



**Committee on Transportation and Infrastructure  
U.S. House of Representatives**

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Washington, DC 20515

**Nick J. Rahall, III**  
Ranking Member

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February 28, 2014

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**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 II”

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**PURPOSE**

The Subcommittee on Coast Guard and Maritime Transportation will conduct the second part of its 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, March 4, 2013, at 10:00 a.m. in 2253 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 non-federal witnesses.

The Subcommittee previously met on Tuesday, September 10, 2013, at 10:30 a.m. for Part I of the hearing. Part I focused on safety and commercial regulations. For Part I, the Subcommittee heard from the Coast Guard, FMC, MARAD, 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.

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](http://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.

## **Significant Coast Guard Environmental Rulemakings Affecting the Maritime Industry**

### *Nontank Vessel Response Plans*

On September 30, 2013, the Coast Guard published a final rule entitled *Nontank Vessel Response Plans and Other Vessel Response Plan Requirements (RIN 1625-AB27)*. These regulations require the owners and operators of nontank vessels greater than 400 gross tons that 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 10-year period.

## *Ballast Water*

On March 23, 2012, the Coast Guard published a final rule entitled *Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (RIN 1625-AA32)*. 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 systems (BWTS) on ocean-going vessels. Each BWTS must be certified or “type approved” 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 BWTS must 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 BWTS technologies in stopping the introduction and spread of invasive species.

To date, the Coast Guard has certified two independent laboratories to accept BWTS from manufacturers for type approval testing. However, applications from BWTS manufacturers have been few, and consequently, no BWTS have yet been type approved. As such, on September 25, 2013, the Coast Guard issued a policy letter to inform vessel owners of the procedure to request an extension to the deadlines to install BWTS on their vessels (Policy Letter CG-OES). As of February 19, 2014, the Coast Guard had granted extension requests to 25 vessels. Vessel operators that do not install a type approved BWTS or request an extension may achieve compliance with the Coast Guard rule for five years by installing a Coast Guard approved alternative management system (AMS). An AMS is a BWTS that has been certified to meet the IMO standard by a foreign country. As of February 12, 2014, the Coast Guard had approved 34 AMS.

## **Significant EPA Environmental Regulations Affecting the Maritime Industry**

### *Ballast Water and Other Incidental Discharges*

Pursuant to a federal court order, in December 2008, the EPA promulgated final regulations establishing a Vessel General Permit (VGP) for Discharges Incidental to the Normal Operation of Vessels under the Clean Water Act's National Pollution Discharge Elimination System program (EPA-HQ-OW-2011-0055). The VGP required 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 incorporated the Coast Guard's previous regulation that required mandatory ballast water exchange.

On March 28, 2013, the EPA released its final 2013 VGP to replace the 2008 VGP, which expired on December 18, 2013 (EPA-HQ-OW-2011-0141). The 2013 VGP requires the

installation of BWTS 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, BWTS under the 2013 VGP would need to be certified 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). However, the EPA does not require the BWTS to be type approved. In addition to regulating the 26 incidental discharges regulated under the 2008 VGP, the 2013 VGP adds the regulation of effluent, including ice slurry, from fish holds on commercial fishing vessels. The 2013 VGP also incorporates local water quality regulatory requirements added by 25 states that vessel operators must comply with while transiting those jurisdictions.

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 BWTS 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.

As previously stated, the Coast Guard rule requires the installation of type-approved BWTS on a schedule based on vessel ballast water capacity and construction date. Since no BWTS has yet been type approved, the Coast Guard is granting vessel operators extensions from the deadlines to install BWTS on their vessels. The 2013 VGP does not include a similar administrative mechanism for vessel operators to receive an extension. On December 27, 2013, the EPA released a memorandum outlining its enforcement policy for vessels that received an extension from the Coast Guard for the installation of BWTS. The memorandum states that although these vessel owners would still be in violation of the Clean Water Act, the EPA would "consider such violations... a low enforcement priority". Vessels that install a Coast Guard approved AMS are in compliance with the 2013 VGP.

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 last extended in the Coast Guard and Maritime Transportation Act of 2012 (P.L. 112-213) 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.

H.R. 4005, the Howard Coble Coast Guard and Maritime Transportation Act of 2014 includes a provision based on legislation introduced by Representatives LoBiondo and Larsen (H.R. 3464) to exempt commercial fishing vessels and commercial vessels less than 79 feet without ballast tanks from the sVGP requirements. The provision does not impact the regulation of ballast water discharges by the Coast Guard, EPA, or state governments. H.R. 4005, as

amended, was ordered reported by the Committee on Transportation and Infrastructure by voice vote on February 11, 2014.

*North American Emission Control Area*

On March 26, 2010, at the request of the EPA, the Coast Guard, and its Canadian counterpart agencies, 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 vessel exhaust emissions (EPA-420-F-10-015). Beginning on August 1, 2012, vessels operating in the North American ECA (e.g., contiguous waters out to 200 miles from shore) 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.

**WITNESSES**

**Panel I**

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

The Honorable Michael Shapiro  
Principal Deputy Assistant Administrator  
Office of Water, Environmental Protection Agency

The Honorable Chris Grundler  
Director, Office of Transportation and Air Quality  
Office of Air and Radiation  
Environmental Protection Agency

**Panel II**

Mr. Thomas A. Allegretti  
President  
The American Waterways Operators

Ms. Kathy J. Metcalf  
Director, Maritime Affairs  
Chamber of Shipping of America

Mr. James Roussos  
Vice President of Boat Operations  
LaMonica Fine Foods LLC

Mr. Rod Jones  
President and CEO  
CSL Group