

Shipbuilders Council of America

Subpart F: SCA Challenge



The national trade association for U.S. shipbuilders, ship repairers, and shipyard suppliers. Founded in 1920



Outline

- Background: SCA involvement in rule development
- Final Rule
 - Remaining Concerns
 - SCA Challenge
 - Temporary Delay
- Settlement Proposal
 - Next Steps



Background

- Before the May 2 Final Rule, Subpart F was in place since 1972
 - Consisted of Federal/Consensus Standards
- In 1982, SCA requested OSHA to revise, update and consolidate the Standards
- In 1988, OSHA founded SESAC (Shipyard Employment Standards Advisory Committee)
 - Labor/Industry/Maritime Experts



Background

- In 1993, SESAC submitted final draft recommendations to OSHA – SESAC disbands
- In 1995, OSHA establishes MACOSH
- MACOSH approves SESAC's draft and asks OSHA to proceed with rulemaking process
 - MACOSH advises OSHA to have a separate rulemaking for control of hazardous energy



Background

- 12 years later, OSHA publishes proposed rule on December 20, 2007
- SCA submits detailed comments
- OSHA holds two public hearings – Roy Martin testifies on behalf of SCA
- Final Rule published on May 2, 2011
- Compliance achieved by 1, 2011.
 - LO/T+ requirements subject to a later compliance date on October 31, 2011.



Final Rule – Remaining Concerns

- Arguably the most impactful rule ever published for a maritime industry
- Final Rule generated a lot of questions and concerns
 - OSHA severely underestimated costs
 - No plans for a Compliance Directive
 - Recurring theme: widespread disagreement on interpretation of various sections (Navy/OSHA/Industry)



Final Rule – SCA Challenge

- Having already met with OSHA, several shipyards approach SCA with compiled concerns
- On June 29, 2011, SCA files Petition for Reconsideration of the Final Rule with the US Court of Appeals for the Fourth Circuit
 - Opens up entire rule to challenge, although focus is on sections like LO/T+, Lighting, etc...



Final Rule – Temporary Delay

- On July 6, 2011, SCA requests 180 enforcement stay for Motor Vehicles and Lighting – and 1 year for LO/T+
- SCA and counsel meet with OSHA, OSHA subsequently grants:
 - August 1 effective date for all sections except:
 - Lighting 1915.82 – October 31, 2011
 - Motor Vehicle Safety 1915.82 – October 31, 2011 (Except 1915.93 (b)(4) secured seating)
 - LO/T+ 1915.89 – October 31, 2011 except 1915.89 (k)(2)(ii) which is extended until Jan. 31, 2012



Settlement Proposal

- Settlement development began immediately
 - Stakeholder working group
 - Strategy:
 - Settlement is “law of the land”
 - What will OSHA accept?
 - How to present industry recommendations?
 - Additional enforcement stays?
 - Timeline...



Settlement Proposal

- On October 21, 2011, SCA submitted the settlement proposal
- Three key goals:
 - (1) Request OSHA initiate the development of a Compliance Directive ASAP in coordination with a working group comprised of representatives from SCA member shipyards. A Compliance Directive is needed for this complex Rule to ensure regulatory consistency and certainty



Settlement Proposal

- (2) Request OSHA stay enforcement for all parts of 1915.89 until a Compliance Directive is published
- (3) Request that in advance of a Compliance Directive, and contained in the terms of settlement to SCA's Petition for Reconsideration, OSHA agree to recommendations addressing our most immediate concerns about new LO/TO+ requirements and other sections



Settlement Proposal

- Out of immediacy, and aside from the proposal, SCA requested an additional 30 day compliance extension for all parts of LO/T+ 1915.89
 - OSHA Granted 30-day extension of enforcement stay for all parts .89 and .82
 - Enforcement stayed for those parts through November 30, 2011
 - OSHA is currently considering the proposal



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Thank You

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