Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Bill Shuster
Chairman

Nick J. Rahall, II
Ranking Member

Christopher P. Bertram, Staff Director

James H. Zoia, Democrat Staff Director

September 6, 2013

SUMMARY OF SUBJECT MATTER

TO:	Members, Subcommittee on Coast Guard and Maritime Transportation
FROM:	Staff, Subcommittee on Coast Guard and Maritime Transportation
RE:	Hearing on "Maritime Transportation Regulations: Impacts on Safety, Security, Jobs, and the Environment; Part I"

PURPOSE

The Subcommittee on Coast Guard and Maritime Transportation will conduct a two part hearing to review the status of regulations by the United States Coast Guard, the Environmental Protection Agency (EPA), the Federal Maritime Commission (FMC), and the Maritime Administration (MARAD), as well as examine how such regulations impact the maritime industry. The Subcommittee will meet on Tuesday, September 10, 2013, at 10:30 a.m., in 2167 of the Rayburn House Office Building for Part I of the hearing. Part I will focus on safety and commercial regulations. For Part I, the Subcommittee will hear from the Coast Guard, FMC, MARAD, and representatives from private industry.

The Subcommittee will meet on Thursday October 10, 2013, at 10:00 a.m. in 2167 Rayburn House Office Building for Part II of the hearing. Part II will focus on environmental regulations. For Part II, the Subcommittee will hear from the Coast Guard, EPA, and representatives from private industry.

BACKGROUND

The Rulemaking Process

The federal government creates or modifies rules and regulations through a rulemaking process guided by the Administrative Procedure Act (APA), codified in title 5, United States Code. The process involves notice in the *Federal Register* and the opportunity for public comment in a docket maintained by the regulating agency. In addition to complying with the APA, a federal agency must also promulgate regulations and rules in compliance with other statutory mandates and its own rules and policies.

The Coast Guard's Regulatory Development Program is typical of the approach taken by other federal agencies in promulgating regulations. After identifying the need for regulatory action, usually as the result of a public petition, internal review, casualty investigation, change in an international treaty, or an act of Congress, the Coast Guard forms a rulemaking team. The rulemaking team creates a detailed and comprehensive work plan, which summarizes and defines the rulemaking project and ensures the availability of proper resources. The rulemaking team typically drafts a Notice of Proposed Rulemaking (NPRM) for publication in the *Federal Register*. Prior to publication in the *Federal Register*, the NPRM must be cleared through several internal Coast Guard offices, and externally through the Department of Homeland Security and the Office of Management and Budget (OMB).

The Coast Guard typically accepts public comments in response to an NPRM for 90 days. The rulemaking team reviews the public comments and develops responses in accordance with APA requirements. The rulemaking team posts all *Federal Register* documents (e.g., NPRM, public notices, economic and environmental analyses, studies and other references, etc.) and public comments (provided they do not contain classified or other restricted information) to a public docket accessible via the www.Regulations.gov website.

After considering public comments, the rulemaking team typically drafts a final rule for publication in the *Federal Register* (certain circumstances warrant the use of other final rule documents such as an Interim Final Rule, Direct Final Rule or Temporary Final Rule, or may warrant termination of the rulemaking project, for which withdrawal procedures exist). The final rule must contain: (1) the regulatory text; (2) a concise general statement of the rule's basis and purpose; and (3) a discussion of the public comments and Coast Guard responses. Prior to publication in the *Federal Register*, the final rule must be cleared in a manner similar to the NPRM clearance process described above.

The final rule includes an effective date which is typically 90 days after publication of the final rule in the *Federal Register*. The regulatory process is completed as of the effective date. However, once the rulemaking is effective, its implementation may be delayed by litigation.

Major Rulemaking

A major rulemaking is defined by the Congressional Review Act (CRA) (Section 804of title 5 United States Code) as a rule that is likely to have an annual impact on the economy of $100 million or more; or result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies or geographic regions; or adversely affect in a significant way competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Under the Congressional Review Act, an agency must submit its major rulemakings to Congress. Within 60 legislative days after Congress receives an agency's rule, a Member of Congress can introduce a resolution of disapproval that, if passed and enacted into law, can nullify the rule, even if it has already gone into effect. Congressional disapproval under the CRA also prevents the agency from promulgating a "substantially similar" rule without subsequent

statutory authorization. There are currently no rulemakings directly impacting the maritime sector that meet the definition of a major rulemaking.

Significant Coast Guard Rulemakings Affecting the Maritime Industry

Recent Significant Final Rulemakings

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (RIN 1625-AA32) – On March 23, 2012, the Coast Guard published its final rule for Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters. These regulations are intended to control the introduction and spread of non-indigenous species from ships discharging ballast water in waters of the United States. The final rule would require the installation of ballast water treatment technologies on ocean-going vessels. The treatment technology must be certified by the Coast Guard to ensure it will prohibit the release of ballast water containing more than 10 organisms that are greater than 10 micrometers in size per cubic meter of ballast water or certain concentrations of smaller size classes of organisms. This is the same standard adopted by the International Maritime Organization (IMO) under regulations to implement the International Convention for the Control and Management of Ships' Ballast Water and Sediments. Under the final rule, installation of ballast water treatment technology will begin with new vessels constructed after December 1, 2013, and would be phased in for existing vessels over the next five years. The Coast Guard estimates the 10-year total cost of the proposed rule on U.S. vessel owners could exceed $645 million. The Service estimates benefits could total between $989 million and $1.6 billion depending on the effectiveness of the ballast water treatment technologies in stopping the introduction and spread of invasive species.

Significant Proposed Rulemakings

Towing Vessel Safety (RIN 1625–AB06) – The Coast Guard and Maritime Transportation Act of 2006 (P.L. 109-241), required the Coast Guard to publish a rulemaking providing for the inspection of towing vessels. Section 701 of the Coast Guard Authorization Act of 2010 (CGAA, P.L. 111-281) established a January 15, 2011 deadline for the NPRM and an October 15, 2011 deadline for the issuance of a final rule. On August 11, 2011, the Coast Guard published the NPRM for Inspection of Towing Vessels. The Coast Guard is currently analyzing more than 2,000 public comments received and is working to finalize this rulemaking. Over a 10-year period of analysis, the Coast Guard estimates the cost of the rulemaking on industry could total $130 million, while the monetized benefits could reach $200 million.

Transportation Worker Identification Credential Readers (RIN 1625-AB21) – Section 102 of the Maritime Transportation Security Act of 2002 (P.L. 107-295) required the Secretary of Homeland Security to prescribe regulations requiring individuals that required unescorted access to secure areas of certain vessels and maritime facilities to be issued a biometric identification, now known as a Transportation Worker Identification Credential (TWIC). Section 104 of the Security and Accountability for Every (SAFE) Port Act of 2006 (P.L. 109-347) required the Secretary to conduct a pilot program to test technology to read TWIC and established a deadline of April 13, 2009 to issue final rules for the deployment of TWIC readers. The TSA did not complete the pilot program until February 27, 2012. On March 22, 2013, the Coast Guard

published the NPRM for TWIC Readers. The NPRM outlines which maritime facilities and vessels must install TWIC readers. The Service estimates the NPRM would affect 38 vessels and 532 facilities and cost approximately $186 million over 10 years. The Service did not provide a monetized estimate of benefits, but indicated the qualitative benefits include enhanced access control and security at U.S. ports, high risk maritime facilities, and onboard U.S.-flag vessels. The final rule is expected to be issued in December 2013.

Vessel Requirements for Notice of Arrival and Departure, and Automatic Identification System (RIN 1625-AA99) – The Coast Guard is proposing to expand the applicability of notice of arrival and departure (NOAD) and automatic identification system (AIS) requirements to more commercial vessels. Section 704 of the Coast Guard and Maritime Transportation Act of 2012 (CG&MTA, Public Law 112-213) clarified that vessel operating between OCS facilities are not required to submit NOAD information. The NPRM would also expand the requirement for AIS carriage to smaller commercial vessels, as well as to other vessels transiting U.S. waters including commercial fishing vessels. The Coast Guard estimates that the 10-year total cost of the proposed rule to U.S.- and foreign-flagged vessel owners is between $181 million and $236 million, while the benefits in the form of reduced property damage could also total $236 million. The NPRM was issued on December 16, 2008. The final rule is expected to be issued in December 2013.

Nontank Vessel Response Plans and Other Vessel Response Plan Requirements (RIN 1625-AA32) – As required by the Oil Pollution Act of 1990, on August 31, 2009, the Coast Guard published a NPRM to require the owners and operators of nontank vessels greater than 400 gross tons which carry oil for fuel to prepare and submit oil spill response plans. The Coast Guard estimates that the 10-year total cost of the proposed rule to U.S.- and foreign-flagged vessel owners is between $263 million and $318.4 million. The Coast Guard did not provide an estimate on monetized benefits, but did estimate the rules could prevent the discharge of as much as 2,446 barrels of oil over a ten year period. The final rule is expected in fall 2013.

Significant Future Rulemakings

Fishing Vessel Safety (RIN 1625-AB85) – Current law requires commercial fishing vessels to undergo dockside examinations every five years to ensure compliance with certain vessel safety standards. Vessel operators are also required to keep records of equipment maintenance, and safety drills for Coast Guard examination. Vessels that do not receive their first examination prior to October 15, 2015 will not be allowed to sail. Current law also requires the Coast Guard to issue regulations to establish a safety training program to certify fishing vessel masters and maintain such certification. The Service expects to issue an interim final rule in September 2013.

Cruise Vessel Safety and Security (RIN 1625-AB91) – Section 3 of the Cruise Vessel Security and Safety Act of 2010 (P.L. 111-207) requires the Coast Guard to issue regulations governing the installation and maintenance of certain safety and security equipment aboard cruise vessels operating in U.S. waters, as well as procedures for the vessel operator to follow in the event of a sexual assault or other crime. The deadline for vessels to come into compliance with much of the Act was January 27, 2012. The Coast Guard issued guidance to the industry to ensure

compliance prior to the January 2012 deadline and expects to publish an NPRM in December 2013 to formally implement and make minor clarifications to the guidance.

Survival Craft (RIN 1625-AB46) – Section 609 of the CGAA prohibits commercial vessel operators from using survival craft after January 1, 2015 which allow any part of an individual to be immersed in water. Section 303 of the CG&MTA delayed the effective date until 30 months after the date on which the Coast Guard submits to the Committee a report on the use of such survival craft. The Coast Guard was also required to report on the impact on vessel stability and passenger safety, and the costs on small business of mandating the use of survival craft that ensures no part of an individual is immersed in water. On August 26, 2013, the Coast Guard submitted it report to the Committee. Summarizing the findings, the Coast Guard reported that –

- "Carriage of out-of-water survival craft… is not anticipated to have a significant effect on vessel safety";
- "It could not be determined conclusively if out-of-water flotation devises would have prevented any of the 452 personnel casualties" that occurred from 1992 to 2011; and
- The "10-year cost was determined to be $350.2 million. The potential benefits over 10 years was [*sic*] determined to be $151 million. The costs exceed the anticipated benefits by almost $200 million."

Distant Water Tuna Fleet Manning – Section 701 of the CG&MTA extended the exemption from certain manning requirements for U.S.-flag distant water tuna fleet vessels. It also clarified that foreign citizens could serve as officers on these vessels if they hold a credential issued by a foreign government that is equivalent to a credential issued by the Coast Guard. The Coast Guard continues to review foreign credential information provided by industry and expects to issue interim guidance to industry while it promulgates a rule implementing the provision.

Classification Society Delegation of Authority – Section 304 of the CG&MTA prohibits the Coast Guard from delegating authority to a classification society that provides comparable services to a state sponsor of terrorism such as Iran. Classification societies are non-governmental organizations that establish and maintain standards for vessel construction, as well as conduct surveys and inspections of vessels on behalf of flag states and other clients to ensure the vessels continue to meet such standards. The Coast Guard delegates its authority to certain classification societies to ensure vessel operators comply with federal requirements for vessel construction and safe operation. The Coast Guard is developing an NPRM to implement this provision.

Significant EPA Regulations Affecting the Maritime Industry

Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels (EPA-HQ-OW-2011-0141) – Pursuant to a federal court order, in December 2008, the EPA promulgated final regulations establishing a Vessel General Permit (VGP) under the Clean Water Act's National Pollution Discharge Elimination System program to govern ballast water and other discharges incidental to the normal operation of vessels. The VGP requires vessel operators to be in compliance with best management practices covering 26 types of discharges incidental to normal vessel operations, including ballast water, deck runoff, air conditioner condensate, bilge water, graywater, and cooling system discharges. With respect to ballast water, the VGP

incorporates the Coast Guard's previous regulation that required mandatory ballast water exchange. The VGP also incorporates local water quality regulatory requirements added by 26 states, two Indian tribes, and one territory that vessel operators must comply with while transiting those jurisdictions. As a result, to transit U.S. waters, vessel operators must ensure they are in compliance with Coast Guard and EPA regulations, as well as over two dozen state, territory, or tribal regulations governing 26 discharges. Approximately 45,000 vessels currently operate under the VGP.

On March 28, 2013, the EPA released its final 2013 VGP to replace the 2008 VGP, which expires on December 18, 2013. The 2013 VGP would require the installation of ballast water treatment technology on certain vessels operating in U.S. waters carrying more than eight cubic meters of ballast water. Similar to the Coast Guard's ballast water rule, treatment technologies under the 2013 VGP would need to be certified by the Coast Guard to prohibit the release of ballast water containing more than 10 organisms that are greater than 10 micrometers in size per cubic meter of ballast water or certain concentrations of smaller size classes of organisms (same as the IMO standard). In addition to regulating 26 other incidental discharges, the 2013 VGP also proposes to regulate effluent, including ice slurry, from fish holds on commercial fishing vessels. The EPA estimates that over 70,000 vessels will need to comply with the 2013 VGP at a cost of up to $23 million annually. This estimate does not include the cost to purchase and install ballast water treatment technologies on board a vessel or the cost of additional regulatory requirements which may be added by the states. The EPA could not calculate monetized benefits as a result of the implementation of the 2013 VGP, but it stated the permit would have two qualitative benefits: (1) reduced risk of invasive species; and (2) enhanced water quality.

On November 30, 2011, the EPA released a draft Small Vessel General Permit (sVGP) to cover commercial vessels less than 79 feet in length that are currently subject to a moratorium from compliance with the VGP (EPA-HQ-OW-2011-0150). The current moratorium was included in the CG&MTA and expires on December 18, 2014. The draft sVGP requires these vessels to comply with best management practices for the same 27 incidental discharges as the 2013 VGP. The EPA estimates that approximately 138,000 vessels will need to comply with the draft sVGP at a cost of up to $12 million annually (this estimate does not include the cost of additional regulatory requirements which may be added by the states). The EPA could not calculate monetized benefits as a result of the implementation of the draft sVGP, but it stated the permit would have the same two qualitative benefits as the 2013 VGP. A final sVGP is currently in agency review.

<u>North American Emission Control Area (EPA-420-F-10-015)</u> – At the request of the EPA, the Coast Guard and its Canadian counterparts, on March 26, 2010, the IMO amended the International Convention for the Prevention of Pollution from Ships (MARPOL) to designate specific portions of U.S. and Canadian waters as an Emission Control Area (ECA) to address exhaust emissions from vessels. Beginning on August 1, 2012, vessels operating in the North American ECA were required to burn fuel with lower sulfur content (1 percent) or install scrubbers in their exhaust systems to reduce emissions of sulfur oxides and nitrogen oxides. Beginning in 2015, the sulfur fuel standard will be further reduced to 0.1 percent sulfur. The EPA estimates it will cost industry approximately $3.2 billion by 2020 to comply with the North

American ECA. The EPA estimates the monetized benefits to be between $47 and $110 billion by 2020.

Significant FMC Regulations Affecting the Maritime Industry

Ocean Transportation Intermediary Licensing and Financial Responsibility Requirements (RIN 3072-AC44) – An Ocean Transportation Intermediary (OTI) is an individual or company that books space on a vessel for an entity seeking to ship goods. There are currently over 57,000 OTIs licensed and regulated by the FMC. On May 31, 2013, the FMC published an advanced notice of proposed rulemaking (ANPRM) which would make several changes to regulations governing OTIs, including:

- Requiring licenses to be renewed every two years;
- Increasing eligibility requirements for a license;
- Adding grounds for license revocations and eliminating certain rights OTIs have when facing a license revocation by the FMC; and
- Increasing levels of financial responsibility by 25 to 50 percent depending on the type of OTI.

The FMC is currently reviewing comments on the proposal. Since the rulemaking is still in the ANPRM phase, an economic analysis has not been conducted.

Significant MARAD Regulations Affecting the Maritime Industry

Cargo Preference Enforcement – Section 55305 of title 46, United States Code, requires that at least 50 percent of cargoes procured or financed by the federal government be transported on U.S.-flag vessels. Section 3511 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (P.L. 110-417) amended section 55305 to require the Secretary of Transportation to conduct an annual review of cargoes shipped by other federal agencies to ensure compliance with the 50 percent requirement. It also authorized the Secretary to take various actions to rectify violations. The fiscal year 2009 NDAA became law on October 14, 2008. MARAD has yet to begin a rulemaking process to implement section 3511.

WITNESSES – PART I

Panel I

Rear Admiral Joseph Servidio
Assistant Commandant for Prevention Policy
United States Coast Guard

The Honorable Mario Cordero
Chairman
Federal Maritime Commission

The Honorable Paul "Chip" Jaenichen
Acting Administrator
Maritime Administration

Panel II

Mr. Thomas A. Allegretti
President
American Waterways Operators

Captain William G. Schubert
USA Maritime

Mr. Ken Franke
President
Sportfishing Association of California

Geoffrey C. Powell
Vice President
National Customs Brokers and Forwarders Association of America

Rear Admiral Rick Gurnan, USMS
President
Massachusetts Maritime Academy
on behalf of
Consortium of State Maritime Academies

Mr. Patrick L. Wojahn
Public Policy Analyst
National Disability Rights Network