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ANY OTHER BUSINESS

Initial considerations regarding the application of safeguards to the proposed IMO unified interpretations

Submitted by IACS

SUMMARY

Executive summary: This document offers the views and initial considerations of IACS on the nature of unified interpretations, understanding of the meaning of safeguards and the degree of their application to different cases of interpretations, and recommends the development of guidelines to assist in the application of safeguards.

Strategic direction, if applicable: 7

Output: 7.1

Action to be taken: Paragraph 11

Related document: MSC 108/20

Introduction

1 MSC 108 agreed on the policy for consideration and approval of interpretations to be followed by all its subsidiary bodies and, preferably, by all IMO bodies concerned (MSC 108/20, paragraph 19.6). The policy, *inter alia*, states that:

"...

.2 unified interpretations (UIs) are useful in that they are meant to ensure uniform application of technical requirements containing vague expressions that are open to divergent interpretations, or to provide other more specific guidance;

.3 in order to ensure that UIs do not go beyond mandatory requirements and do not circumvent the development process of mandatory requirements, the following safeguards should be observed:

.1 interpretations are not meant to amend mandatory requirements in conventions and associated instruments;

- .2 interpretations should not go beyond the interpretation of requirements; and
- .3 interpretations should not contradict the text of requirements;"

2 The sub-committees were instructed to follow the agreed approach when considering the proposals for unified interpretations.

Discussion

3 In order to understand the application of the safeguards from the point of view of the object of their application (what an interpretation is) and the applicability (the meaning of safeguards), and to create guidance to assist those applying the safeguards, IACS considered the following aspects of interpretations and their assessment.

Clarifying specific words or phrases; responding to the question "what"

4 Interpretations which clarify vague or ambiguous terms in regulations may be considered as interpretations which satisfy the safeguards. For example, if a regulation contains expressions like "appropriate" or "high visibility", an interpretation providing clarification on such terms should be considered acceptable, as it would not alter the intent of the regulation but merely ensure consistent understanding and application of limited word(s) of the regulation.

Establishing the intent of the regulation

5 The interpretations which attempt to establish the intent behind, or to alter the meaning of, sentences or entire paragraphs of the regulation, where the intent is not explicitly clear from the text, may not meet the safeguards. Such interpretations may go beyond a clarification and risk modifying the original intent of the regulation. For example, proposals interpreting the scope of application are considered to change the intent of a regulation and should not be considered meeting the safeguards.

6 Also, IACS considered whether the interpretations which establish a means to achieve an intent which is already clear could be considered to meet the safeguards; and acknowledged that this may be determined on a case-by-case basis.

Responding to the question "how"

7 The interpretations which provide guidance on how to document, survey or implement a regulation (e.g. how to document compliance with the perfluorooctane sulfonic acid (PFOS) ban) may be considered acceptable, if they strictly remain within the boundaries of the existing regulatory text. These interpretations would focus on the procedural aspects of compliance rather than clarification of the requirement itself.

8 IACS acknowledges that this criterion may require case-by-case considerations, in particular, in relation to how the interpretations are phrased, i.e. if the interpretation limits other options for complying with the requirement.

9 In this context, IACS recalls the view of MSC 108 (MSC 108/20, paragraph 19.6.2) that interpretations are useful in that they also provide more specific guidance to the application of technical requirements.

Recommendation

10 Based on the above initial assessment of the safeguards agreed by MSC 108 and their relevance to the development of interpretations, IACS recommends the development of IMO guidelines elaborating on the safeguards to assist in the evaluation of interpretations. This should include criteria for clarifying specific words or phrases, responding to the questions of "what" and "how", and avoiding attempts to reinterpret the intent of a broader regulatory text.

Action requested of the Committee

11 The Committee is invited to consider the foregoing and the recommendation in paragraph 10, and to take action, as appropriate.
