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

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April 8, 2016

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 Safety and Stewardship Programs"

PURPOSE

On Thursday, April 14, 2016, at 10:00 a.m., in 2253 Rayburn House Office Building, the Subcommittee on Coast Guard and Maritime Transportation will hold a hearing on Maritime Transportation Safety and Stewardship Programs. The Subcommittee will hear from the Coast Guard, the Transportation Research Board of the National Academies of Sciences, Engineering, and Medicine, the American Waterways Operators, the International Cruise Victims Association, Inc., the Agriculture Transportation Coalition (AgTC), and the National Association of Waterfront Employers.

BACKGROUND

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 (See Appendix A for more information on the regulatory process).

Significant Coast Guard Rulemakings Affecting the Maritime Industry

Towing Vessel Safety (RIN 1625–AB06). The Coast Guard and Maritime Transportation Act of 2004 (P.L. 108-293), requires 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) required the Coast Guard to publish the notice of proposed rulemaking (NPRM) by January 15, 2011, and issue the final rule by October 15, 2011. On August 11, 2011, the Coast

Guard published the NPRM for Inspection of Towing Vessels and held a public comment period until December 9, 2011. The Coast Guard received 268 comments and is working to finalize this rulemaking, but has declined to provide a specific date for when a final rule will be published. In 2011, the Coast Guard estimated the cost of the rulemaking on industry could total $14.3 to $17 million, while the annualized benefits could reach $28.5 million (see RIN Data sheet).

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 United States 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 published a NPRM on January 16, 2015. The comment period was open until March 10, 2015. A final rule has not been published.

Additionally, section 608 of the Coast Guard Authorization Act of 2015 (P.L. 114-120) requires the Coast Guard to complete a report on the status of technologies for immediately detecting passengers who have fallen overboard from cruise vessels, the feasibility of implementing such technologies and the costs and benefits. The Coast Guard has started its review and expects to meet the report deadline of August 8, 2017.

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (RIN 1625-AA32). On March 23, 2012, the Coast Guard published the final rule on Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters. The 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 requires 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 is phased in for existing vessels over 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 also 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 applications from manufacturers for type approval testing. However, very few applications from BWTS manufacturers have been submitted, and no BWTS have yet been type approved. 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 March 2016, the Coast Guard has approved approximately 5,500 vessel ballast

water regulation compliance date extensions. 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 23, 2016, the Coast Guard has accepted 56 AMS.

Vessel General Permit 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). Pursuant to a federal court order, in December 2008, the EPA promulgated final regulations establishing a Vessel General Permit (VGP). On March 28, 2013, the EPA released its final VGP to replace the 2008 VGP, which expired on December 18, 2013 (EPA-HQ-OW-2011-0141). The 2013 VGP is valid through December 18, 2018. 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 (See Appendix B for additional information).

Small Vessel General Permit (sVGP) to cover commercial vessels less than 79 feet in length (EPA-HQ-OW-2011-0150). On December 8, 2011, the EPA released a draft sVGP which requires these vessels to comply with best management practices for the same 27 incidental discharges as the 2013 VGP. Commercial vessels less than 79 feet are currently subject to a Congressional moratorium from compliance with the VGP. EPA estimates that approximately 138,000 vessels will need to comply with the sVGP at a cost of up to $12 million annually. This estimate does not include the cost of additional regulatory requirements which might be added by the states. 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. While the final sVGP was released in the *Federal Register* on September 10, 2014, the moratorium for these vessels was extended in the Howard Coble Coast Guard and Maritime Transportation Act of 2014 (P.L. 113-281) and will expire on December 18, 2017.

Regulatory requirements in the 2014 and 2015 Coast Guard Authorization Acts

The Howard Coble Coast Guard and Maritime Transportation Act of 2014 regulatory requirements:

Offshore Supply Vessels, Towing Vessel, and Barge Engine Rating Watches (RIN 1625-AC25). Section 316 of the 2014 Act amended 46 U.S.C. 8104(g)(1) by allowing coal passers, firemen, oilers, and water tenders serving on offshore supply vessels, towing vessels, and barges engaged in seagoing voyages of less than 600 miles to be divided into at least two watches.

Previously, only officers and other deck crew members on those vessels could be divided into two watches. Current regulations provide the definition of "day" on vessels authorized to operate a two watch system to mean that a 12-hour working day can be credited as 1.5 days of seagoing service towards further mariner licensing. Because of the statutory change, regulations became inconsistent with current law and need to be updated. The Coast Guard published its final rule on October 26, 2015, and it went into effect on January 25, 2016.

The Coast Guard Authorization Act of 2015 regulatory requirements:

Port Access Route Study: In Nantucket Sound (RIN Not Available) – Section 310 of the of the 2015 Act directs the Coast Guard to complete and submit to Congress a Port Access Route Study (PARS) of Nantucket Sound to determine whether the Coast Guard should revise existing regulations to improve navigation safety due to factors such as increased vessel traffic, changing vessel traffic patterns, weather conditions, or navigational difficulty in the Sound. The Coast Guard released a notice of study and request for comments on March 22, 2016. The public comment period ends on June 20, 2016.

Survival Craft – Section 301 of the 2015 Act requires passenger vessels that are built or that undergo a major conversion after January 1, 2016, to be equipped with out-of-water survival craft. Additionally, section 301 of the 2015 Act directs the Coast Guard to revise its regulations regarding the carriage of out-of-water survival craft after a review of factors regarding out-of-water survival craft use and effectiveness on certain passenger populations. The Service issued Marine Safety Information Bulletins (Numbers 02-16 and 04-16) in February 2016 to inform the public on the changes made by the 2015 Act and expects to complete action on the section 301 requirements by December 31, 2016.

Recreational Vessel Engine Weights – Section 308 of the 2015 Act requires the Coast Guard to update its rule regarding the references the agency provides for manufacturers to use to determine the weight of engines when manufacturers conduct flotation tests of new products. Current regulations are out of date and an update of regulations will ensure more accurate vessel flotation tests and improved recreational vessel safety. The Coast Guard expects to publish a NPRM by August 6, 2016.

National Academy of Science 2016 report "Impact of United States Coast Guard Regulation on United States Flag Registry"

Section 605 of the 2014 Act (P.L. 113-281) required the Coast Guard to engage the National Academies of Sciences (NAS), to conduct an assessment of the authorities under subtitle II of title 46 United States Code that impact United States vessels and limit their effectiveness to compete in international maritime transportation markets.

The NAS assessment relies on analysis contained within two prior reports that reviewed impediments to United States flag registry for vessels engaged in international commerce. [1] The

[1] The first report "*Impediments to the United States Flag Registry, Report to Congress*" was issued by the Coast Guard on September 3, 2013. The second report entitled "*Comparison of U.S. and Foreign-Flag Operating Costs*" was completed by Price-Waterhouse and released by the Maritime Administration (MARAD) in September 2011.

NAS report acknowledges that over the last thirty years considerable progress has been made to decrease United States flag regulatory compliance costs while simultaneously improving marine safety and environmental performance. The Committee noted that additional improvements in the regulatory process could be made to further reduce industry costs. The Committee made nine recommendations in the report (See Appendix C).

Vessel Container Weights

In 2014, the IMO's Maritime Safety Committee approved changes to the *International Convention for the Safety of Life at Sea* (SOLAS)[2], Regulation VI-2 – Cargo Information, to require verification of container weights before containers can be loaded onto ships. The requirement comes into effect on July 1, 2016. Under the requirement, all packed shipping containers must be accompanied by a signed, shipping document that lists the verified gross mass of each container before they can be loaded onto a ship operated by a flag state that is a party to SOLAS Convention (See Appendix D for more information on SOLAS and IMO).

There are two allowable methods by which to determine a container's weight — weighing the container after it is packed or weighing all the cargo and contents of the container and adding that weight to the container's tare weight (e.g. the weight of the container empty).

On March 14, 2016, a group of 49 shipping industry representatives sent a letter to the Coast Guard to relay concerns that carriers may interpret the new regulation to require a shipper to certify both the cargo and the carrier's container. The shippers state that implementing the SOLAS regulation in this way is "contrary to the practical realities of our United States export maritime commerce and fundamentally flawed conceptually." The letter supported the views expressed by Coast Guard Rear Admiral Paul Thomas whereby he indicated that should a shipper provide the cargo mass weight and the carrier add the tare weight of the container, the intent of the requirement would be achieved.

The Coast Guard has stated that United States carriers currently comply with SOLAS. Consequently, the Coast Guard is not requiring domestic shippers to make changes in existing practices. The Coast Guard will also continue to ensure SOLAS compliance aboard foreign-flagged ships via port state control examinations. This action will not change with the implementation of the July 1, 2016 requirements. The Coast Guard has stated it does not intend to initiate a rulemaking or to issue policy guidance to industry on the implementation of the amendments, unless there is a demonstrated need to ensure SOLAS compliance.

[2] The *International Convention for the Safety of Life at Sea* (SOLAS) is an international treaty that governs the safe operation of all ships engaged in international maritime trade. The SOLAS Convention specifies the minimum standards for the construction, equipment, and operation of merchant ships.

WITNESS LIST

Panel I

RDML Paul Thomas
Deputy Commandant for Prevention Policy
United States Coast Guard

Mr. R. Keith Michel
Committee Chair
Transportation Research Board
National Academy of Sciences, Engineering, and Medicine

Panel II

Mr. Thomas Allegretti
President and Chief Executive Officer
American Waterways Operators

Mr. John W. Butler
President and Chief Executive Officer
World Shipping Council

Mr. John Crowley
Executive Director
National Association of Waterfront Employers

Ms. Donna Lemm
AgTC SOLAS Committee Chair
Vice President
Mallory Alexander International Logistics

Mr. Kendall Carver
Chairman
International Cruise Victims Association, Inc.

Appendix A - The Rulemaking Process

After identifying the need for regulatory action, the Coast Guard forms a rulemaking team. The rulemaking team creates a 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, the NPRM must be cleared through several internal Coast Guard offices, and externally through the Department of Homeland Security, the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs (OIRA).

The Coast Guard usually accepts public comments in response to an NPRM for 90 days. The rulemaking team then reviews the 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 restricted information) to a public docket accessible at www.Regulations.gov.

After considering public comments, the rulemaking team drafts a final rule for publication in the *Federal Register*.[3] 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, 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 regulation becomes effective, its implementation may be delayed by subsequent litigation, or judicial or legislative action.

Major Rulemaking

A major rulemaking is defined by the Congressional Review Act (CRA)[4] as a rule that is likely to have an annual impact on the economy of $100 million or more; or, to result in a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies or geographic regions; or, to 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 CRA, an agency must submit its major rulemakings to Congress. Within 60 legislative days after Congress receives an agency's final rule, a Member of Congress can introduce a resolution of disapproval that, if passed and enacted into law, can nullify the rule, even if the regulation has already gone into effect. Congressional disapproval under the CRA also prevents the agency from promulgating a "substantially similar" rule without subsequent statutory authorization. Currently no rulemakings directly impacting the maritime sector meet the definition of a major rulemaking.

[3] Certain circumstances may warrant the use of other types of 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 specific withdrawal procedures exist.
[4] 5 U.S.C. 804.

Appendix B - Vessel General Permit 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 2008 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 2008 VGP incorporated the Coast Guard's previous regulation that required mandatory ballast water exchange.

The EPA estimated 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 costs of additional regulatory requirements which might be added by the states. EPA could not calculate monetized benefits as a result of the implementation of the 2013 VGP, but it stated that the permit would produce two qualitative benefits: (1) reduced risk of invasive species; and (2) enhanced water quality.

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

Appendix C - National Academy of Science 2016 report "Impact of United States Coast Guard Regulation on United States Flag Registry" Recommendations

1) Maritime Security Program (MSP) vessels from operating companies with proven safety records in MSP should be allowed to enroll in MSP Select (e.g. an Alternative Compliance Program (ACP) for inspection and oversight) at the time of reflagging.

2) The Coast Guard should apply ACP procedures for acceptance of replacement equipment for MSP vessels.

3) Vessels with a documented history of safe and reliable operation while allowing periodically unmanned machinery spaces (PUMS) should be permitted at the time of reflagging to continue such operations after about 1,000 hours of operation to validate the safety record.

4) The Coast Guard should perform a risk-based assessment of the costs and benefits of each regulation in the Code of Federal Regulations that exceeds international requirements and eliminate those regulations that cannot be justified on a cost-benefit basis.

5) The Coast Guard should accept type approvals for vessel equipment and machinery approved by recognized class societies in lieu of Coast Guard-specific approval process.

6) The Coast Guard's goal should be to monitor approved class society (ACS) while allowing ACS to perform the vessel oversight role with minimal redundancy between ACS and the Coast Guard. Allowing the Coast Guard to meet its responsibilities by serving in a safety, quality assurance, and oversight role rather than in a project and vessel oversight role.

7) The Coast Guard should implement a streamlined process for exemptions, interpretations, and appeals (for equivalent safety provision requests).

8) The Coast Guard should maintain its commitment to raise the standards of international regulations by continuing to work with approved class societies and the maritime industry within the IMO to improve the safety and environmental performance of the world fleet.

9) The Coast Guard should periodically schedule consultation with stakeholders regarding both existing and proposed regulations and establish metrics and monitor performance to allow for reporting of results and comparisons to the world fleet.

Appendix D - International Convention for the Safety of Life at Sea and the International Maritime Organization

The Coast Guard is the United States flag port state authority for international maritime treaties and is responsible for ensuring United States-flagged ships comply with the *International Convention for the Safety of Life at Sea* (SOLAS) when engaged in international voyages. The Coast Guard conducts reviews, technical assessments, and inspections throughout the life cycle of a ship and regularly issues certificates to show proof of compliance. The Coast Guard also verifies that all foreign-flagged ships comply with the SOLAS Convention when operating in United States waters. This is accomplished principally through examinations that verify the flag state has certified full compliance with the SOLAS Convention and confirmation of compliance with the flag state's certifications.

The IMO is a specialized agency of the United Nations that develops and maintains a governing framework for international shipping, including SOLAS and other international maritime conventions and codes dealing with the design, construction and operations of ships. The IMO has 171 member nations and three associate members. Sixty-five intergovernmental organizations (IGOs) and seventy-seven nongovernmental organizations (NGOs) have been granted observer status. The IMO conducts its work through five committees and seven sub-committees staffed by delegations of the member states, associate members, IGOs and NGOs. The Coast Guard leads the U.S. delegation to the IMO for both committee and sub-committee sessions.