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SENATE

REPORT
114–372

A BILL TO PROVIDE A DEADLINE FOR COMPLIANCE WITH AN ALTERNATE SAFETY COMPLIANCE PROGRAM AND FOR OTHER PURPOSES

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 3088

NOVEMBER 15, 2016.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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NOVEMBER 15, 2016.—Ordered to be printed

Mr. THUNE, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 3088]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 3088), to provide a deadline for compliance with an alternate safety compliance program and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 3088 is to adjust the deadline for compliance with the Coast Guard's Alternative Safety Compliance Program, as established in the Coast Guard Reauthorization Act of 2010 (Act of 2010).[1] The legislation would guarantee mariners a minimum of 3 years to comply with any new regulations and eliminate the mandated compliance deadline of January 1, 2020. This legislation would direct the Coast Guard to conduct public engagement and coordination with diverse fleets prior to the implementation of any new safety regulations. Lastly, it would require the Secretary of the department in which the Coast Guard is operating, in coordination with the National Institute of Occupational Health and Safety, to submit a report to Congress on the progress of the design and implementation of the Alternative Safety Compliance Program.

[1] P.L. 111–281

BACKGROUND AND NEEDS

The Act of 2010 mandated sweeping changes to fishing vessel safety. The development of the commercial fishing vessel Alternative Safety Compliance Program was one of those changes. This program is intended to provide increased safety to the commercial fishing fleet and eliminate the ambiguous delineation of when requirements are mandated.[2] Alternate programs can be developed for specific regions and fisheries in cooperation with the commercial fishing industry. The statutory deadline for the Coast Guard to prescribe the Alternative Safety Compliance Program is January 1, 2017.[3] The current deadline for compliance with the new requirements is January 1, 2020. The Coast Guard released the draft Pacific Area Plan on April 14, 2016, and it is unclear when other regional plans will be available for discussion or if the final plan will resemble the draft plan.

Safety and enforcement

Casualty data show that approximately two-thirds of commercial fishing vessels lost to flooding result from hull or equipment failure; poor maintenance is often a factor. The older the vessel, the more likely it is to experience a catastrophic event. The Coast Guard does not have authority to require inspection of fishing vessels. It does have a voluntary fishing vessel exam program, but exams are much less intrusive than inspections. For example, exams can confirm compliance with safety equipment requirements, but are less likely to reveal structural deficiencies. Moreover, except for fish processing vessels built after 1990, commercial fishing vessels are currently not required to meet construction standards such as survey and classification requirements. Thus, there has been little authority or ability to enforce construction standards and material condition on commercial fishing vessels. Standards to ensure a maintained vessel and a stringent application of safety standards on older commercial fishing vessels would improve the safety of such vessels. While many improvements to fishing vessel safety, such as dockside exams, have occurred as a result of the Act of 2010, construction and maintenance standards have not yet been fully implemented.

Industry concerns

Recently, there has been some concern by the commercial fishing industry that they have not been consulted, as was statutorily required, in the development of the Alternative Safety Compliance Program. There is further concern that, due to the approaching January 1, 2017, deadline for a final Alternative Safety Compliance Program, the Coast Guard may use a "one size fits all" standard for the entire country rather than developing regional plans. This legislation seeks to mitigate such concerns.[4]

SUMMARY OF PROVISIONS

If enacted, S. 3088 would do the following:

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[2] Update on U.S. Commercial Fishing Industry Vessel Requirements, at http://www.uscg.mil/d13/cfvs/ASC/Update%20on%20CFVS%20Requirements%20-%201Mar2013.pdf.
[3] Ibid.
[4] Ibid.

- Change the mandated implementation deadline date from January 1, 2020, to whichever is later: January 1, 2021, or 3 years after a final rule is released by the Coast Guard.
- Reinforce the requirement that the rules must be developed in cooperation with industry.
- Allow 3 years before any fishing vessels need to comply with any substantial change to the requirements of the Alternative Safety Compliance Program.
- Direct the Coast Guard to improve coordination and outreach.
- Direct the Coast Guard to provide a report to Congress on the progress of the design and implementation of the Alternative Safety Compliance Program.

LEGISLATIVE HISTORY

S. 3088 was introduced on June 23, 2016, by Senator Sullivan and cosponsored by Senator Cantwell. A related bill was introduced by Representative Hunter (H.R. 5531). H.R. 5531 would amend the Alternative Safety Compliance Program deadline from January 1, 2020, to 3 years after implementation of new rules.

On June 28, 2016, Senator Sullivan offered an amendment in the nature of a substitute to S. 3088 to modify the compliance deadline to January 1, 2021, or the end of the 3 year period beginning on the date the Secretary issues a final rule establishing an Alternative Safety Compliance Program, whichever is later.

On June 29, 2016, the Committee met in open Executive Session and, by voice vote, reported S. 3088 favorably with an amendment (in the nature of a substitute).

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 3088—A bill to provide a deadline for compliance with an alternate safety compliance program and for other purposes

S. 3088 would delay, for at least three years, the deadline for complying with certain safety requirements related to commercial fishing vessels. The bill would require the Coast Guard, the agency primarily responsible for administering laws and regulations related to maritime safety, to improve coordination and outreach and complete other administrative tasks related to those safety requirements.

CBO estimates that enacting S. 3088 would have no significant effect on the federal budget. Based on information from the Coast Guard about the anticipated administrative costs of increased outreach efforts and reporting requirements, CBO estimates that any increased spending under the bill (which would be subject to appropriation) would not exceed $500,000 in any year. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 3088 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 3088 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 3088, as reported, does not create any new programs or impose any new regulatory requirements, and therefore would not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

The legislation is not expected to have a negative impact on the Nation's economy.

PRIVACY

The reported bill is not expected to impact the personal privacy of individuals.

PAPERWORK

S. 3088 would require the Secretary of the department in which the Coast Guard is operating, in coordination with the head of the National Institute of Occupational Health and Safety, to submit a report to Congress on the design and implementation of the Alternative Safety Compliance Program no later than June 1, 2018.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Deadline for compliance with Alternative Safety Compliance Program.

This section would amend existing law to change the implementation deadline of the Alternative Safety Compliance Program from January 1, 2020, to whichever is later: January 1, 2021, or 3 years after the date the Coast Guard issues a final rule establishing an alternate safety compliance program. This section also would grant any vessel to which section 4502(b) of title 46, United States Code, applies at least 3 additional years to comply with any substantial changes to the Alternative Safety Compliance Program.

Section 2. Coordination.

This section would require the Coast Guard to publish and disseminate a standardized plan for coordination, outreach, and design of the Alternative Safety Compliance Program within 30 days of the bill's date of enactment.

Section 3. Public engagement.

This section would require the Coast Guard to publish a memorandum for the public and the fishing, shipbuilding, and maritime industries that includes guidance, timelines, and opportunities for public engagement concerning the Alternative Safety Compliance Program within 30 days of the bill's date of enactment.

Section 4. Report to Congress.

This section would direct the Secretary of the department in which the Coast Guard is operating, in coordination with the head of the National Institute of Occupational Health and Safety, to submit a report by June 1, 2018, on the progress of the design and implementation of the Alternative Safety Compliance Program. This report would be in cooperation with the National Institute of Occupational Health and Safety and would cover the following:

- Meeting summaries and specific details of meetings.
- All documents provided to the public.
- Drafts of plans and annexes.
- A prioritized list of high risk fisheries being considered for additional safety requirements.
- A list of fleets under annexes and rationale for inclusion.
- A summary of outreach to experts involved in the design of the program.
- References for data and analyses used.
- A summary of appropriations used and still needed to complete the program under the deadline.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 46. SHIPPING

SUBTITLE II. VESSELS AND SEAMEN

PART B. INSPECTION AND REGULATION OF VESSELS

CHAPTER 45. UNINSPECTED COMMERCIAL FISHING INDUSTRY VESSELS

§ 4503. Fishing, fish tender, and fish processing vessel certification

* * * * * * *

(d)

[(1) After January 1, 2020, a fishing vessel, fish processing vessel, or fish tender vessel to which section 4502(b) of this title applies shall comply with an alternate safety compliance program that is developed in cooperation with the commercial fishing industry and prescribed by the Secretary, if the vessel—

[(A) is at least 50 feet overall in length;

[(B) is built before July 1, 2013; and

[(C) is 25 years of age or older.

[(2) A fishing vessel, fish processing vessel, or fish tender vessel built before July 1, 2013, that undergoes a major conversion completed after the later of July 1, 2013, or the date the Secretary establishes standards for an alternate safety compliance program, shall comply with such an alternative safety compliance program that is developed in cooperation with the commercial fishing industry and prescribed by the Secretary.

[(3) Alternative safety compliance programs may be developed for purposes of paragraph (1) for specific regions and fisheries.]

(1) After the later of January 1, 2021, or the end of the 3-year period beginning on the date the Secretary issues a final rule establishing an alternate safety compliance program developed in cooperation with the commercial fishing industry for fishing vessels, fish processing vessels, or fish tender vessels to which section 4502(b) of this title applies, such a vessel shall comply with such program, if the vessel—

(A) is at least 50 feet in registered length;

(B) is built before July 1, 2012; and

(C) is 25 years of age or older.

(2) A fishing vessel, fish processing vessel, or fish tender vessel built before July 1, 2012 that undergoes a major conversion completed after the later of July 1, 2012, or the date the Secretary establishes standards for an alternate safety compliance program, shall comply with such an alternative safety compliance program that is developed in cooperation with the commercial fishing industry and prescribed by the Secretary.

(3) If, after such alternate safety compliance program, the addition of annexes thereto or changes to such annexes, is established, there are substantial changes to the requirements of the alternate safety compliance program, the Secretary shall provide at least three years for fishing vessels, fish processing vessels, or fish tender vessels to which section 4502(b) of this title applies to comply with such changes.

(4) Alternative safety compliance programs shall be developed for purposes of paragraph (1) for specific regions and fisheries

(5) Nothing in this section may be construed to supersede any existing alternate safety compliance programs in effect on the date of the enactment of this paragraph.

[(4)]*(6)* Notwithstanding paragraph (1), vessels owned by a person that owns more than 30 vessels subject to that paragraph are not required to meet the alternate safety compliance requirements of that paragraph until January 1, 2030, if that owner enters into a compliance agreement with the Secretary that provides for a fixed schedule for all of the vessels owned

by that person to meet requirements of that paragraph by that date and the vessel owner is meeting that schedule.

[(5)**]***(7)* A fishing vessel, fish processing vessel, or fish tender vessel to which section 4502(b) of this title applies that was classed before July 1, 2012, shall—

(A) remain subject to the requirements of a classification society approved by the Secretary; and

(B) have on board a certificate from that society.

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