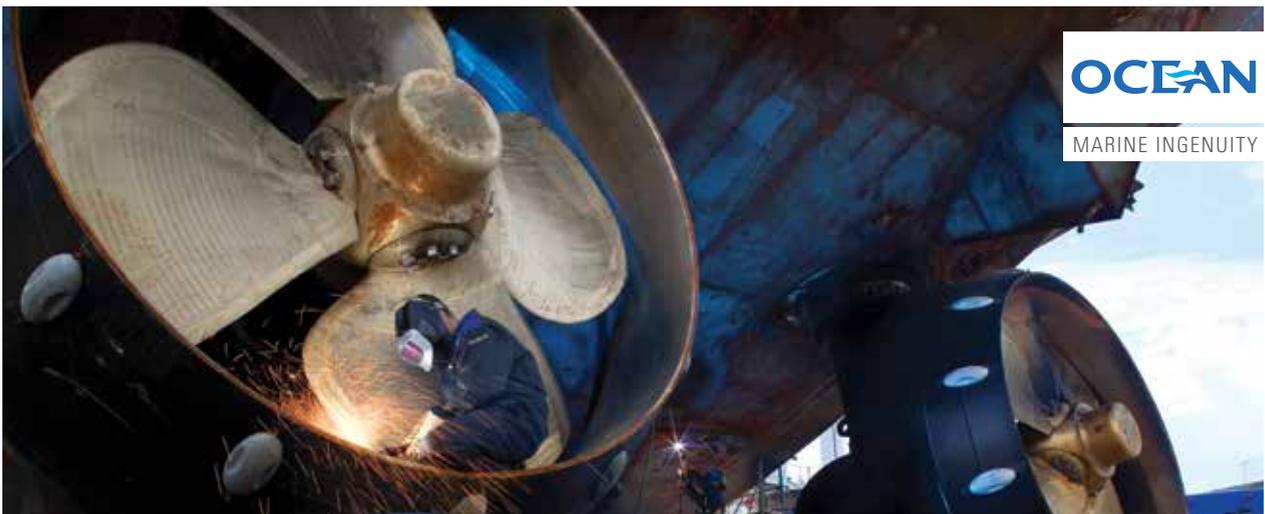
COMPLIANCE

Ultimately, even though SOLAS cannot be enforced directly against domestic U.S. shippers, it is enforceable against vessels subject to SOLAS and can therefore substantially impact U.S. shippers. With industry stakeholders and the Coast Guard working together to develop implementation procedures by the July 1 deadline, the flexibility provided by the Coast Guard's equivalency determination will hopefully lead to more clarity and facilitate the goal of improved safety and efficiency.

The key to a successful outcome is for stakeholders to continue to work together to establish practical procedures consistent with SOLAS at each U.S. port to ensure that reliable VGMs are provided for all containers on all vessels departing from a U.S. port.

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