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VIA E-MAIL: watson@chaffe.com

Hal Watson
President
Maritime Law Association of the United States
801 Travis Street, Suite 1910
Houston, TX 77002

Dear Hal,

On behalf of the Cruise Lines and Passengers Ships Committee of the Maritime Law Association of the United States, please see below, responses to the “Questionnaire – Pandemic Response - The Effect on Seafarers and Passengers at Sea.”

I hope the information is helpful and can be of good use to outline the current state of the law in the United States.

1. Is your jurisdiction a member of the World Health Organization?

Answer:

The United States of America is a full member state of the World Health Organization (“WHO”).¹ The United States of America is also a member of the Pan American Health Organization, the Regional Office for the Americas of the WHO.²

The Commonwealth of Puerto Rico, an unincorporated territory of the United States is an associate member.³

¹ <http://www.who.int/countries/usa/en/>

² <http://www.paho.org/hq/index.php?lang=en>

³ <http://apps.who.int/gb/bd/PDF/bd47/EN/members-en.pdf>

2. Has your jurisdiction given effect under its domestic law to the International Health Regulations (2005)?

Answer:

In 2005, the World Health Assembly of the World Health Organization (WHO), following almost 10 years of discussion and debate, unanimously adopted revisions to the International Health Regulations (IHR) (2005).⁴ These new regulations built upon previous international agreements, including the International Sanitary Regulations of 1951 and IHR 1969, which obligated member states of the WHO to report any cases of cholera, plague, or yellow fever that occurred within their boundaries.^{5 6}

The International Health Regulations (2005), entered into force in the United States in July, 2007. Under IHR (2005), the 194-member states are required to notify the WHO of any public health emergency of international concern (PHEIC), as defined through an algorithm included in Annex 2 of the regulations. Specifically, each country must have the capacity to notify the WHO within 24 hours of assessing a potential PHEIC. The regulations also revise rules for detecting and managing disease at national ports of entry; require the development of national capacity for surveillance, detection, and response to infectious diseases; and set expectations for developing public health response mechanisms to protect individual rights and avoid interference with international trade.⁷

The International Health Regulations (IHR) (2005) require countries to report potential public health emergencies of international concern to the World Health Organization. Given that in the United States is a federal system, disease surveillance and reporting is a state, territory, or local-level responsibility.⁸

Implementation of IHR (2005) with nations having a federal system of government, especially nations in which the majority of public health regulatory powers lie—by law, custom, or both—with regional governments, poses a particular challenge. Even so, the United States was the only nation explicitly to cite federalism as a reservation to IHR (2005).⁹ This reservation rested on the fact that in the United States, diseases are reported first to the local and state public health authorities and then, depending on the disease and threat, are reported voluntarily to the national level (i.e., the Department of Health and Human Services [HHS] through the Centers for Disease Control and Prevention [CDC]).¹⁰ In the United States system, reporting to the federal government is a matter of custom rather than overarching law; that is, the federal government does not claim

⁴ World Health Assembly. Revision of the International Health Regulations, WHA58.3. 2005. [cited 2008 Sep 25]. Available from: URL: http://www.who.int/gb/ebwha/pdf_files/WHA58-REC1/english/Resolutions.pdf.

⁵ United Nations. International Sanitary Regulations. 175 UN Treaty Series 214. 1951.

⁶ World Health Organization. International Health Regulations (1969) Geneva: WHO; 1969.

⁷ World Health Assembly. Revision of the International Health Regulations, WHA58.3. 2005. [cited 2008 Sep 25]. Available from: URL: http://www.who.int/gb/ebwha/pdf_files/WHA58-REC1/english/Resolutions.pdf.

⁸ Katz, Rebecca, PhD, MPH and Allen, Heather, MPA, Public Health Rep. 2009 Nov-Dec; 124(6): 806–812. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2773943/#B4>

⁹ Id.

¹⁰ World Health Organization. International Health Regulations (2005) 2nd ed.; appendix 2—reservations and other state party communications in connection with the International Health Regulations (2005) Geneva: WHO; 2008.

the authority under its inherent plenary powers to collect or order the collection of pertinent disease surveillance data, but instead relies upon state governments to voluntarily report conditions or diseases to the national authorities. The completeness and timeliness of reporting by the states is highly variable.¹¹

This U.S. custom for surveillance stands in stark contrast to WHO regulations, which require reporting of a PHEIC within 24 hours to encourage rapid information sharing. Thus, the U.S. system for complying with the WHO standards rests on voluntary state action—with the advice of organizations such as the Council for State and Territorial Epidemiologists (CSTE)—regarding what is appropriate information to be passed to federal authorities. In practice, states normally share important disease information with their federal partners in a timely fashion, often consulting with experts at CDC, yet this custom is not codified into law.¹²

3. Has your jurisdiction ratified the IMO-MLC 2006 Convention?

Answer:

The United States has not ratified MLC 2006, and as a result, the Coast Guard will not enforce compliance with MLC 2006 on U.S. vessels or foreign vessels while navigating within U.S. waters.

4. What steps have been taken within your jurisdiction to give effect to the IMO-MLC 2006 Convention.

Answer:¹³

The Maritime Labour Convention, 2006 (“MLC 2006”) was adopted by the International Labor Organization (“ILO”) at the 94th Maritime Session of the International Labour Convention (“ILC”) on February 7, 2006, and will enter into force on August 20, 2013. The United States has not ratified MLC 2006; however, on February 11, 2013, the Coast Guard published a notice (“MLC Notice”) in the Federal Register announcing the availability of a draft Navigation and Vessel Inspection Circular (“NVIC”) setting forth proposed Coast Guard policies and procedures regarding the inspection of U.S. vessels for voluntary compliance with MLC 2006. <http://www.gpo.gov/fdsys/pkg/FR-2013-02-11/pdf/2013-02956.pdf>. The primary purpose of the NVIC is to assist U.S. vessels in avoiding port State control actions in foreign ports of countries that have become party to MLC 2006 by providing for a voluntary inspection program mechanism for U.S.-flag vessels resulting in the issuance of a Statement of Voluntary Compliance, Maritime Labour Convention (“SOVC-MLC”).

The United States has not ratified MLC 2006, and as a result, the Coast Guard will not enforce compliance with MLC 2006 on U.S. vessels or foreign vessels while navigating within U.S. waters. Despite the fact that the United States has not ratified MLC 2006, U.S.-flag vessels are exposed to potential port State action under the “no more favorable treatment clause” as discussed above under

¹¹ Summary of notifiable diseases—United States, 2006. MMWR Morb Mortal Wkly Rep. 2008;55(53):1–94. [PubMed]

¹² Katz, Rebecca, PhD, MPH and Allen, Heather, MPA, Public Health Rep. 2009 Nov-Dec; 124(6): 806–812. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2773943/#B4>

¹³ <https://www.blankrome.com/index.cfm?contentID=37&itemID=3051>

the background section. In light of this potential risk, which could include detention at a port in a country that is a party to MLC 2006, the Coast Guard encourages shipowner and operator compliance with MLC 2006. To that end, the U.S. Coast Guard published the MLC Notice.

The NVIC, titled “Guidance Implementing the Maritime Labour Convention, 2006,” clarifies that the NVIC is intended to provide guidance for Coast Guard marine inspectors, Recognized Class Societies (“RCS”), and U.S. vessel owners/operators for meeting the provisions of MLC 2006 and to establish a voluntary inspection program for vessel owners/operators who wish to document compliance with the requirements of MLC 2006. Consistent with MLC 2006, the Guidance applies to ships greater than 500 gross tons on international voyages as well as U.S. commercial vessels less than 500 gross tons, including uninspected commercial vessels, engaging in international voyages to ports of MLC 2006 party nations. Vessels that do not operate in ports of those countries that are a party to MLC 2006 are not required to be in compliance with MLC 2006. The MLC Notice and draft NVIC may be reviewed at <http://www.regulations.gov/#!docketDetail;D=USCG-2012-1066>.

Similar to the Maritime Labour Certificate and DMLC issued by parties to MLC 2006, the Coast Guard intends to issue a SOVC-MLC to vessels demonstrating compliance with MLC 2006. Shipowners and operators of vessels that fall within the scope of the NVIC are not obligated to obtain a SOVC-MLC certificate, but may voluntarily request inspection to obtain this certificate. The Coast Guard has authorized RCSs to conduct MLC 2006 compliance inspections and issue SOVCs at the request of vessel owners and operators.

Generally, MLC 2006 establishes fourteen areas that are subject to mandatory compliance for certification and the issuance of certificates. These areas that must be inspected for compliance include: minimum age; medical certification; qualifications of seafarers; use of any licensed or certified or regulated private recruitment and placement services; seafarers’ employment agreements; payment of wages; hours of work and rest; manning levels for the ship; accommodation; on-board recreation facilities; food and catering; on-board medical care; health and safety and accident prevention; and on-board complaint procedures. Similar to the MLC 2006 certificate, an inspection conducted by the RCS for the purposes of issuing a SOVC-MLC will confirm compliance with these fourteen points.

The format to the SOVC-MLC will be consistent with the MLC certificate provided in the MLC Code and will be supplemented with a SOVC Declaration of Maritime Labour Compliance, which will reference the applicable U.S. federal rule or regulation applicable to the relevant mandatory area of compliance. To the extent that there is no applicable U.S. rule or regulation, the Coast Guard will defer to the applicable MLC 2006 standard. In addition to stating the current U.S. laws and regulations for the relevant mandatory areas of compliance, the SOVC-MLC must also

state the measures adopted by the shipowner or operator to ensure compliance with the laws and regulations.

Once the SOVC-MLC is issued, it must be posted on the vessel in a visible location accessible by the seafarers. The certificates will be valid for a period not exceeding five years or until there has been a material change in circumstance. Foreign country port State control authorities are not obligated to accept the Coast Guard SOVC-MLC, and unless the United States becomes a party MLC 2006, the Coast Guard has no enforcement authority to certify vessels as compliant with the MLC.

5. Has your jurisdiction ratified the IMO Facilitation of Maritime Traffic Convention 1965 (FAL Convention)?

Answer:

The United States has ratified the FAL Convention.¹⁴

6. What steps have been taken within your jurisdiction to give effect to the FAL Convention?

Answer:

The United States requires seafarers to obtain transit and crew visas called individual C-1/d visas. The C-1 part of the visa allows the seafarer to remain in U.S. waters up to 29 days. This allows them to travel from port to port, and when necessary, to transit from the airport to the seaport and vice versa. The D part of the visa identifies the seafarer to U.S. immigration authorities as a crew member working on a vessel.

The United States has also adopted security measures on the identification of seafarers as part of the formalities on the arrival of ships. Section 402 of the Enhanced Border Security and Visa Entry Reform Act provides the requirement for commercial aircraft or vessels arriving at, or department from, the United States to provide border officers with specified passenger and crew manifest information 96 hours before arrival in the port.

7. Are you aware if your jurisdiction has denied free pratique to a vessel during any of the following pandemics: Avian flu; SARS; Chikunguya or MERS?

Answer:

Under United States federal regulations found at 42 C.F.R. §71.31, the Centers for Disease Control and Prevention's ("CDC") grants controlled free pratique to vessels entering U.S. ports of entry. Port authorities, public agencies, and private organizations are prohibited from requiring SSCECs/SSCCs for seafaring vessels at U.S. ports of entry.

¹⁴ <http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/status-x.xls>

8. Are you aware if your jurisdiction has taken any steps to establish the care capacities identified in Sections A and B of Annex 1 of the International Health Regulations, and in particular a “national public health emergency response plan” in compliance with the International Health Regulations?

In the United States, a public health emergency declaration releases resources meant to handle an actual or potential public health crisis. Recent examples include incidents of flooding, severe weather.¹⁵ and the 2009 H1N1 influenza outbreak. Homeland Security Secretary Janet Napolitano described it as a "declaration of emergency preparedness."¹⁶

The National Disaster Medical System Federal Partners Memorandum of Agreement defines a public health emergency as "an emergency need for health care [medical] services to respond to a disaster, significant outbreak of an infectious disease, bioterrorist attack or other significant or catastrophic event. For purposes of NDMS activation, a public health emergency may include but is not limited to, public health emergencies declared by the Secretary of HHS [Health and Human Services] under 42 U.S.C. 247d, or a declaration of a major disaster or emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206)."¹⁷

9. (a) What measures were taken by your jurisdiction during the recent Ebola outbreak?

Answer: In the United States:¹⁸

- Reducing the likelihood of spread of Ebola through travel, including working with federal and state health officials to establish entry risk assessment procedures
- Establishing entry screening and monitoring of all travelers entering the U.S. from Ebola-affected areas
- Assisting state health departments in responding to domestic Ebola concerns
- Establishing trained and ready hospitals in the United States capable of safely caring for possible Ebola patients
- Forming CDC Rapid Ebola Preparedness (REP) response teams that could provide assistance within 24 hours to a health care facility managing a patient with Ebola.
- Identifying and distributing to state and local public health laboratories a laboratory assay that could reliably detect infection with the Ebola virus strain circulating in West Africa, and working with the Food and Drug Administration, the U.S. Department of Defense, and the

¹⁵ "HHS Acting Secretary Declares Public Health Emergency for North Dakota Storms". 2009-03-25.

¹⁶ US Declares Public Health Emergency for Swine Flu". Associated Press. 2009-04-26.

¹⁷ "National Disaster Medical System Memorandum Of Agreement Among The Departments Of Homeland Security, Health And Human Services, Veterans Affairs, And Defense" (PDF). 2005-09-26.

¹⁸ <https://www.cdc.gov/media/releases/2016/p0707-history-ebola-response.html>

Association of Public Health Laboratories to rapidly introduce and validate the assay in public health laboratories across the United States.

(b) Which Department of State or organization in your jurisdiction was responsible for implementing those measures during the recent Ebola outbreak?

Answer:

The Centers for Disease Control (“CDC”).

(c) Were maritime administrations within your jurisdiction consulted in relation to decisions taken during your jurisdiction during the Ebola outbreak?

Answer:

Yes. The United States Coast Guard (“USCG”) continues to monitor the threat and work to prevent the possible waterborne entry or spread of the virus via U.S. ports. An Ebola Crisis Action Team has been stood up at USCG Headquarters and is conducting a comprehensive review of USCG policy to provide clarifying guidance to port stakeholders, and they will release additional guidance as necessary. Also, guidance from the CDC continues to evolve and updates will be available at: <http://www.cdc.gov/vhf/ebola>.

33 C.F.R. § 160.215 requires the owner, agent, master, operator, or person in charge of a vessel to immediately notify the nearest Coast Guard Sector whenever there is a hazardous condition aboard the vessel. An ill person on board, especially one displaying the symptoms listed above, may constitute a hazardous condition and should be reported. Facilities that encounter similar conditions are strongly recommended to report this to the Coast Guard.

(d) Were those who took decisions within your jurisdiction during the Ebola outbreak aware of the requirements of: (i) International Health Regulations; and (ii) The FAL Convention 1965 (As Amended); and (iii) the ILO MLC 2006 Convention?

Answer:

The United States Coast Guard (“USCG”) is aware of these requirements.

(e) Were those making the decisions in your jurisdiction with relation to the Ebola outbreak aware of the potential conflict in the requirements between those Regulations and Conventions?

Answer:

There is a presumption the government officials are familiar and aware with the domestic law and international commitments of the United States.

Sincerely,

Carlos F. Llinás Negret

Carlos F. Llinás

Chair, Cruise Lines and Passengers Ships Committee
Maritime Law Association of the United States