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MARITIME TRANSPORTATION REGULATIONS: IMPACTS ON SAFETY, SECURITY, JOBS, AND THE ENVIRONMENT, PART 1

(113–34)

HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

SEPTEMBER 10, 2013

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

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Washington, DC 20515

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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.

North American Emission Control Area (EPA-420-F-10-015) – 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

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USA Maritime

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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

MARITIME TRANSPORTATION REGULATIONS: IMPACTS ON SAFETY, SECURITY, JOBS, AND THE ENVIRONMENT, PART 1

TUESDAY, SEPTEMBER 10, 2013

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:33 a.m., in Room 2167, Rayburn House Office Building, Hon. Duncan Hunter (Chairman of the subcommittee) presiding.

Mr. HUNTER. The subcommittee will come to order.

The subcommittee is meeting today to review regulations affecting the maritime industry, and we are interested in how the implementation of these regulations is impacting vessel safety, the flow of commerce through our ports, and the ability to grow jobs in the maritime sector.

The Coast Guard, Federal Maritime Commission, and Maritime Administration have broad authority to regulate maritime commerce, including establishing and enforcing rules to ensure vessel and passenger safety, protect consumers, and promote the U.S.-flag industry. With such vast authority comes great responsibility to regulate industry in a manner that is fair and does not stifle competition and job growth.

This hearing is the first of a two-part hearing focusing on ensuring these agencies are meeting that responsibility. Today's hearing will review pending rules impacting the safety and security of our ports and waterways, as well as the regulations affecting business practices and the viability of the U.S. flag. On October 10th, we will reconvene to review environmental regulations impacting the maritime sector.

Maritime commerce is essential to the U.S. economy. While regulations must address concerns related to safety, security and stewardship, they must also balance the importance of maintaining the free flow of maritime commerce. Domestic shipping alone is responsible for over 500,000 American jobs and $100 billion in annual economic output. In addition, 90 percent of all global trade and over 25 percent of our GDP moves via the sea. With the economy still in a fragile state, it is imperative that the Federal Government foster an atmosphere where our maritime industry can compete and expand.

To that end, I am concerned about the cost and impact of several rulemakings that will affect the maritime sector; specifically forthcoming Coast Guard regulations affecting the commercial and recreational fishing industry will place significant economic burdens on these small businesses.

I am also concerned that the proposed rules by the FMC are misguided and will do little to further consumer protections, but will impose enormous regulatory burdens and costs on business. If these and other rules are not written and executed in a commonsense manner, I am concerned they could make it financially impossible for the U.S. maritime sector to expand and grow jobs.

The Maritime Administration's mission is to foster, promote, and develop the merchant maritime industry in the United States. In 2008, Congress strengthened the agency's ability to fulfill that mission by ensuring it could properly enforce our cargo preference laws. Unfortunately, the administration continues to drag their feet and refuses to promulgate rules to implement the law. Meanwhile, the number of ships flying the U.S. flag in the overseas trade continues to dwindle. The inaction on implementing the 2008 law, coupled with the President's misguided efforts to restructure the Food for Peace Program has left me baffled. It would appear by their actions that this administration simply does not understand or care about the very critical role the U.S.-flag industry plays in expanding our economy and ensuring our national security.

If we want to grow our economy and remain a world power capable of defending ourselves and projecting power for ourselves and our allies, we must work together to strengthen and preserve our maritime industry.

I thank the witnesses for appearing today and look forward to their testimony.

With that, I yield to Ranking Member Garamendi.

Mr. GARAMENDI. Mr. Hunter, this is remarkable. We are actually, Democrats and Republicans, agreeing. I would make a statement here, and I will read it, but it is exactly the same direction you are going, and that is to ask what we must do to strengthen our maritime industry. And we are really together here.

You know, I am going to read this thing because it is really a brilliant statement written by my colleague here to the right. But the bottom line of it is we are going to do everything necessary, including legislation, to make it happen, to really build the American maritime industry. And there are many, many pieces to that. We talked about it. I heard you speak this weekend in Los Angeles on that issue, Mr. Hunter. I followed you. We are in unison here. And so our message is today, tomorrow, and every day beyond is that we are going to use this subcommittee to strengthen the American maritime industry.

Now, to read a brilliant statement. Maybe I won't read all of it. You said, Mr. Hunter, you laid out the facts of the importance of maritime to the American economy. I won't repeat all of that. But for the Coast Guard, you have got a real challenge out ahead of you. And we are concerned about the fact that the regulations that you have been hanging onto for the last 2 years haven't been forthcoming. Why? That is a question. When it comes your turn, I would like you to answer that.

Specifically, it seems to be stuck. A neat little statement, I got to hand it to my colleague—my staff here, a back eddy. We love that, don't we? A back eddy. You are stuck, these regulations seem to be stuck in a back eddy. What is going on? And we are talking here specifically about the Towing Vessel Safety Rule. Normally these things get stuck in a back eddy because of opposition from the industry. That is not the case. Industry wants it. Why hasn't it moved?

With regard to the Federal Maritime Commission and the Maritime Administration, why haven't you been enforcing the laws about American cargo? What is going on here? What is happening? Is it the MarAd or is it someplace else? I just left a lengthy meeting with the White House Chief of Staff McDonough. It was on Syria. But is that where it is stuck? Are we getting blowback from the administration? Are we getting blowback from the Department of Transportation? Why are we not enforcing the laws with regard to American cargo and the shipment of it? What is going on here? What is happening?

All of these issues we need to pursue. And, frankly, it is our task, I think, as a committee to also pursue a maritime policy, to lay out clearly what the maritime policy is for the United States. What is it that we need to accomplish? Are the rules, are the laws unclear? Are they fractured, different pieces that are not coherent and coordinated in a way that makes sense?

I know I am going to pursue this, I know Mr. Hunter has great interest in this also. And we need clarity of American policy and, frankly, we need the money to back it up. A little later this week, maybe even as early as Thursday, there is going to be a CR on the floor. That continuing resolution, is it going to provide the money necessary to carry out the task? And I know that MarAd is short a third of the money they need to carry out their tasks. This is an issue for us. Are we going to provide the money necessary to carry out the American policies with regard to the maritime industry? And there is a host of them.

Apparently, based on the resolution that is likely to be on the floor, the answer is no, because it does not provide the money necessary to carry out the American policies with regard to the maritime industry. That is us, and we have our obligations here, but this is really about those of you that are testifying today.

I am going to ask that my brilliant statement written by my staff be entered into the record, and I will let it go at that.

Mr. Hunter, you and I have other obligations in the armed services, so you want to play back and forth here?

Mr. HUNTER. Yeah.

Mr. GARAMENDI. I will run and go and listen for a while and then I will come back.

Mr. HUNTER. Yeah. Switch off.

Mr. GARAMENDI. We will go back and forth and hopefully carry on the obligations of this committee. With that, I yield back whatever time is left here, ask that my statement be written into the record, and we will go from there.

Mr. HUNTER. Without objection. Thank the gentleman.

And, you know, it is great to see at least some of us getting along and working together towards the same end. It is a good thing.

And I think John would agree, if you control the oceans, you control the world. And we are a maritime Nation, and we need to make sure we stay strong.

So we are going to go have to step out. Mr. Southerland from Florida is going to take my place in a little bit. Not that the other witnesses are any more important or less important than you, but, you know, Syria is on everybody's mind, and that is the committee hearing. Right now we have Secretary Kerry and Chuck Hagel and Martin Dempsey, too, in that hearing going on right now. So, unfortunately, we are going to have to step out and come back.

Mr. GARAMENDI. Mr. Chairman, my place will be held by Congresswoman Hahn when she arrives. I will stay until she gets here.

Mr. HUNTER. Thank you.

On our first panel of witnesses today are Rear Admiral Joseph Servidio, Assistant Commandant for Prevention Policy at the United States Coast Guard; the Honorable Mario Cordero, Chairman of the Federal Maritime Commission; and the Honorable Chip Jaenichen, Acting Administrator of the Maritime Administration.

Admiral Servidio, you are recognized for your statement.

TESTIMONY OF REAR ADMIRAL JOSEPH A. SERVIDIO, ASSISTANT COMMANDANT FOR PREVENTION POLICY, UNITED STATES COAST GUARD; HON. MARIO CORDERO, CHAIRMAN, FEDERAL MARITIME COMMISSION; AND HON. PAUL N. JAENICHEN, MARITIME ACTING ADMINISTRATOR, MARITIME ADMINISTRATION

Admiral SERVIDIO. Good morning, Chairman Hunter, Ranking Member Garamendi, and distinguished members of the subcommittee. It is my pleasure to be here today to discuss the Coast Guard's regulatory program.

The Coast Guard's regulatory program focuses on managing maritime risks through the establishment of proficiency, safety, and security standards to protect life, property, and maritime and coastal environments. Key objectives of our regulatory program are to ensure our regs are reasonable, they do not impose an undue burden on waterway users and industry, and they facilitate the safe and efficient flow of commerce.

To meet these objectives, the Coast Guard continues to build upon our regulatory development program, which includes improving our professional workforce, strengthening transparency, streamlining processes, and carefully scrutinizing regulatory actions to ensure they achieve desired outcomes.

These efforts and the notable support of this subcommittee have yielded positive results. For example, last Friday the Coast Guard submitted a final rulemaking on nontank vessel response plans, establishing standards for oil pollution response plans for over 15,000 vessels. In March, we published the Notice of Proposed Rulemaking for the Transportation Worker Identification Credential, or the TWIC readers. This rule proposes requirements for biometric-capable readers on designated high-risk facilities and vessels, as required by the Maritime Transportation Security Act.

We are in the final phase of the Standards for Training, Certification and Watchkeeping, or STCW rulemaking, which as proposed

would align U.S. mariner standards with those established internationally through the International Maritime Organization.

Throughout the rulemaking process, the Coast Guard ensures that we engage with industry to address concerns and minimize unreasonable costs and disruptions. For example, as we continue to work towards a final rule for towing vessel safety, we have actively engaged with the towing industry to implement the voluntary compliance program. In 2009, we started a towing vessel safety bridging program to assist towing vessel operators and owners in meeting the new inspection requirements. We have worked with industry to monitor and refine the program, and thus far in the Coast Guard's Eighth District, over 3,600 industry-initiated voluntary inspections have been completed, representing over 95 percent of the entire fleet within the district and the majority of towing vessels nationwide.

These types of programs are vital parts of our Coast Guard commitment to working with industry to implement rules that help achieve desired safety, security, and environmental outcomes, enable a more level playing field, and provide better support for U.S. companies, and enhance maritime global competitiveness.

While we continue to build on the successes I have discussed, I know we have challenges ahead. Despite noteworthy progress, including reducing by a third our original backlog of rulemaking projects, from 97 in 2008 to 68 today, and reducing the average cycle time for projects, from a high of over 6 years in 2009 to a little bit over 4 years today, we are not where we want to be.

In 2013, the number of rulemakings has increased and we project a backlog of 76 projects by the end of the year. Increased rulemaking complexity and scrutiny have made the workload per rule more time and more resource intensive.

Through our Regulatory Development Program, we continue to focus on gaining efficiencies while ensuring proper procedures are followed, that benefits outweigh costs, that appropriate compliance mechanisms exist, and that our rules are understandable and reduce regulatory uncertainty. We developed an Enterprise Project Management System that allows us to examine resources and track performance metrics across our rulemaking projects, a capability we did not have before. As a result, our program is ISO 9000 compliant and includes regular internal audits and continuous improvement processes.

In short, we are making every possible effort to ensure the regs we publish are timely, cost-effective, and derive from a thorough review and evaluation of public comments.

I want to thank Congress, and this subcommittee in particular, for your support and your investments. You have enabled our rulemaking program improvements. Thank you for the opportunity to be here today, and I look forward to answering your questions.

Mr. HUNTER. Thank you, Admiral.

And since I won't be able to ask you questions later unless I come back, I just want to tell you I am looking forward to talking with you about the distant tuna fleet, manning issues, and the rulemaking process, simply just why it is so hard to make a rule based off of statute. I understand there is a lot of room for public comment later and that is how the system works, but to take 6

years to do the towing regulations, you should be able to get stuff out in 6 months, I would say. So anyway.

Mr. Cordero, your turn.

Mr. CORDERO. Good morning, Chairman Hunter, Ranking Member Garamendi, and members of the subcommittee. Thank you for the opportunity to address you today on matters related to the Commission's regulations. With me today are my fellow Commissioners, William Doyle, Rebecca Dye, Michael Khouri, and Richard Lidinsky.

I am pleased to report that the Commission has taken a systematic approach in reviewing its regulations in order to minimize unnecessary burdens while ensuring a cost-effective regulatory regime that ensures economic security for those involved in the international oceanborne commerce, and the consumers that rely on it.

The Commission's review process first identifies rules that are obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. Once identified, we aim to either strengthen, modernize, or repeal these rules so as to make the agency's regulatory program more effective and less burdensome. Throughout the process, we have carried out our review with an eye toward maximizing public participation.

I would like to take a moment to highlight some of the recent regulatory modifications that we have implemented. In 2004, the Commission addressed potentially restrictive practices by the Government of China by creating the ability for U.S. non-vessel operating common carriers, NVOCCs, to obtain alternative, U.S.-based FMC-administered financial instruments to be accepted in lieu of China's cash deposit requirement. This allowed NVOCCs to put into use tens of thousands of dollars in capital that would have otherwise been deposited in Chinese financial institutions as dollar-for-dollar collateral.

In February 2011, the Commission issued a final rule streamlining its rules of practice and procedure to reduce the burden on parties to Commission proceedings. It has been estimated that these changes will save parties approximately $260,000 a year in reproduction, postal, and courier costs.

In March 2011, the Commission issued a final rule allowing licensed NVOCCs that enter into negotiated rate agreements exemption from the tariff rate publication requirements of the Shipping Act. Before the exemption, NVOCCs were required to publish rate changes for each charge to a shipper. It has been estimated that if all 3,400 licensed NVOCCs take advantage of the exemption, total annual savings could exceed 600,000 person-hours, or $40 million.

In March 2012, the Commission used a final rule that allows companies to enter into service contracts to reference freight indices or other external information. This rule recognizes new tools that common carriers and shippers may use to manage freight rate volatility and other market risks common to the commercial maritime industry.

In February 2013, the Commission updated its passenger vessel operator regulations. These measures strengthened protections for consumers with regard to their deposits and prepayments while at

the same time reducing financial responsibility requirements imposed on the smaller cruiser lines.

I hope these examples give you a better understanding of the work the Commission has recently done with respect to reviewing and updating our regulations.

Now I will turn to the Commission's review of ocean transportation intermediary rules. In 1999, as directed by the Ocean Shipping Reform Act, or OSRA, the Commission adopted new regulations affecting ocean freight forwarders and NVOCCs, now designated as OTIs. The Commission has not substantially revisited the rules governing licensing, financial responsibility, or general duties of OTIs since 1999. This review has been an open and transparent process, as detailed in my written testimony.

I will now summarize current Advance Notice of Proposed Rulemaking for OTIs. The Advance Notice includes a proposal for adjusting the minimum bonding requirements for OTIs; a proposal that licensed OTIs renew their license registrations; proposes disclosure of OTI agent/principal relationships; proposes to clarify the OTI experience requirement in order to become a licensed OTI; proposes that foreign-based OTIs establish a dedicated and staffed office in the United States; seeks comments on setting claims, payment, priorities, and ways to improve reporting provisions by surety bond companies; proposes further streamlining the revocation process within the Commission; and proposes to eliminate the $10,000 bonding requirement for each individual OTI branch office.

As the comment period ended only 11 days ago, we are still in the process of carefully evaluating the comments, and will be using those comments to further assess the proposed regulations.

Mr. Chairman, as we proceed through this process, I look forward to working closely with the subcommittee and with our stakeholders. I am happy to answer any questions you may have. Thank you.

Mr. SOUTHERLAND [presiding]. Thank you very much.

Mr. Jaenichen.

Mr. JAENICHEN. Good morning, Chairman Hunter, Ranking Member Garamendi, and members of the subcommittee. Thank you for the opportunity to present testimony to the subcommittee regarding marine transportation regulations, their impact on safety, security, jobs, and the environment.

The statutory mission, as Chairman Hunter pointed out, is to foster, promote, develop the maritime industry of the United States. The purpose of that mission is to meet the economic and security needs of the Nation. To achieve this mission, MarAd is focused not only on how to sustain the U.S. merchant marine as it exists today, but also to improve and grow the industry to ensure its viability in the future.

Overall, our marine transportation is strong and resilient, but there are opportunities for improvement and growth, and it is essential that we capitalize on these opportunities.

As I have heard from the industry stakeholders, as well as Members of Congress, a maritime strategy is needed that will enable the United States as a maritime Nation to sustain leadership in the international community. Not only will this benefit the maritime industry, but will also help achieve other key goals, including

job creation and employment, enhancement of economic competitiveness through energy efficiency and innovation, environmental sustainability, and improvement of improved transportation capacity through interoperability between ports, waterways, rail, and highways.

To focus on a long-term strategy, the Maritime Administration is working to organize a public meeting to concentrate on U.S.-flagged maritime cargo and sealift capacity. The public meeting, which is tentatively scheduled to be held by the end of the year, will be designed to elicit an unconstrained set of ideas for improving and expanding and strengthening the maritime transportation system, to vet those ideas in a public forum, and to derive a list of items for further study, action, or voluntary adoption.

The key areas to address would include transportation speed, efficiency, reliability, availability, and cost-effectiveness, the Marine Transportation System's contribution to the overall U.S. economic competitiveness, environmental sustainability, interoperability between modes of transportation, the number of qualified U.S. citizen mariners, the number and quality of U.S.-flagged ships engaged in commerce internationally and domestically, and the volume, value, and innovation of U.S. shipbuilding and repair.

As part of this strategy, the Maritime Administration also plans to analyze the costs of operating under U.S. flag compared to foreign flag and to determine if the agency can take actions to make the U.S. flag more competitive.

In addition, MarAd will be looking at challenges facing the U.S. shipbuilding industry and options to promote this industry, which has proven to be beneficial to the Nation from both an economic and a defense perspective. MarAd expects to do extensive public outreach on these issues and others to identify changes that would strengthen the U.S. merchant marine.

As Congress has recognized, the carriage of cargo and sealift capacity are essential to the Marine Transportation System. One of the Maritime Administration's immediate goals is to increase cargo on U.S.-flagged vessels by identifying additional Federal programs with international transportation opportunities. The Maritime Administration is currently engaged in an intensive rule development process to update its cargo preference regulations and to implement statutory changes to the cargo preference law contained in the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009.

I acknowledge the frustration that has been expressed about the delay in implementing this rule; however, significant efforts have been put into the proposed rulemaking by the Department of Transportation and the Maritime Administration over the last several years. These efforts will inform and guide the proposed rulemaking that we are currently drafting.

Other regulatory action that the Maritime Administration is working on involves implementation of statutory changes that were made in last year's National Defense Authorization Act and also the Coast Guard Authorization Act. These include the extension of the Maritime Security Program through 2025 and changes to America's Marine Highway Program eligibility criteria.

In addition, the Maritime Administration is preparing to implement a training certification program that is called for in the Cruise Vessel Security and Safety Act of 2010. As many of the committee members are aware, the Maritime Administration also plans to issue an Advance Notice of Proposed Rulemaking to gather comments on whether the agency's existing U.S. citizenship criteria for its ship managers and agents benefit the Nation's maritime commercial and national security, and provide also the most current, effective, and best approach for supporting National Defense Reserve Fleet operations.

The agency last examined this regulation more than 20 years ago, and despite significant changes in the maritime industry, no change has been made to the citizenship requirements. Currently there is no intention on whether this change is going to be—or we have made a position on that, but we believe it is appropriate to seek public comment on the issue to determine whether to propose any changes to the existing regulations going forward.

Thank you for the opportunity to discuss the marine transportation regulations, and I look forward to the subcommittee's questions.

Mr. SOUTHERLAND. Very good. Thank you all for your testimony.

We are going to get into a round of questions. And there are three of us currently on the panel, and on the committee, so we may do a couple rounds if that is all right with you.

My first question from me is to Admiral Servidio, and this is kind of close to home. Admiral, as you know, last year's Coast Guard authorization bill included provisions authorizing two new vessel determinations for vessels that had significant work performed after their original construction date. Last October a shipyard in my district delivered a $40 million state-of-the-art offshore supply vessel with a similar background. In that case, the hull was constructed in 2007 but never operated after suffering a major fire in the original shipyard.

The *Keith Cowan*, a significantly redesigned offshore supply vessel, complying with the latest rules and regulations, was built from that hull. Upon completion of that vessel last year, the Coast Guard issued a certificate of inspection showing a 2012 delivery date, but a certificate of documentation showing a 2007 build date, 5 years earlier. As a practical matter, that discrepancy results in a 25-percent shortening of the vessel's useful commercial life.

The Coast Guard did not object to the two new vessel determinations in last year's Coast Guard bill. So today I am asking for your confirmation that the Coast Guard will have no objection to legislation designating the actual 2012 delivery date as the official build date for the *Keith Cowan*.

Admiral SERVIDIO. Mr. Chairman, we would not object to that provision; however, I think it is important that everyone recognizes that with a 2012 build date, there will be a number of other international requirements that would be part of what the vessel would need to comply with in order to operate. But we would be more than willing to work with S.E.A. Corp on those issues, sir.

Mr. SOUTHERLAND. Very good. And it is my understanding that they understand that. So thank you for clearing that up.

Admiral, one more question, or a couple questions on a different subject before I move down the panel. The Coast Guard Authorization Act of 2010 prohibits the use of survival craft that leave any part of an individual submerged in water. The Coast Guard and Maritime Transportation Act of 2012 required the Coast Guard to study the issue before implementing the mandate. Last month the Coast Guard delivered its report to the committee.

Prior to the mandate in the 2010 act, the Coast Guard reviewed the benefits requiring out-of-water survival craft on certain vessels and determined that vessels operating in certain environments did not need to carry such craft. Under what circumstances do vessels already carry out-of-the-water survival craft and why did the Coast Guard determine that only these vessels should have to carry such craft?

Admiral SERVIDIO. Mr. Chairman, I apologize. I believe that there might have been some administrative errors in getting that report to Congress, and I apologize if there were any hiccups with that.

We did do our study, sir, and we looked closely at the number of casualties that took place during that time window, and we looked to see whether we could find definitive proof that out-of-water would have prevented some of those casualties, sir, and we did not find that in going through our data, and hence, that is why we came up with that finding in our report, sir.

Mr. SOUTHERLAND. What vessels, based on what you have found, what vessels would be required to carry out-of-water survival craft as a result of that mandate, just for some of us who are new?

Admiral SERVIDIO. Yes, sir. Generally out-of-water survival craft are required on vessels sailing internationally—cruise ships, large deep draft vessels, oil rigs, mobile offshore drilling units. Those types of vessels, sir, would have to have that.

Mr. SOUTHERLAND. Very good. And now with the few minutes that I have remaining, I want to ask Chairman Cordero a question. The Federal Maritime Commission currently retains jurisdiction over the Consolidated Chassis Management, or the CCM Pool Agreement. As a result, CCM, which is in the business of operating and managing chassis pools, enjoys antitrust immunity under the Shipping Act of 1984. There are some facts as a result of that that I would like to state.

Number one, the operation and management of chassis is a domestic land-based business. Number two, CCM and its subsidiaries are separately incorporated limited liability companies that are neither ocean common carriers nor marine terminal operators. Fact number three, by CCM's own admission, the shipping lines that initially formed CCM for the purpose of operating chassis pools, to which they contributed chassis they owned or leased, will have sold all but approximately 20 percent of their collective chassis fleet by the end of this year. And four, the shipping lines continue to offer less and less intermodal through rates as a part of their service offerings to the shippers and consignees, and increasingly are required that such parties pay separately for the use of these chassis and the transport of container from port to rail ramp.

My question based on those four facts: How does FMC justify continuing to retain jurisdiction over the CCM Pool Agreement as

a result of these facts and continue to afford CCM antitrust immunity under the Shipping Act?

Mr. CORDERO. Thank you, Congressman, for your question. First of all, some history on that issue, as you have alluded to. The history of this question becomes centered on the fact that the carriers exclusively own chassis. On that question alone, it was most definitive within the purview of the FMC to address agreements in related to that scenario.

Now, as you have stated, over the years this is one of the aspects of the changed industry conditions. The question before the FMC, among some of the aspects that we look to in these areas, is adopting to these changed conditions. Presently there is a discussion, there is a dialogue with regard to the development in the chassis pool area, and at this point, again, all I could represent to the subcommittee is that dialogue is ongoing. And given the transition, these are some of the questions that most definitively the FMC will be asking.

Mr. SOUTHERLAND. So you can clearly state definitively that you recognize this change and how the industry is moving or it is evolving, and you will continue to work as necessary and report to this subcommittee based on those discussions with the acknowledgment that there needs to be change?

Mr. CORDERO. Yes.

Mr. SOUTHERLAND. OK.

Mr. CORDERO. We will continue to work with the subcommittee with that acknowledgment in terms of developments with regard to the chassis pool as it relates to the interests that the carriers hold or do not hold in the future.

Mr. SOUTHERLAND. Very good. Very good.

All right. I have exceeded my time. And with that, I recognize Ms. Hahn.

Ms. HAHN. Thank you, Mr. Chairman.

Thank you to all the witnesses for testifying before us today, and especially I always like to give a shout-out to Chairman Cordero, who I have worked with and have been friends with for many years back in the trenches in the harbors of Los Angeles and Long Beach.

So I would like to talk briefly about the Federal Maritime Commission's proposed rules governing ocean transportation intermediaries. The FMC has recently proposed increasing the required bond amount for OTIs in order to better protect market participants from suffering losses. While I think we would all like to ensure that no intermediaries are cut out of the industry because of the increased bond requirement, it is imperative that the FMC update existing regulations so that they can adequately address the concerns of the current market.

In your testimony you note, Chairman Cordero, that the rule in question hasn't been updated in nearly 15 years and the FMC's proposed rule is merely a reflection of the current market. In fact, the new bond amount for certain common carriers, $100,000, I think, is still lower than it would be if the 1999 required amount was adjusted for inflation, which I think in today's market would be $105,000.

So I know there is some concern about this. There are some feelings that this could really have a negative impact. So I would ask

you, Chairman Cordero, is it normal for regulatory bodies such as the FMC to periodically review and update their rules to ensure that they are up to date and reflect the current concerns of the market? And maybe you can expand on what are some of the dangers of failing to update outdated regulations.

Mr. CORDERO. Well, first of all, it is normal for agencies to review their rules. In the case of the FMC, we are doing so in accordance with the plan for Retrospective Review of the Existing Rules. There is a plan to this.

Now, as to the question of the bonding amount, again, you have properly indicated that we have not reviewed those amounts since the onset of OSRA in 1999, so we have not reviewed the bond limits in 14, 15 years. I think it is fair to recognize that in some of the comments that have been filed by our stakeholders, I will represent, that even our stakeholders do indicate that there is merit to this issue; that is, there is merit to discussing this issue and dialogue on this issue. And, of course, for the same reason that you just stated, that based on the consumer index, you know, we will need to review that. And, in fact, what is being proposed is below, in some cases, the index.

And lastly I will say we need to keep in mind with regard to how this industry has evolved, more particularly and more specifically, if I may say, in regard to containerization. Look to where we were in 1999 and where are we now in 2013. Nineteen ninety-nine, we had 2,000, 4,000 TEU container ships. Beginning in 2005, those vessels increased to a size of 8,000 TEUs. Today, in 2013, we are seeing major carriers now on order with 18,000 TEUs. The reason I bring that into context, imagine the amount of transactions that are occurring in relation to this industry. In 2000, to the present date of 2013, we have today almost doubled the amount of licensed OTIs. Much less when you look at it in terms of the number, that number is higher.

I mention these factors because it is important to keep in mind that part of the mission of the FMC is to address unlawful, deceptive practices that occur by some of the bad players in this industry. And, again, I emphasize "some." So I think it is particularly important for us to address these issues and look at the bonding amount.

Ms. HAHN. Thank you. And let me also discuss one of the other issues that our stakeholders are having anxiety about, and that is the proposed rule requiring OTIs to update their information every 2 years. I know there is some concern that this is an overly burdensome process, so how exactly does a stakeholder update their information, and why is this important? And maybe you could allay some of those fears today by walking us through the process of updating an OTI's information with the FMC.

Mr. CORDERO. Thank you. And I will do so, referencing common ground here. I think it is also fair to say that the comments that we received from the various stakeholders do indicate not only a concern, but with regard to the need, to make sure that everybody updates the information that is required. This has been a discussion within the FMC for many years and has evolved now to this announced rule.

Now, as to the concern that it may be overly burdensome, I think there is a perception out there that it may be, but I hopefully here will have the opportunity to clear that perception. What we are talking about essentially is a two-page form. This is it. A two-page form that you file online. There are basically nine questions. Six of the nine you basically check off the box. And basically what it does, it updates the information: change of address, owners, qualified individuals. These are just simple data that is not only required by the Shipping Act, but again, required with regard to our regulatory effectiveness.

Let me lastly comment that there is a definitive problem with regard to people who are not updating properly with the FMC. A recent audit of this by our staff indicated that of the 2.5 percent people that were audited, again keeping in mind this figure of over 6,000 OTIs, almost 25 percent had failed to comply with updating the FMC.

So in conclusion, I hope I cleared the perception that this is not a burdensome application process. It is basically a two-page form that you could do online and would take you no more than 5 minutes.

Ms. HAHN. Thank you. I have some other questions, but I will do it on the second round.

Mr. SOUTHERLAND. Thank you, Ms. Hahn.

Now we will recognize Mr. Rice.

Mr. RICE. Thank you, Mr. Chairman.

You know, this just appears to me to be absolutely absurd. We are here today talking about rules on rulemaking and the time it takes to put out our rules. And in the last hearing that we had in this committee we were told that American international shipping has dwindled by 90 percent in the last 50 years. It appears to me that with our excess of rules that we have choked off a valuable American industry in shipping and international shipping and shipbuilding, and now we are working on commercial fishing, I think we are doing a pretty good job of choking them off, and I am sure private will be next.

So, you know, when we have this graph that you have presented here on the average rule development time going down, I think it should go up. In fact, we probably should have a rule that says that we can't issue a rule until 50 years of study. When we have got the number of rules coming out every year increasing, I think that is exactly the opposite of what we need. I think we need to have the number of rules going down every year. You know, all this has happened, the dwindling of our commercial fleet, despite probably the most protectionist statute I have ever heard of in the Jones Act.

What I would like to know from each of you is, I am interested in rebuilding our international shipping fleet in particular, so what rules do we have to implement or do away with that would entice large shippers to start flagging their ships here? And let's go one at a time across.

Admiral SERVIDIO. Yes, sir. Thank you for the question. The Coast Guard's philosophy is we don't initiate a domestic rule unless there is a need to implement something internationally or whether there is an obvious safety, security, environmental gap that needs

to be addressed, and I will get to that in a second, sir, or it is required through an authorization act. And the majority of the rules that we initiate, sir, are in order to implement international requirements or authorization act requirements.

Again, sir, our philosophy is we don't want new rules. If we can use an international existing rule, that is our preference. If there is classification society rules that would address the safety or environmental aspects, we will go with that.

Mr. RICE. Admiral, how many commercial shippers would we have if we didn't have the Jones Act internationally?

Admiral SERVIDIO. Our offshore supply vessel fleet and our offshore fleet is very, very competitive, sir, without the Jones Act. There are other aspects of our fleet that are not as competitive.

Mr. RICE. So we haven't lost 90 percent of our international shipping in the last 50 years? That is what we were told at our last hearing.

Admiral SERVIDIO. I can't comment on that, sir. I will say that we are looking to harmonize our rules with the international rules so we have a level playing field with U.S. and with the foreign carriers that come into our waters, sir.

Mr. RICE. How many ships of foreign carriers are registered, flagged in the United States? Do you know that, sir?

Admiral SERVIDIO. How many of our ships, sir?

Mr. RICE. No. Ships of foreign carriers. How many are flagged in the United States?

Admiral SERVIDIO. We worked with Maersk Industries just this summer, sir, to reflag eight vessels from foreign into the U.S.

Mr. RICE. Are they done? Did that happen.

Admiral SERVIDIO. Yes, sir.

Mr. RICE. Because I have talked to Maersk, and they told me that none, they don't have any.

Admiral SERVIDIO. They did, sir, as part of the MSP program, and we conducted that at Activities Europe, and it was very successful. We worked closely with Maersk on that project.

Mr. RICE. And these are international ships.

Admiral SERVIDIO. Yes, sir. Deep draft vessels, sir.

Mr. RICE. Mr. Cordero, what do you think we need to do to entice foreign shippers to start flagging ships in the United States.

Mr. CORDERO. Thank you for your question, Congressman.

First of all, I will note the FMC is an independent regulatory agency, and our mission, of course, is to foster a fair, efficient, and reliable international ocean transportation system. In that regard, our focus is, in fact, with the foreign carriers.

As it relates to specifically your question, Congressman, I could provide you further information with regard to the relevance of the FMC on that issue; however, I will defer to the gentlemen to my right and to my left with regard to the Jones Act questions, given it is more within their purview. So as to the FMC, again, we are addressing basically the regulatory aspects within our purview of the foreign carriers.

Mr. RICE. Thank you, sir.

Mr. Jaenichen.

Mr. JAENICHEN. Yes. The Jones Act itself really affects domestic trade as to trade between two ports in the United States. The

international trade that you are referring to obviously has changed. There are——

Mr. RICE. It is also requires American-flagged ships to carry American Government things internationally.

Mr. JAENICHEN. That is cargo preference, yes, sir.

Mr. RICE. Yes, sir. And I think there are only, what we were told in our last hearing, less than 90 international American ships in international commerce, and we were told at our last hearing that if we didn't have the Jones Act we may have none or close to none.

Mr. JAENICHEN. There are actually two different issues that are being affected there, sir. The Jones Act itself, as I said before, is really for domestic trade between two ports. The cargo preference rules that we have requires carriage on U.S. flag. For the Department of Defense, it is 100 percent, for food aid it is 50 percent, as what is required by current statute.

The number of ships carrying U.S. flag is really determined by a number of other factors. There is a significant cost difference between the cost of having a U.S. flag versus having a foreign flag. And a lot of those have to do with open registries, tax structure, and various things like that, including insurance. Those are the areas where we need to go take a look at those to see if we can identify policy and changes to be able to reduce that.

Mr. RICE. That is one rule I would like to see happen in less than 5 years.

What I would like from you and the Admiral particularly, if you all could give me a list of things that we need to do to have—I want to make our shipping industry competitive again, so I want to know a list of rules that we need to adopt that would make international shippers want to flag here again. That would help me a lot.

Mr. JAENICHEN. Yes, sir.

Mr. RICE. Thank you.

Mr. SOUTHERLAND. Thank you, Mr. Rice.

I now recognize Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I have a number of questions.

Acting Administrator Jaenichen, MarAd has informed U.S. vessels that due to sequestration it will not be able to pay the full monthly MSP stipend in August 2013 and it will not pay any stipend in 2013. Have any vessels left the MSP program as a result of this situation? I am going to run through a lot of questions, so just answer me yes or no.

Mr. JAENICHEN. Sir, we have had one vessel that has reflagged and then they have replaced a vessel. So currently, until that vessel comes back in on the 1st of October, we are down to 59 vessels.

Mr. CUMMINGS. All right. As bad as this is, I understand that a variety of different budget scenarios may cause MSP to actually have to push as many as 10 vessels out of the program. And I note that these vessels can immediately leave the U.S. flag and join the flag of another nation. Can you very briefly describe these scenarios, budget scenarios, and the extent of possible vessel losses?

Mr. JAENICHEN. Thank you for that question. Sir, by statute we are really taking a look at just sort of the mathematics of it. Now, the program itself is authorized at $186 million, and you break

that down for the 60 vessels, that is $3.1 million paid on a monthly basis. Any reduction of 3.1 or a fraction thereof results in the loss of one vessel.

Currently under the situation that we are, we are operating under the fiscal year 2013 budget, which actually went back to fiscal year 2012, and took a look, because we had carryover when we developed that budget. That difference is $12 million, and so that effectively equates to four ships.

Depending on the target number that we are given for sequestration and that overall rate, it will work to affect the number of losses. Unless there is a change in the appropriations for that program, we will have to begin removing ships. We are required, if there are insufficient appropriations, to remove ships from the program.

Mr. CUMMINGS. And what would the impact be on our national security and the viability of our merchant marine if vessels were forced to leave the MSP program and if they then decided to leave the U.S. flag?

Mr. JAENICHEN. Sir, those 60 ships provide for 2,700 mariners onboard each ship. A loss of one ship out of the program that ultimately reflags to foreign flag would be a loss of 45 jobs for U.S. mariners.

We are currently—I discussed this with the maritime labor unions—we are at a tipping point with regard to the number of maritime labor personnel that are available to man our reserve sealift and our commercial sealift ships going forward. And if those mariners are lost, it is not likely that they will come back, and so we will be at a situation where we may not be able to man all of our ships that are required for sealift to support the Department of Defense in the event of a national emergency.

Mr. CUMMINGS. So that is a major problem.

Mr. JAENICHEN. Sir, we are at that point, yes, sir.

Mr. CUMMINGS. I think the cuts required under sequestration are wrong and I think they are harmful to the United States and I think that they should be ended. That said, right now I think we need to be careful that we don't lose what remains of our U.S.-flag oceangoing fleet.

What steps will you take right now to address this urgent issue and try to preserve and strengthen the United States-flag fleet?

Mr. JAENICHEN. Sir, thank you for that question. We are actually going through the process to ensure that we are meeting all of the various requirements to the Paperwork Reduction Act and also the Federal Advisory Committee rules with regard to soliciting information. We will be putting out a Federal Register notice that will announce a maritime strategy symposium that will be held at the Department of Defense before the end of the year. The plan is to have a 3-day event where we set the agenda based on the various ideas and be able to debate those and then put together an actionable list of things that can be done to help support and develop the U.S. maritime flag.

Mr. CUMMINGS. Thank you.

Admiral, on May 23rd, 2013, the DHS inspector general issued a report entitled "Marine Accident Reporting, Investigations, and Enforcement in the United States Coast Guard." The report's main

finding is the following, quote: "The Coast Guard does not have adequate processes or sufficient personnel to investigate, take correct actions and enforce regulations related to the reporting of marine accidents as required by the Federal regulations and Coast Guard policy," end of quote.

Obviously, while this finding is alarming, it is not new. When I was chairman of the subcommittee we convened a long series of hearings to examine the decline in the Coast Guard marine's safety capability.

My time here is very short, but I need to know, what are you going to do about this? Or given the sequestration, must we simply be resigned to a continuing decline in the Coast Guard's ability to ensure the safety of our Marine Transportation System, and what would this mean for the safety of life at sea?

Admiral SERVIDIO. Thank you for that question, sir. We are focused on it. I see this as a challenge going forward. The Marine Safety Enhancement Plan allowed us to bring a number of people into the Coast Guard, sir, but our focus really needs to be on some of the competency issues of those people. And we are building a plan now, given this budgetary environment, which is different from 2008 timeframe, sir, on how we are going to retain those competencies and increase efficiencies, and we are looking at that, sir. And we recognize it is a challenge, but as the industry gets more complicated, it is one we have to address.

Mr. CUMMINGS. With the chairman's indulgence, just two more questions.

Admiral, the inspector general stated that the Coast Guard has not implemented the authorities granted by the 2010 authorization act to allow promotion by specialty. Why hasn't the Coast Guard implemented this step? Why hasn't the Coast Guard taken this and other actions available to it that would help retain at least the current level of expertise in the Marine Safety Program at little or no cost?

Admiral SERVIDIO. Thank you for the question, sir. The enhanced status quo is an authority the Coast Guard has. It is something I will be meeting with our Office of Personnel Management and see where we stand with that, sir. I am going to have to get back to you on the record, sir, with regards to specifics of where we stand with implementing that authority, sir.

[The information follows:]

> A mature Officer Specialty Management System (OSMS) is a prerequisite for the Service before Enhanced Status Quo (ESQ) can be implemented. On 26 June 2013, the Coast Guard launched the OSMS. OSMS provides a means to quantify the number of specialists in select fields and assists our Service with meeting current and future demands. OSMS also fosters and focuses professionalism within specialties with sanctioned requirements set by Specialty Managers providing the competencies, education, training, and licenses/certification needed to earn and maintain a given specialty.
>
> Any use of ESQ will come by recommendation of the Assistant Commandant for Human Resources, and approval by the Commandant.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. SOUTHERLAND. Thank you very much.

We are going to do another quick round of questions, because we do have a second panel, and I would ask the Members if we could

be mindful of our time. We went a little over because of the few of us that are here. So I have, just in the second round, I have just two quick questions.

Mr. Jaenichen, when can we expect to see draft regulations to implement the 2008 cargo preference enforcement regulations?

Mr. JAENICHEN. Sir, our intent is to have them internally reviewed by the Department of Transportation by the end of the year, and then we would start the interagency process yet again. I cannot tell you how long it will take once we get into that process, but I intend to have something written down that we can start reviewing within the interagency by the end of the year.

Mr. SOUTHERLAND. OK. So by December 31st we will have——

Mr. JAENICHEN. That is for the Department, and then after that we then start the interagency process.

Mr. SOUTHERLAND. OK. Very good.

And, Admiral, let me ask you a question. Will the current Commandant be able to promulgate the towing vessel inspection rule before the end of his term? I think that is in May of next year.

Admiral SERVIDIO. Unfortunately, sir, I can't speculate on the various processes of public comment and the processes of clearance, but I recognize the authorization act and the timeline, sir. We are aggressively adjudicating the 3,000 comments we received on our Advance Notice of Proposed Rulemaking, sir. And a number of issues were brought up in those comments about, for example, third-party organizations, safety management systems and the requirements for making them mandatory, redundancy of vital systems, and grandfathering positions.

There is somewhat of a balance between a quick rule, sir, and a good rule, and we are trying to do both of them at the same time. And I recognize the timelines and our need to try to get this out as quickly as possible.

Mr. SOUTHERLAND. Very good. Very good.

All right. With that, I recognize Mrs. Hahn.

Ms. HAHN. Thank you, Mr. Chairman. I am glad you asked about cargo preference, because that was going to be one of my questions.

But this is for Rear Admiral Servidio. As you know, the TWIC program was launched shortly after 9/11 in order to ensure sensitive areas and facilities, such as our ports, are protected against potential security breaches. However, we know that since then, there have been a number of challenges with its implementation, from inaccuracies with its background checks to its delays in completing its pilot program for TWIC readers, this program has repeatedly incurred setbacks since its implementation. Now I understand that earlier this year the Coast Guard finally issued a proposed rule requiring TWIC readers to be installed at our Nation's highest risk facilities.

Considering that the Department of Homeland Security is still having problems developing and installing card readers at port facilities, a problem that was highlighted by a recent GAO report, how are our Nation's highest risk ports expected to fully comply with the law? And should the Coast Guard, along with DHS and TSA, consider GAO's recommendation to search for alternative credentialing approaches?

Admiral SERVIDIO. Thank you for the question. I have met with representatives from your port area several times about this issue. We have had four public meetings. We have 150 comments that we are taking into account as we go to a final rule on TWIC. I think the number of comments reflect that it was a well-thought-out Notice of Proposed Rulemaking. Most of those comments are either, We believe we should be included in the high-risk facilities or specific vessels saying they think that their vessel shouldn't be included in those high-risk facilities. But those are the preponderance of the comments.

That said, we are working with DHS and with TSA on evaluating other potential cards at this time. And we are taking into account the GAO reports with respect to some of the problems with readers. But I think it is important that some of that was a prototype and I think some of those problems have been worked through. So I can tell you that we are aware of the concerns, and we will be moving forward with an eye towards what those concerns are.

Ms. HAHN. And we know that many thousands of those cards will be expiring, a lot of them at the same time. And that is also what causes me concern. What do we do the day after hundreds of thousands of those cards have expired?

Admiral SERVIDIO. We have stood up an executive steering committee just looking at the TWIC program. I speak to Steve Sadler of TSA weekly with regards to how we are doing on this. And we have monthly meetings, looking at a suite of metrics. I share your concern. We are keeping our eye on that ball. Thus far, we have been able to address those issues, and we are seeing cycle times improving. But it is a concern going through, and it is one that we recognize we need to——

Ms. HAHN. Yes, and it is also very urgent because I am out there on port facilities all the time with signs everywhere, "Do not allow any entrance of a person with an expired card." So I certainly don't want commerce to come to a screeching halt because we have not figured out what to do the day after these cards have expired.

This is very urgent. So I appreciate your attention to this. We can figure this one out.

Admiral SERVIDIO. Yes, we can.

Ms. HAHN. We are smart enough.

Admiral SERVIDIO. Thank you.

Mr. SOUTHERLAND. Thank you, Ms. Hahn. I now recognize Mr. Rice.

Mr. RICE. Gentlemen, my primary focus is American competitiveness. And I truly believe that our regulatory morass is strangling commerce in this country, and it will strangle our entire economy if we don't get it under control. And I can think of no more glaring example of, you know, the strangling of an entire industry than the regulatory mess that we have created in this particular industry.

So we desperately need jobs. We desperately need industry. It would be my goal to see the rebirth of the American shipbuilding industry and the rebirth of the American international commercial fleet. So I don't want to be talking about 100 ships. I want to be talking about 1,000 American-flagged ships. And I am desperate to know what we can do to get there. I think that we should not be

creating new rules. I want to you stop that. I want to you change your mindset and start doing away with rules that are strangling our shipbuilding economy. And I really look forward, Admiral and Mr. Jaenichen, to your suggestions to what we need to do to have people want to flag here again. Because if you will give me that, I will work on it. When do you think I can get that?

Mr. JAENICHEN. Sir, as I indicated before, we are going to have that first public debate by the end of this year.

Mr. RICE. OK. That is not what I am talking about. I want to you write down what you think your suggestions would be that we could entice people to start flagging here again. And I don't want to wait until the end of the year. I am talking a couple of weeks. Can we not get that?

Mr. JAENICHEN. Sir, one of the things, there are a of different ideas. And if they were easy to implement and do, they would have been done already. The challenge that we have is we need to have the stakeholder input to evaluate. What my team puts together is going to be very limited in terms of what kind of feedback I get. I need to have that public debate in order to be able to have a program that I think is viable going forward.

Mr. RICE. Do you need a public debate for you to tell me what your ideas would be of things we need to change to get people to start flagging here again?

Mr. JAENICHEN. Sir, those are ideas by people who are not involved in it intimately on a daily basis in the maritime industry. I have a lot of good ideas, but I don't know whether they are actually supportable or achievable inside with the stakeholders.

Mr. RICE. Well, how long have you been with this group?

Mr. JAENICHEN. Sir, I have been the Acting Maritime Administrator since June and I have been with the Maritime Administration as a deputy administrator since last July.

Mr. RICE. OK. If you could please give me your suggestions, I would love to see them. Admiral, can I get some suggestions from you?

Admiral SERVIDIO. We recently provided a report to Congress, sir, on some of these issues so we can take some of that, sir, and I can provide highlights from that report for you, sir.

Mr. RICE. OK. I want to revitalize this industry. I don't want to strangle them anymore. And I hope we keep our hands off the commercial fishing fleet. They have been through enough. So I implore you, let's stop ruling these people to death, get off their backs and let them do their business. Thank you very much.

Mr. SOUTHERLAND. Thank you, Mr. Rice. Mr. Cummings.

Mr. CUMMINGS. Mr. Jaenichen, the first thing you ought to put on that list is end sequestration. Make sure you put that on the list because you just provided testimony that we are pushing ships out because of sequestration. So make sure you put that number one on the list. If you need me to write it, I will write it.

Mr. JAENICHEN. Sir, I have got it loud and clear, sir.

Mr. CUMMINGS. And those are ships that are there now and jobs that we have now that we are going to lose—not for a day, not for an hour, not for a month, but forever. That is real. And it is dwindling. Our ships are dwindling, dwindling, dwindling. My mother only had a second grade education, a former sharecropper. She

said, I want to you go up the ladder, but I don't want you to fall down. In other words, preserve what you have. Protect what you have. And that is what we have got to do. You can write that down and tweet it.

Admiral, as you know, the 2010 Coast Guard Authorization Act required that beginning in 2015, only survival craft that would ensure that no part of the body is immersed in water should be used. The most recent authorization delayed this requirement until 30 months after the date on which the Coast Guard submitted a report on the use of such survival craft. The NTSB has been recommending the elimination of survival craft that don't provide out-of-the-water protection for decades. Your study concludes that the cost of switching to such a craft would outweigh the benefits. However, the study was based on a review of past casualties and the study itself notes, "In general, the bulk of the data available were inconclusive as to whether the use of out-of-the-water survival craft would have affected the outcomes of these casualties. Casualty reports were inconsistent in addressing how many liferafts or inflatable buoyant apparatus were used during a casualty as well as the number of survivors found in each device when used."

"The study was also asked to look specifically at the survivability of individuals, including persons with disabilities, children, and the elderly."

Regarding this issue, your report states the following, "The age or disability of personnel casualties were generally not included in the casualty data reviewed in this analysis. Therefore, there is no empirical evidence to support that survivability of persons with disabilities, children, or elderly is different than an able-bodied person using either a lifefloat inflatable buoyant apparatus or liferaft. Nevertheless"—and it goes on to state—"it is clear intuitively that such demographics may present unusual risks and practical challenges to vessel operations. Although the Coast Guard considers some suggestions from stakeholders to carry out practical in-water trials in this area in connection with this report, this was not practical due to time and resource constraints."

Admiral, should a disabled veteran who became paralyzed while serving our Nation in Iraq or Afghanistan be condemned to die because the charter fishing boat on which he is a passenger sinks or capsizes? Or should that vessel be required to have a survival craft that can give that veteran the chance of surviving by keeping his or her body out of the water? That is question number one. Number two, Admiral, was this report prepared by marine safety professionals who were fully qualified as either investigators or inspectors? And does this report represent only their professional opinion?

Final question, Admiral, how much time and how many resources would it require to carry out practical in-water trials?

Admiral SERVIDIO. Thank you for the question, sir. The report was prepared by marine safety professionals, sir. We have limitations with respect to the data that our system carries. I would obviously share your concerns with respect to disabled people, sir. We worked, when I was captain of a port in numerous ports, on making arrangements so that we could address the safety aspects and allow for disabled veterans, in Tampa specifically, sir, to go out on

commercial vessels and enjoy and take part in the pleasure of our maritime ecosystem.

I am going to have to get back to you, sir, on what we would need to do in order for in-water tests and get back to you on the record for that, sir.

[The information follows:]

A practical test program addressing the relative survivability of the disabled, elderly, and children vs. able-bodied persons in various types of survival craft would be a complex and potentially risky undertaking. While some limited preliminary work could be carried out in controlled, simulated conditions such as a wave/wind tank, valid and meaningful conclusions would require full-scale trials in realistic conditions in order to reliably model the dynamics of evacuation of persons of differing abilities from a floating vessel into different types of survival craft. Given that the survival craft on these smaller commercial vessels are generally not davit-launched, there would be potential risk of injury to the test subjects just entering the craft, so the test parameters would need to be carefully controlled and monitored for personnel safety.

The Coast Guard does not have the staff resources or infrastructure to carry out such a test program in-house. While we would seek to leverage interagency expertise and resources from experts such as DOT's Access Board, and could likely perform some preliminary work at a facility such as our rescue swimmer training facility in Elizabeth City, the bulk of the work for this study would have to be contracted out. Our technical and economic staff developed detailed minimum time and cost estimates to conduct such a program on a contract basis, including preliminary computer modeling to inform development of appropriate parameters and methods for practical testing; the acquisition/lease of test vessels/crews and test equipment; identification (or simulation) and compensation of test subjects in the desired demographics; travel and per diem costs for government and lab personnel and test subjects; logistical and documentary support; standby personnel/facilities for health and safety oversight; and government staff time for test plan development and data/report review. These estimates are considered to be minimums; possible unanticipated problems (such as issues with coordination of scheduling with variations in weather and sea conditions, personnel, and equipment performance) could substantially increase the time and cost. Given the uniqueness and substantial risks of the proposed test program, and absent any history of previous such tests to inform the development of our estimates, a 20 percent risk premium was applied to our initial raw estimate in anticipation of possible overruns.

Taking into account the uncertainties associated with such a test protocol, the estimated cost for a contractor to conduct and document trials using representative test subjects to simulate evacuation from typical vessels and to evaluate survivability in different types of survival craft is $2.24 million (including the premium discussed above), and is estimated to take approximately 18 months after issuance of a contract. This includes preliminary computer modeling, arrangement for suitable test vessel(s), recruitment of suitable test subjects, preliminary subject testing/evaluation, acquisition of representative test survival craft (liferafts, buoyant apparatus/lifefloats, inflatable buoyant apparatus), conducting open water tests, and collection and analysis of data to develop a final report.

Development, solicitation, and award of a contract is estimated to require 9 months beforehand. In addition to direct contractor costs, we estimate approximately one full-time equivalent in contracting support and currently unanticipated USCG technical/project management time would be required to guide and oversee the complete test program with post-test report development, analysis, and review. Absent additional compensating staff resources, this would have a substantial negative impact on current projects and customer response times.

The anticipated timeline for conducting such a study is:

Contract Development	6 months
Contract Solicitation & Award	3 months
Preliminary Test Prep/Analysis	6 months
Gov't/CG Review	1 month
Prelim Test Data Review and Report	4 months
Gov't/CG Review	1 month
Open Water Test Prep & Execution	2 months
Data Review, Interim	2 months
Gov't/CG Review	1 month
Final Report	1 month
Total Time	27 months

Mr. CUMMINGS. We can do better. We can do better. And I hope you take that back to the Coast Guard. Thank you, Mr. Chairman. And I am looking forward to your responses.

Mr. SOUTHERLAND. Thank you very much. If there are no other questions, I want to thank the witnesses for their testimony. And I want to say, Mr. Jaenichen, I know before in your comments, you made a reference to the cost of shipbuilding in this country. And you have all three been given the responsibility of creating a list. I would like to encourage all of you to include on that list the cost of American jobs because of the EPA and the regulation on our shipbuilders. Their boot is on the neck of our shipbuilders. So I understand the fury over sequestration and the jobs that you have alluded to. But I would also like on your list to please give me an idea of the tens of thousands of jobs—not thousands, but tens of thousands as a result of those regulations and how they are crushing the American shipbuilder because that adds to the costs. And I agree with you, Mr. Jaenichen, and you acknowledged it, the cost of what it takes to produce these vessels in the United States.

So I would like to thank all of you for being here. And with that, we will move on to our second panel. And I would ask that those individuals on our second panel to please come forward.

All right. Our second panel of witnesses today includes Mr. Thomas Allegretti, president and CEO of The American Waterways Operators; Captain William Schubert of USA Maritime; Mr. Ken Franke, president of the Sportfishing Association of California; Mr. Geoffrey Powell, vice president of the National Customs Brokers and Forwarders Association of America; Rear Admiral Rick Gurnon, president of the Massachusetts Maritime Academy, appearing today on behalf of their Consortium of the State Maritime Academies; and Patrick Wojahn, public policy analyst for the National Disability Rights Network.

Mr. Allegretti, you are recognized for 5 minutes.

TESTIMONY OF THOMAS A. ALLEGRETTI, PRESIDENT AND CEO, THE AMERICAN WATERWAYS OPERATORS; CAPTAIN WILLIAM G. SCHUBERT, USA MARITIME; KENNETH D. FRANKE, PRESIDENT, SPORTFISHING ASSOCIATION OF CALIFORNIA; GEOFFREY C. POWELL, VICE PRESIDENT, NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA; REAR ADMIRAL RICK G. GURNON, USMS, PRESIDENT, MASSACHUSETTS MARITIME ACADEMY, ON BEHALF OF THE CONSORTIUM OF STATE MARITIME ACADEMIES; AND PATRICK L. WOJAHN, PUBLIC POLICY ANALYST, NATIONAL DISABILITY RIGHTS NETWORK, ON BEHALF OF THE CONSORTIUM FOR CITIZENS WITH DISABILITIES TRANSPORTATION TASK FORCE

Mr. ALLEGRETTI. Good morning, Chairman Southerland, Ranking Member Hahn. Thank you for the opportunity to appear before the subcommittee today. I am here today on behalf of AWO members to convey a simple message and an urgent request. We need prompt publication of a Coast Guard rule on towing vessel inspection that is consistent with the intent of Congress and with the recommendations of the congressionally authorized Towing Safety Advisory Committee. We need this regulation published right away. The cause of marine safety demands it.

Congress directed the Coast Guard to undertake this rulemaking more than 9 years ago. The statutory deadline for issuance of a final rule passed nearly 2 years ago. Those facts alone create a cause for action. But the enactment date and the missed deadlines are not the only reasons why immediate publication is imperative. Even more compelling is the fact that the rulemaking offers an historic opportunity to take safety in our industry to a new level, akin to the transformation of the oil transportation industry after the Oil Pollution Act of 1990.

There is widespread—indeed, overwhelming industry and public support for moving forward with this rule right away. And the administration, Congress, and our industry have real vulnerability and will face hard questions from the American public if this long overdue rulemaking is not finalized soon and a serious accident should occur.

For more than 20 years, our industry has been engaged on a journey of continuous improvement. The Coast Guard, Congress, and our industry shipper-customers have been active partners in that journey. The voyage has been marked by private sector leadership and responsible public policymaking, both of which have produced meaningful results. But we have not yet achieved our goal of zero harm. And the most important step we can take now, a critical missing link in the safety chain, is the publication of the towing vessel inspection rule.

Mr. Chairman, there is a continuing and heightened risk to marine safety each day that this important regulation is not promulgated. Thirteen years ago, the NTSB published a report on the 1998 ramming of the Eads Bridge in St. Louis Harbor and the near breakaway of the President Casino with 2,000 passengers aboard. The NTSB recommended that the Coast Guard seek statutory authority to require towing companies to implement safety manage-

ment systems, calling the lack of a safety management system requirement "a threat to waterway safety."

Five years ago, after another serious accident, a 2008 collision in which nearly 300,000 gallons of oil were spilled into the lower Mississippi River, I testified before this subcommittee on actions needed to prevent such accidents. I said then that had the inspection regulations been in place, the collision might have been prevented because the Coast Guard would have been notified when the operator of the vessel failed a safety management system audit prior to the casualty. This would have forced the company to either improve its procedures or risk losing its license to operate.

AWO members are frustrated that this rulemaking has taken so long when the benefits of action are so great, the consequences of inaction are so severe, and our industry is asking to be regulated. The fact is that this rulemaking is not particularly controversial. There is widespread support from industry, from the public, from bipartisan Members of Congress for moving forward with the central tenets of this rulemaking.

AWO is especially concerned about the potential for delays at the Department of Homeland Security. We are very concerned that the Coast Guard will finish its work on the inspection rulemaking only to have it languish at the Department. This is not a hypothetical concern. The proposed rule on towing vessel inspection was sent to DHS in early 2009 and was not published in the Federal Register until August 2011, more than 2 years later. We cannot afford a delay like that again.

So here is what we recommend: We urge the Coast Guard to commit to finalizing the towing vessel inspection rule and sending it to DHS this fall. We urge DHS to complete its review process this year so that the rule can be cleared by OMB and published next spring during this commandant's watch. And we urge Congress to continue to exercise its oversight to ensure that the towing vessel inspection rule is published without further delay. Today's hearing is an important step in that oversight process, and we thank you for your leadership in holding it.

Mr. SOUTHERLAND. Thank you, Mr. Allegretti.

Captain Schubert, you are now recognized.

Mr. SCHUBERT. Mr. Chairman and members of the subcommittee, thank you for the invitation to speak here today. I am here on behalf of USA Maritime, and also to offer my own personal perspective as a former U.S. Maritime Administrator from 2001 to 2005.

USA Maritime is a coalition of ship owning companies, maritime labor organizations, and maritime trade associations which represent virtually every one of the privately owned U.S.-flagged vessels operating regularly in the foreign trade. As this subcommittee knows, the U.S.-flagged merchant marine engaged in foreign trade, which is so vital to our Nation's defense, depends heavily on the Maritime Security Program and the cargo preference laws for its survival.

The two programs are inseparable and necessary to support a peacetime merchant marine. Regrettably, we face a serious challenge to both critical support programs. First, the Maritime Security Program—MSP—is facing drastic and potentially crippling cuts due to sequestration. MarAd has recently informed the indus-

try that up to one-third of the 60 ships—that is 20 ships—supported by MSP may be lost if automatic cuts occur. Combined with the percentage reduction in cargo preference reservation applicable to food aid from 75 to 50 percent and the drawdown in operations in Afghanistan, this will have a disastrous consequence for the U.S. merchant marine.

It is no exaggeration at all to say that the U.S. merchant marine stands at the edge of a cliff from which it may never recover. The U.S. merchant marine has a proud and illustrious heritage, going back to the beginning of the Republic, including valiant and sacrificial achievements in every conflict Americans have fought. But unfortunately, the U.S. merchant marine operating around the world will not survive much longer if MSP is drastically cut.

We urge Congress to consider that the fleet has already shrunk to a bare minimum to support national defense needs. I could further state from my firsthand experience as the administrator during Operation Iraqi Freedom and Operation Enduring Freedom, comanaging one of the largest sealift operations in American history that this statement is no exaggeration.

Simply put, any further cuts will be devastating to our industry and will surely cost the U.S. Government and the taxpayers billions of dollars to replicate the lost sealift capacity. The second challenge facing the industry is the current lack of MarAd's ability to conduct serious enforcement of the cargo preference laws. Ships cannot remain active in peacetime unless they have cargo, and the cargo preference laws are designed to ensure that U.S.-flagged vessels carry a fair share of U.S. Government impelled cargoes and at reasonable freight rates.

Persistent and active enforcement of cargo preference is essential to ensure that those laws work as Congress intended and to meet national security policy objectives. Almost exactly 2 years ago, MarAd, to its credit, held a public listening session as to how to improve enforcement of cargo preference. Virtually every witness called for increased transparency, expedited staffing of vacant cargo preference positions, and most of all, promulgation of a rule implementing the 2008 cargo preference amendment enacted by Congress and designed to improve cargo preference enforcement.

Now 2 years later, MarAd has made some commendable progress filling positions and improving our working relationships with the U.S. Ex-Im Bank and their stakeholders. But it remains difficult, if not impossible, to get enforcement and compliance information from the other Government agencies subject to the law. And there is still no rule. In 2008, Congress saw a need to improve cargo preference enforcement. MarAd must do its part in promulgating the rule and vigorously enforcing the law. The industry can no longer wait. MarAd must find a way to get the rule promulgated and start enforcing the law as Congress so wisely intended.

We look forward to working with the subcommittee and the full committee on working to preserve and strengthen the U.S.-flagged merchant marine. And thank you again for focusing on these issues. I would be pleased to take any questions at the appropriate time. Thank you, Mr. Chairman.

Mr. SOUTHERLAND. Thank you, Captain Schubert.

Mr. Franke, you are now recognized.

Mr. FRANKE. Thank you, Mr. Chairman.

Thank you, chairman and subcommittee members, for providing this opportunity to make comment on the U.S. Coast Guard report to Congress on survival craft safety.

I am Ken Franke, president of the Sportfishing Association of California and additionally speaking on behalf of the Golden Gate Fishermen's Association as well as the National Association of Charter Boat Owners.

SAC, GGFA, and NACBO are industry associations that represent over 3,000 small passenger vessel companies based on all maritime borders of the United States. This fleet transports several million passengers annually. And rest assured, passenger safety and appropriate lifesaving equipment aboard our vessels is the absolute number one priority.

With regard to the Coast Guard report on survival craft safety, we applaud the level of detail and factual clarity contained in the document. A review of the report makes it easy to conclude that the current system of equipping the small passenger vessels with safety equipment is working.

At issue, however, is, what do we do with the information? And how do we proceed effectively without incurring waste or even harm to the national small passenger vessel fleet? Key comments we felt were applicable to small passenger vessels in the report are quoted as follows: A, based on analysis of available casualty data, carriage of out-of-water survival craft in place of lifefloats and buoyant apparatus is not anticipated to have a significant effect on vessel safety. B, for inspected small passenger vessels—those are inspected by the U.S. Coast Guard—for which the vessel data and casualty reports are more complete, the absence of fatalities attributed to the type or number of survival craft since 1996 suggests that the current requirements phased in between 1996 and 2006 have provided adequate protection. It does not support a compelling need for additional requirements for out-of-water survival craft for these vessels. C, for passenger vessels where the passenger capacity is limited by weight, in some cases, the increased weight of inflatable survival craft may require some reduction in the number of persons that can be carried with possible consequential long-term loss of passenger revenue. And D, it is important to note that in a significant number of cases on small passenger vessels, other lifesaving equipment that might have mitigated the severity of the casualty was not used or may have been used improperly.

Based on these comments, it would seem that retrofitting the vessels with inflatable liferafts would not be reducing threat to life. What it would do is cost a small business owner and jobs to incur a $350 million bill over 10 years that, in some cases, would put them out of business. We feel it is important to mention our vessels and passenger safety have been a progressive evolving story with an emphasis on improved design training and technology over the past 10 years. This results in a reduction in those incidents where survival craft is employed. The statistics in the Coast Guard report support this fact. We refer to the following examples: GPS positioning ensures precise navigation, improved vessel safety movement, and ensures high-speed response by rescuers by necessary; plotting software and improved radar and sonar systems further

reduce the risk of collision or grounding; EPIRB emergency transmitters provide improved response times by first responders.

Communications equipment has vastly improved, with movement to satellite intercoms and networks capable of broadcasting to entire fleets with clarity during an emergency. Vessel design and bulkheads to divide compartments substantially reduces the likelihood of a vessel sinking. Vessel traffic centers help reduce conflict on the water by ensuring separation of vessels in congested areas. Licensing requirements and new crew training have become much more intensive.

These factors, all of which reduce the risk of the need to deploy a survival craft, combined with the intensive annual and random inspections by the Coast Guard personnel have led to a robust and layered life protection system aboard our vessels. Therefore, it is our opinion that retrofitting, in many cases, large portions of small passenger vessels to accommodate inflatable liferafts is inappropriate and a waste of money.

Additionally, we feel it is not prudent to move forward with implementing a rule that there is no basis to indicate will save a life any more than the current risk-based survival craft requirements in place.

Based on all of the above comments, we recommend to the subcommittee that action be taken to legislatively amend the previous instruction to the Coast Guard to continue to utilize risk-based survival craft guidelines. Further, if as a result of this report they feel there is an area that can be improved on by policy development, then the Coast Guard should pursue addressing the deficiencies and report back to the subcommittee on the actions taken.

Speaking specific to my own fleet, to which the statistics are most familiar to me, with the Coast Guard's oversight, our fleet moved 10 million passengers over 10 years with no death attributed to the lack of an inflatable liferaft. The system works.

In closing, we compliment the hard work of the Coast Guard in both protecting our fleet and preparing this report. This was an outstanding document. I venture to guess everyone wishes we had it 2 years ago. We commend them for their achievement.

With that, I submit to any questions you may have.

Mr. YOUNG [presiding]. Mr. Powell.

Mr. POWELL. Mr. Chairman, thank you for this opportunity to testify on behalf of the National Customs Brokers and Forwarders Association of America, the NCBFAA. I am Geoffrey Powell, vice president of the association. NCBFAA's 800 member companies and 28 affiliated regional associations represent the majority of licensed ocean freight forwarders and non-vessel operating common carriers, or NVOCCs and are, therefore, directly affected by maritime regulation.

Your invitation to us to testify is extremely timely. The Association is greatly concerned that a recent proposed rulemaking by the Federal Maritime Commission is inconsistent with the important goals of job creation, improving the national economy, and reducing, not increasing, the burdens of unnecessary regulation.

Ocean transportation intermediaries, or OTIs, play an important role, ensuring that U.S. importers and exporters of all sizes can move their goods in international commerce efficiently and eco-

nomically. They consolidate smaller shipments that could not otherwise be economically transported. They provide the full range of logistical services that are necessary to export or import cargo from and to the United States.

The rulemaking sprung from an investigation of the barrel trade, but then failed to address any of the issues that surfaced; in that instance, the movement of household goods. Instead, it focused on something completely different, the regulation of OTIs. There are a myriad of issues raised by the proposal; however, I will highlight three of the more problematic. First, the Shipping Act provides for OTIs to obtain licenses without term limits as a condition for doing business. Without any explanation, justification, or statutory authority, the FMC proposes to convert all licenses to 2-year terms that require biennial renewals. This will be a burdensome, time consuming, and expensive proposition, including requiring parties to pay as yet undetermined filing fees. There is no record of abuse, no specific legislative authority under the Shipping Act, no direction from Congress for the FMC to take these steps with respect to OTIs.

The FMC justifies this burden by arguing it needs to ensure that it has current corporate information concerning its licenses. However, the FMC's existing regulations already require that these changes must be provided to the FMC as they occur. We must also say that the FMC cannot effectively meet the challenge of issuing new licenses under existing regulations, a process which often takes 2 to 3 months or more. Adding to this additional renewal requirement would inundate FMC staff and grind the entire process to a halt.

A fundamental flaw in the Commission's rulemaking process was its failure to meet with the industry in order to identify any problems and then, if necessary, jointly find solutions that are the least burdensome. Secondly, without any apparent supporting rationale, the proposal also authorizes suspension or revocation of a license in terms that are vague, overbroad, and in some instances unreasonable. In a related vein, the proposed regulations establish procedures for licensed revocations which raise due process concerns and are contrary to the U.S. Constitution and the Administrative Procedure Act. The proposal, which would take away a company's ability to do business, provides for no right of discovery, no apparent right to a hearing, no right to cross-examine witnesses, and no right to appeal from the decision of the designated hearing officer.

Our last example is the Commission's proposal to increase ocean forwarder and NVOCC bonds by 50 and 33.33 percent, respectively. This would result in increased bond premiums for the several thousands of licensees on an annual basis. Despite the fact that the Commission was able to cite only two instances in which the bond was insufficient to cover outstanding claims, the proposed increase would not dramatically increase any potential claimant's level of protection since the proposed increased bond would still fall far short of the amounts that were cited in the two examples relied upon by the Commission.

Regrettably, the Commission has failed to exercise good judgment in these proposed regulations which will only serve to increase cost to the industry and make smaller OTIs less competitive,

all for no apparent reason. For these reasons, the Association respectfully requests that the subcommittee require that the FMC explain why it is proceeding along this path.

Mr. Chairman, we are grateful for the subcommittee's interest in this matter.

Mr. YOUNG. Thank you, Mr. Powell.

I think it is Rear Admiral Gurnon.

Admiral GURNON. Good afternoon, Chairman Young and members of the committee.

Mr. YOUNG. I can't see too well this early in the morning.

Admiral GURNON. I understand. You have time zones to cross from Alaska.

I am Rick Gurnon, president of the Massachusetts Maritime Academy. I am speaking today on behalf of the Consortium of State Maritime Academies. Our colleges are located in Massachusetts, New York, Maine, California, Texas, and Michigan. Although students from every State represented on your committee are enrolled at our colleges at reduced rates due to regional status.

I would like to take a moment and introduce the other two academy presidents who are with me today, Rear Admiral Wendi Carpenter from SUNY Maritime and Rear Admiral Robert Smith of Texas A&M Galveston and Texas A&M Maritime Academy. Together, we represent a vital component of the national economy, and I thank you for the opportunity to appear before you today to discuss two very important issues of great concern to us. First, the impact of the ever-increasing regulatory burden on our institutions; and second, the need to replace our aging training ships owned by the Federal Government and critical to our ability to train our students for jobs and meet Federal requirements.

Collectively, the six State maritime academies graduate over 70 percent of the licensed deck and engineering officers in our country. While a sufficient pool of American merchant mariners is always important for the free flow of commerce and to support our troops overseas, that pool of officers becomes critically important in the event of a national emergency. All of the bombs, beans, bullets, boots, Bradleys, and Black Hawks that get to the Middle East moved by ship, with graduates of the State maritime academies at the helm and in the engine room of those vessels.

In addition to their bachelor's degrees, State maritime academy graduates are well prepared for positions of significant responsibility and technical difficulty, not just as mates and engineers aboard ships, but as senior leaders across many industries, in Government, in the military, from the seabed to space. Unfortunately, the State academies now face a number of challenges that threaten our success. And our primary concern is the regulatory burden.

When the international convention on Standards of Training, Certification and Watchkeeping Code, STCW, was first implemented in 1997, it launched an ever-increasing layered set of requirements which are onerous, unnecessary, and result in unfunded mandates with significantly higher cost for the students and no measurable improvements in safety or security. The original intent of STCW was to increase the training and professionalism of other nations' mariners. Despite over a decade of STCW requirements, we are not aware of any study that has deter-

mined that its implementation has improved U.S. maritime safety. The unintended consequence is that already high-quality American mariners were saddled with additional time-consuming and costly requirements that drove many mariners out of the profession because of the excessive energy, time, and money now needed to attain or retain their qualifications.

Because of the rigid manner of the Coast Guard's interpretation of STCW, we estimate that the implementation adds $1,850 to the cost to educating each student or over $5 million for us collectively each year. Of particular concern to us is the fact that the Coast Guard continues to interpret STCW without input from the academies. Our second concern is the need to replace our aging training ships. Each of the six State maritime academies has a federally owned training ship assigned through the Maritime Administration. The ships are the primary means by which our students receive their required seatime, and are essential components of our approved training programs.

Because of the Federal requirements that these ships be built in the United States, they are either old merchant ships or converted Navy ships, and they average 35 years old. The SUNY Maritime training ship, originally designed in 1963, is a break bulk cargo ship, is over 51 years old, and needs replacement.

The Maritime Administration has presented a business case for the construction of a new national security multimission vessel and estimates the project would support 600 to 1,000 high-paying manufacturing jobs per ship in the United States. New multimission training ships would also serve as platforms for disaster relief, humanitarian assistance, and logistics support for the Department of Defense. In fact, training ships have been utilized in disaster relief during Hurricane Sandy and Katrina and in humanitarian assistance in both Haiti and Mogadishu. During Hurricane Sandy, for example, MarAd testifies that the use of the *Kennedy* and the *Empire State* resulted in a cost avoidance of approximately $3.7 million to the taxpayer.

In closing, let me emphasize that the State maritime academies hold the U.S. Coast Guard and Maritime Administration in high regard. Our reason to exist is to train our students to become competent professional leaders in the maritime industry, but that task is becoming evermore difficult due to an increasing regulatory burden on the academies and the aging of our federally owned training ships.

Thank you very much. I stand by for questions.

Mr. YOUNG. Thank you, Admiral. Mr. Wojahn.

Mr. WOJAHN. Good afternoon, Chairman Young. My name is Patrick Wojahn, and I serve as a public policy analyst at the National Disability Rights Network. I am here as a representative of the Consortium for Citizens With Disabilities Transportation Task Force. I thank you for holding this hearing today and appreciate the opportunity to testify on the important safety and civil rights issue of out-of-water survival craft. CCD is a coalition of national disability organizations working together to advocate for national public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of society. The transportation task

force focuses on ensuring that national policy regarding transportation move society toward the ultimate goal of access to adequate transportation to accommodate the needs of employment, housing, and recreation for all people with disabilities.

In order to be effective for people with disabilities, elderly people, and infants, survival craft must provide out-of-water protection. This is a matter of life and death, as many people with disabilities, elderly people, and infants lack the ability to hold onto survival craft that allows any part of them to remain immersed in water. For them, lifefloats and buoyant apparatus that does not keep them fully out of water are effectively useless.

The benefits of survival craft that keep people entirely out of water to both people with disabilities and people without disabilities have been well understood by the Coast Guard and the National Transportation Safety Board, but have consistently recommended use of these craft as safety devices for at least 70 years.

The Federal Government has also recognized for many decades that accessibility for people with disabilities, which would be supported by the use of out-of-water survival craft, is a civil right. In particular, the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 have enshrined the principle of equal opportunity for people with disabilities into Federal law. Equal opportunity requires that people with disabilities be able to ride on surface vessels, transporting passengers without greater fear of dying due to inadequate survival craft.

Veterans who risk their lives to protect our country and who now have a disability should not have to risk their lives to go sportfishing or ride a ferry. Unfortunately, the cost-benefit analysis that the Coast Guard submitted regarding the requirement of out-of-water survival craft included in the August 26, 2013, Coast Guard report to Congress, does not consider the civil rights factors discussed above. It also includes a deeply flawed analysis of the costs and benefits of this requirement of out-of-water survival craft.

Although the report acknowledges that there are a number of uncertainties in determining the number of lives that might be saved by out-of-water survival craft, it appears to consistently resolve these uncertainties in favor of finding that fewer lives would be saved. Of the approximately 60 vessel casualties and over 160 deaths in vessels carrying passengers that occurred between 2002 and 2011, the Coast Guard found, without explanation, that only 21 of these fatalities, one-third of these lives lost could have been prevented had an out-of-water survival craft been available. This is particularly astounding given the report's finding that out-of-water survival craft increased the fatality rate for passengers in the incidents where they are available by 73.74 percent.

Additionally, the cost-benefit analysis undervalues the lives of people who die as a result of safety vessels that do not protect people out of the water. The Coast Guard, to determine the value of a statistical life, relies on a review of studies by the Department of Homeland Security that place the value of a statistical life, or VSL, at $6.3 million in 2007 dollars. Other recent Federal Government studies, however, place the VSL at a much higher amount.

A recent OSHA analysis of crystalline silica determined that the value of each fatality avoided would have been $8.7 million. A re-

cent EPA cost-benefit analysis placed the value of a statistical life at $8 million in 1990 dollars and $9.6 million in 2020 dollars. There is at best a great deal of uncertainty regarding the appropriate measure of the value of a statistical life.

Given that these numbers are a matter of life and death for people with disabilities, the value of human life should not be monetized and cannot be monetized to the person whose life is lost nor to that person's family. History is rife with examples of cost-benefit analyses such as Ford's analysis of the Ford Pinto being used to justify pure precautionary measures by looking at the value of a statistical life until the point where people actually begin to die.

And who would want to be the one to contact the family member of a veteran with a disability and inform them that that person died because Congress determined that the profit to the industry operating vessels transporting passengers was more important than that person's life? The cost to use out-of-water survival craft is minimal compared to the benefit of saving someone's life.

In conclusion, the Consortium for Citizens With Disabilities supports retaining the statute that requires the Coast Guard to approve only survival craft that keep people out of the water. Passenger vessels required to carry survival craft should only carry survival craft that provide out-of-the-water protection for all passengers. Thank you for the opportunity to testify this morning.

Mr. YOUNG. Thank you, sir.

And now we will open it up for questions. Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. Wojahn, let me start with you. When I walked out in the hall just now, I said to the admiral, I said, Admiral, I am really looking forward to your report, particularly on the disability issue. And he said something very interesting. He said, You have got to understand that it may not be practical to come up with a solution to that problem, and it may have to be done on an individual basis. Maybe you have heard that before. Have you heard that before?

Mr. WOJAHN. Yes.

Mr. CUMMINGS. Can you keep your voice up and respond to that so that when he sends me what he is——

Maybe I will preempt him. You give me the information so I can write the right question to him so that I don't have him giving me the answer that he just gave me.

Do you understand what I just said?

Mr. WOJAHN. No. I am not sure I do.

Mr. CUMMINGS. Help me help him. Help me help you.

In other words, he is saying that it is not practical. And that is the answer that he is going to probably give me——

Mr. WOJAHN. Right.

Mr. CUMMINGS [continuing]. To the issues that you are raising. And I am saying, he says that maybe it is better that you deal with the disabled on an individual basis. And all I am asking you is, what is your response to that, so that I can preempt his response.

Mr. WOJAHN. Well, thank you. I appreciate your question. And I think I do understand it.

I think while civil rights may not always be considered practical, it may not, on an individual case, be considered cost-effective or practical to implement, accessibility has been recognized as some-

thing that we value as a country. And the ability of people with disabilities to be included in every recreational opportunity is enshrined in the Americans with Disabilities Act. So it is not just a question of practicality. It is a question of what do we need to do for the people—for veterans with disabilities who have sacrificed or risked their lives for our country?

Mr. CUMMINGS. All right. OK. Got you.

Mr. Allegretti, you urged in your statement that the Coast Guard issue the long overdue touring vessel inspection rule. Given the findings of the DHS IG, are you confident that the Coast Guard has the resources or the expertise to bring towing vessels under inspection?

Mr. ALLEGRETTI. Yes, sir. I am. And I am not looking so much at the internal competence of the Coast Guard, which I can't speak to in this particular area, but I can look to the process of collaboration that the Coast Guard used over the last 9 years, where it extensively tapped the expertise of industry, of labor to understand how to implement this rule and how to deal with the technical requirements of the rule.

At each step along the way, there was a lot of input to the Coast Guard. So I am confident that if they have used that information, the rule should come out largely right.

Mr. CUMMINGS. And I take it that some of your members of the organization, have they been involved in that process?

Mr. ALLEGRETTI. Extensively, sir. It was done under the aegis of the Towing Safety Advisory Committee, which is a congressionally authorized advisory committee to the Coast Guard. TSAC provided the umbrella to allow all of this work to take place. And what is important about that is that it was inclusive and open to the public. Anybody who had an interest in this issue was invited to participate.

Mr. CUMMINGS. Can you update me on your current discussions, if any, with DOT regarding enforcement of the Jones Act. Have you been talking to them?

Mr. ALLEGRETTI. We have been talking to them. We have been specifically talking to Administrator Jaenichen. And he is a strong supporter of the Jones Act, has professed that publicly to our leadership, and has asked for the opportunity to work with us to figure out how to make sure that within the Department of Transportation, they are doing all of the things necessary to enforce the law and to send public signals about their intent to enforce the law.

Mr. CUMMINGS. Well, I am pleased to say that—I had a meeting with Secretary Foxx. And I am so glad—and I asked him to please make sure maritime is taken off the floor and put on the stove—not the back burner, but on the stove, because I think maritime has been a stepchild to the other transportation—

And I agree with you. Jaenichen is a breath of fresh air. Let's hope that he moves forward and has the support that he needs.

Thank you, Mr. Chairman.

Mr. YOUNG. Thank you, sir. Mr. Rice.

Mr. RICE. Captain Schubert, I am curious. You were talking about enforcement of cargo preferences and the effect of sequestration on the U.S. maritime fleet, the international fleet as well, particularly focused on here. Who owns those ships?

Mr. SCHUBERT. Well, every shipowner who has a U.S.-flagged vessel has to meet citizenship requirements, documentation.

Mr. RICE. Does the Government own them?

Mr. SCHUBERT. No. We are talking about privately owned merchant marine ships.

Mr. RICE. What difference does sequestration make? If they are privately owned, why do they worry about sequestration?

Mr. SCHUBERT. Well, respectfully, we have two issues. One is the enforcement of cargo preference. Incidentally, cargo preference dates back——

Mr. RICE. Let's talk about sequestration.

Mr. SCHUBERT. Sequestration is directly related to the Maritime Security Program. You might call it a retainer that is paid to the carriers.

Mr. RICE. So the Government is paying these guys money?

Mr. SCHUBERT. Yes, they are.

Mr. RICE. OK. Now why is it—you know, there are privately owned vessels all over this world carrying cargo all over the place. I think I learned last time that we carry 2 percent of the world's international cargo. Why aren't we competitive? Why do they have to rely on the Government? Why can't we be competitive? Why can't they carry cargo and make money just like every other ship in the world?

Mr. SCHUBERT. Respectfully, sir, they do carry cargo and make money. But the cost of operating a ship under U.S. flag is more than the international competition. And it has to do with—

I mean, if you visit our ports, you will see foreign-flag ships come in and out all the time. And I have to tell you that the wages that they pay their seamen—sometimes they don't even pay wages. We call them "ships of shame." This is the same international fleet that our U.S.-flagged carriers have to compete against. And I have to say, the $3.1 million MSP payment per vessel is probably about 50 percent of the annual cost differential it takes to operate a ship under U.S. flag when compared to ships under foreign flag.

Mr. RICE. OK. So you are saying the Government pays these ships $3.1 million a year——

Mr. SCHUBERT. Yes, sir.

Mr. RICE [continuing]. To be U.S.-flagged ships?

Mr. SCHUBERT. To help offset the cost of operating under U.S. flag.

Mr. RICE. All right. Why can't they be competitive?

Mr. SCHUBERT. Well, actually, at least the carriers that operate within the 60-ship maritime security fleet program are very competitive internationally. We have one of the most modern——

Mr. RICE. So we are carrying international cargo?

Mr. SCHUBERT. We are carrying international cargo.

Mr. RICE. Not just on cargo preference?

Mr. SCHUBERT. Not just on cargo preference. They couldn't exist otherwise without MSP. Just to give you an example, I believe the container carriers that we have—the three container carriers that we have under the MSP program are the largest, number one, probably the fourth largest, and the seventh largest carrier in the world. They don't do that on cargo preference. They do that be-

cause they are internationally competitive, and they operate U.S.-flagged ships.

Mr. RICE. You said MSP programs?

Mr. SCHUBERT. Maritime Security Program which is the——

Mr. RICE. American-flagged vessels that carry the cargo preferences?

Mr. SCHUBERT. Well, there are two different programs. The Maritime Security Program is a retainer much like the Civil Reserve Air Fleet—CRAF—program that the airline industry has to help offset the cost and be there and be available to provide the global scope. It is not just the ships that we get with MSP. We also get the entire network of terminals, trucks, chassis. MSP is one of the best bang for the buck programs that the taxpayer can get. It is——

Mr. RICE. OK. You say we have got three container ships?

Mr. SCHUBERT. Well, there are three container carriers that are world-class container carriers. The military——

Mr. RICE. Is that all that we have got is three?

Mr. SCHUBERT. Well, those are companies. There are three companies that own container ships. We have several roll-on/roll-off carriers. We have a very diversified——

Mr. RICE. How many container ships do we have? I know we have only got like, what, 80 or 90 U.S.-flagged ships.

Mr. SCHUBERT. I want to say there are about 47 or so U.S.-flag container ships in foreign trade. I don't know if I have the most up-to-date information. But the point is that we have ships, and we depended on those ships during Operation Iraqi Freedom and Operation Enduring Freedom. I was the Maritime Administrator at the start of those operations. It was the largest, most successful sealift in American history in terms of speed and efficiency, and we could not have executed that conflict and supplied the troops in the field with everything from beans to bullets——

Mr. RICE. I am running out of time. So I have to stop you for a second here.

I want to go back and I want to get a specific answer to a question. I asked why we aren't competitive.

Mr. YOUNG. Mr. Congressman, go ahead. I have time. You just keep on going.

Mr. RICE. Thank you. I asked you why aren't we competitive. You mentioned low wages. What else? Why aren't we competitive?

Mr. SCHUBERT. Well, to be honest with you, we did a study on this during my term as Maritime Administrator, and the Tax Code has some issues. The international fleet, just through the Tax Code, has competitive advantages over the U.S. flag.

Mr. RICE. What else? Tax code and wages. What else?

Mr. SCHUBERT. Well, we have some laws that I believe are outdated. It is also in the area of tax. If a U.S.-flagged vessel undertakes a nonemergency repair in a foreign shipyard, it is subject to payment of a 50-percent ad valorem tax on those repairs.

Mr. RICE. I didn't know that. That is a U.S. tax?

Mr. SCHUBERT. That is a U.S. tax. Fifty percent. Now there are some exceptions with some of the free trade agreements that we have. But the point is—and I really commend Administrator Jaenichen for taking a top-to-bottom review of maritime policy. It

is long overdue. He has the full support of the industry and USA Maritime in that effort. But we really can't afford to lose a single ship right now. We are at the very bare minimum.

Mr. RICE. See, I want to change that. That is why I keep asking what we need to do to be competitive. And what I want to know is, what is it going to take to have foreign companies flagging ships in the United States? What is it going to take? What are we going to have to change to make our regulatory structure, our tax structure—what are we going to have to change to make us competitive? I mean, we sit here and watch our shipbuilding industry die on the vine. We have sat here and watched our international shipping die on the vine. It is a horrible state of affairs. It is almost unimaginable. And I want to figure out what we have got to do to change it to make us competitive again.

Mr. SCHUBERT. Well, we do need to enforce the cargo preference laws that are on the books, and that is important.

Mr. RICE. That is not making us competitive. That is giving the Government a crutch. I want to know what it is going to take to make us competitive.

Mr. SCHUBERT. Well, we are up against international competition that—

I mean, I would say that if you were going to build a gas turbine generator in China, they are going to build it cheaper than they are going to build it here. It is the same issue in terms of our industrial base. We are up against international competition.

By the way, the MSP program replaced the operating-differential subsidy program in the mid-1990s. At that time, we were paying the carriers as much as—in U.S. dollars in 1990—approximately $5 million per ship annually to stay U.S. flagged. The fact that we are today only paying $3.1 million annually in current dollars is a big step in the right direction.

Mr. RICE. I want our carriers so competitive that we don't pay them anything. So here is what I would like from you. I would like a list of 10 suggestions, things we need to change that we can help make our shippers competitive. If it is changing Coast Guard regulations, if it is changing our hiring policies, if it is changing our tax structure, I want to know what we can change to make us competitive.

Mr. SCHUBERT. I would like to make one comment about the Coast Guard. I personally think that they have gone to great lengths to help remove obstacles to reflag ships. During my time—and it actually started before I showed up—ships meeting international standards can, in some instances, reflag to U.S. registry. It didn't used to be that way. So Coast Guard has done a lot to help in terms of removing obstacles to reflagging.

Mr. RICE. I hear you, Mr. Schubert. And you know far more about this than I do. And I appreciate that. But I am just looking at the big picture. And the big picture is, we do not have 100 United States ships flagged in international shipping. Something is terribly wrong.

Mr. SCHUBERT. We have a little bit more work to do on the Tax Code.

MR. RICE. I would sure love to see your suggestions.

Mr. SCHUBERT. Sure.

Mr. RICE. Thank you, sir.

Mr. YOUNG. Thank you, Mr. Rice.

I want to thank the panel.

Mr. Allegretti, liquefied natural gas has begun to be used as a marine fuel for vessels at a great expense, by the way, as well as vessels carrying LNG as a commodity. The Coast Guard has begun to slowly make a policy, regulating vessels fueled by LNG or carrying LNG as a cargo. What is AWO's position on LNG and how will you work with the Coast Guard on forthcoming rules?

Mr. ALLEGRETTI. Thanks, Mr. Chairman.

Generally speaking, many of our members are excited about the potential to use LNG as a means of propulsion and the opportunity to carry it as cargo. So I think generally speaking, the position of our association, of our membership is, we would like to do whatever we can to help the Coast Guard facilitate movement in both of those directions.

Mr. YOUNG. Hydraulic fracking—I can't figure out what this has got to do—produces wastewater that must be transported to a disposable site. There is not currently a standard for transporting this wastewater by barge. Answering requests from the industry, the Coast Guard is working on policy guidance that will establish the conditions under which shale gas wastewater can be transported by boat, by barge. Does the AWO support the carriage of shale gas wastewater by barge?

Mr. ALLEGRETTI. Absolutely, sir. We think that that is a great business opportunity in the future of our industry. We think it could be done safely, practically, cost effectively. So the Coast Guard's development of policy guidance in this area will be very helpful to establishing the standards of carriage. And barges move lots and lots of hazardous cargoes. There is no reason why we can't move wastewater as well.

Mr. YOUNG. Thank you.

Mr. Powell, why is the FMC producing this rulemaking? Aren't there current regulations governing the activities of OTIs? Are they deficient or are they sufficient?

Mr. POWELL. Mr. Chairman, we don't think so. We think this ANPRM began with their investigation, Commissioner Khouri's investigation of the barrel trade and looking at the movement of household personal effects. We think there are the proper checks and balances within the OTI industry, if not with the FMC, certainly with the customers who employ us. We have moved from regulation to contractual obligations to our shippers. So we think there is ample protection and control in there for the buyer of those services.

Mr. YOUNG. What you are telling me that there were two instances in this whole thing and they changed the whole regulatory platform?

Mr. POWELL. They cited two examples in the Advance Notice of Proposed Rulemaking where a bond did not cover what the companies went after the bonding companies for. And even with the amounts that they cited, the increase in bonds still would not have covered that.

Mr. YOUNG. Well, it is sort of interesting, because, Rear Admiral, you were talking about regulations. I would like a list from both

of you of what you think are offensive about any regulations, because this is my pet peeve, for everybody sitting at this table, regulations.

Just give you an example, in the last 4 years this Congress passed 628 laws in 4 years and signed by the President. In the same time, the agencies passed 13,883 regulatory laws that do nothing other than cause you more headaches; doesn't really solve any problems, because we got people who don't understand the industry.

And, Captain, I got to tell you one thing. I am a person that believes in America's maritime fleet. I happen to support your organization. I do not like to see my Navy, my maritime commercial fleet become foreign. Of course, I only have to deal with the Jones Act, which I am a big supporter of, the only elected official in Alaska that does support it, by the way. But to me what we have done to our maritime fleet from 1945 until now is really very not for good for this country. And I am not an isolationist. We do have to be competitive, and the ships of shame, for instance, we are getting product from the foreign countries, consuming it, then we have this holier than thou attitude where we don't enforce those rules that should make us competitive, when they have the ability to do that, at a great cost to humanity. No one says a word.

Rear Admiral, I want to say one more thing. I have this burn with the Coast Guard right now, and I am going to try to change it, because I am big supporter of the Coast Guard. Everybody supports the Coast Guard. But they are lawyered up. There are too many lawyers in the Coast Guard now. And they will give you 100 reasons why you can't do something instead of, OK, what can we do safely? What can make it work? And for those lawyers in the room, that is your problem. That is one of the things wrong with this country right now.

But lastly, Rear Admiral, I would like to really have you think about your training ships. Maybe we can be in this together, because I don't see this Congress spending the money they have to do to take and develop your training ships. I think that is reality, unfortunately. So is there a way we can get a ship in your hands that is more reasonably cost? I think that could be a way to do it. And I am talking about leasing and I am talking about being able to take and have a long-term contract if you wish to do it. But we need to have these newer ships, because you get trained on a 50-year-old ship, it is not the same ship. I want us to look and explore this.

Coast Guard keeps saying, well, we want to own them. And the cost factor is about 50 percent more. It is not going to happen. I am talking about icebreakers, you are talking about training ships. Your ships are more important than ours are. And just comment on that.

Admiral GURNON. We agree, Congressman. This is an important part of our training. We are training on 50-year-old antique vessels. It is shameful. Mexico can do it, the Indonesian countries can do it. We can't do it.

We have had a lot of comments about shipbuilding and the lack of shipbuilding in America. You need only look at Great Britain to see the dire straits that they are in. They are unable, for 20 years

been unable to produce a new aircraft carrier because they let their shipbuilding capacity atrophy to the point where it impacts their national defense.

I believe that we can do it. I believe that we can do it. It is good jobs at good wages. Previous training ships were acquired through the earmark program. That is not going to happen in probably my lifetime, so we are going to have to——

Mr. YOUNG. Don't say that. I am 80 years old and I am going to have earmarks sooner or later, you would think. Don't say that. Because it is the dumbest thing we ever did, by the way, I will say. And my party did it. The dumbest thing. You know, look, I am going to shoot myself in the foot. That is how you shoot yourself in the foot. But that is not your problem, but don't say we are not going to get them.

Admiral GURNON. Yes, sir. Strike my last.

We believe that you can do it. We think you can do it in America. And if you look at the big high-tech ships coming out that Americans go on, all of the Carnival cruise line vessels, they are built in Germany and they are built in Italy, not exactly Third World countries. They can do it competitively.

Mr. YOUNG. And I think we can do it if you do one thing, very simple, because what you said—you said, and most of you, I think, will agree.

Tom, how many regulations do you believe you are faced with that you didn't have 30 years ago?

Mr. ALLEGRETTI. Dozens. At least dozens.

Mr. YOUNG. And that would be something for all of you to just sort of put down: This is what was not in existence 30 years ago. And then try to explain to me why they were necessary. What has it accomplished for the people of America? We can become competitive if we just stop this nonsense that we have 100—and by the way, never voted on, never vetted by the people, decided by the bureaucracy. And the bureaucracy is an extension of the executive branch, and this Congress no longer governs America. We don't. It is governed by someone that is never elected, never been vetted, cannot be fired, extension of the executive branch, and as Americans we sit here and take it.

And we cannot be competitive in the shipbuilding business, the shipping of products, the inland waterways, we cannot be competitive if we keep allowing this to occur, because the people who write them don't understand the effect upon the total effort of the industry.

I used to be in this business. I had a business license, a captain's license, and my pilot's license. I go back to the same company I worked for, started by the same people, they have a stack of Coast Guard regulations that high. That is not too bad. That high. If one of their clerks does not file the correct form or fill it out exactly right, the company can be fined or their ships cannot leave the dock. But that is not too bad.

Then you have Homeland Security. That is a great agency. Does anybody feel more secure with Homeland Security nowadays? If you do, you are dumber than a mud fence right now. But they have a stack of regulations, same shipping company, that high that you have to fill. They have got 12 people working in an office now fill-

ing out those forms, serving the same people I did, and if one makes a mistake, they can be fined by that agency. There is no appeal unless you appeal to the agency. And you can be put in jail without judicial process. And their argument to me is, well, there may be a terrorist on the Yukon River. On the Yukon River, a terrorist? There is only one. That is me. But this is the silliness this country has got to today.

Every committee I sit on and listen to witness tell me this, this, this. If we address the issue and if America would wake up, it is not the Congress. Our problem is we have allowed it to occur, and it is bleeding the economy of this country, including your industry. This is not about safety.

I am on my soap box. I have served my time, Mr. Chairman. You can take over now. I have done enough damage. Thank you.

Mr. HUNTER. You can't tell that Mr. Young liked being chairman, can you? We liked it, too.

I am sorry that I am late. I do have a couple of questions, though, for my good friend, Ken Franke, he came up from San Diego.

Ken, let me just say hi. Thanks for coming out.

Last time I saw him, we were fishing with a bunch of wounded marines there about 2 weeks ago.

Mr. FRANKE. Yes, sir.

Mr. HUNTER. So my question is about that, actually. If we were to have gone out past 3 miles, according to the new law that is going to go into effect in about 2½ years, we would have had to have had lifeboats. If we would have gone out past 3 miles with those number of people, over six people past 3 miles, you have to have lifeboats. So tell me, would you have to retrofit fishing vessels to match the lifeboat law?

Mr. FRANKE. Yes. Actually, you know, this is one-size-fits-all, and that is kind of the concern.

I want to preface my comments with we have nationwide a lot of boats with inflatable liferafts. The Coast Guard does a lot of analysis before they give a certificate of inspection of one of our boats. So some boats will have inflatable liferafts, other ones will have lifefloats. In inland waters, like in Mission Bay, for instance, where the water is 6 feet deep, the river paddle wheeler that is 30 feet tall doesn't have any liferafts, because if it sunk, the people would stand on the upper deck.

So we have a risk-based management that exists. And specifics especially to ADA stuff or, you know, severely handicapped people, that is when we in the industry make sure that they are on a vessel with the capabilities to support them. I use it as an example, 2 weeks ago I had a gentleman that has a breathing apparatus and his chair weighs 400 pounds. A little 30-foot boat was not capable of accommodating him and his family. We put them on a much bigger boat that had actually the lifesaving equipment that he needed handy to him, with ramps capable of supporting his wheelchair. So there is infrastructure to deal with those ADA situations and those people that may not necessarily have the dexterity to amble around a 25-foot little sportfishing boat.

The issue comes down to, though, do we go back and tell the mom and pop that own that little fishing boat, I am sorry, you have

to go out of business because you need to buy a $10,000 liferaft to mount up on the roof of your boat and go through a new stability test with the Coast Guard. That is what it comes down to at the end of the road.

The bigger boats, a lot of them have inflatable liferafts, because the Coast Guard analysis of their route says, yeah, this is the safest thing to do. The offshore boats, most of them have the inflatable liferafts. The coastal boats, with the layers of safety that we have, all the communications equipment, the safety compartments on the boats, the division of the bulkheads, we have a good layered approach. And that is why, you know, I mentioned in my statement, we held 10 million people over the last 10 years in my little fleet. We didn't have a single death. That speaks huge when we can have that layer of safety.

So in answer to your question, yeah, we would end up having to retrofit them all, and I would honestly speculate I would probably lose 5 percent of our fleet out of business. Thank you.

Mr. HUNTER. We probably took—two of those marines didn't have legs at all on the fishing vessel we were on.

Mr. FRANKE. Right.

Mr. HUNTER. Was there a detachable liferaft?

Mr. FRANKE. We had lifefloats on that boat, sir.

Mr. HUNTER. Lifefloats. Probably every single marine on that was missing at least one limb.

Mr. FRANKE. Yes.

Mr. HUNTER. I don't know how more disabled you can get, and they seemed to get around just fine.

Mr. FRANKE. Yeah. No, we had 25 disabled aboard the boat.

Mr. HUNTER. Yeah. So with that, I don't have any other questions. I apologize for my absence. We had Secretary Kerry and Hagel and General Dempsey trying to convince us to go to war in Syria, and that is where I have been at. But I want to thank everybody for their time and for being here. And if there are no further questions, I thank the witnesses for their testimony, the Members that are now gone for their participation. The subcommittee stands adjourned.

[Whereupon, at 12:49 p.m., the subcommittee was adjourned.]

Statement of the Honorable John Garamendi

Subcommittee on Coast Guard and Maritime Transportation
Hearing on "Maritime Transportation Regulations: Impacts on Safety, Security, Jobs, and the Environment; Part I"
September 10, 2013

Good morning, Mr. Chairman, and thank you for convening the first in a pair of hearings to examine the status of rulemaking activities initiated by the United States Coast Guard, the Maritime Administration and the Federal Maritime Commission. I want to thank you for your interest in taking this matter up this morning as we begin laying out the framework for writing a new Coast Guard authorization bill this Congress.

As our economy continues to recover, we should look to the U.S. maritime industry which already moves over a billion tons of cargo annually and sustains 500,000 jobs in total, including 74,000 jobs on vessels and at shipyards, to make a major contribution. Making sure that Federal regulations are targeted, fair and reasonable is necessary to ensure that the overall economic recovery continues to broadly gain traction, including the generation of new job opportunities within the U.S. maritime industry.

The Coast Guard is a multi-mission, maritime military service of the United States. It is the principal Federal agency responsible for ensuring maritime safety, for securing our maritime borders and vital infrastructure from threats, and for protecting the marine environment from harm. Considering the broad sweep of Coast Guard responsibilities, it should be of no surprise to anyone to learn that the Coast Guard is heavily engaged in the regulatory process.

What is surprising, however, is how some Coast Guard rules seem to get stuck in a back eddy at Coast Guard headquarters never to emerge again. In particular, I am concerned that this very fate has befallen the towing vessel safety rule that is now almost fully two years late.

A person might reasonably conclude that this is because of the vehement opposition from the regulated community. Yet that does not appear to be the case. In fact, the publication of a final towing vessel safety rule is one of the highest priorities for the trade association representing our nation's waterways operators, including those operators working in my district along the Bay Delta and on the Sacramento River.

The Coast Guard may have legitimate reasons for this delay – budget cuts imposed by sequestration immediately come to mind. But whatever the reason, I will want to hear from Admiral Servidio on when the Coast Guard intends to publish a final rule.

The Maritime Administration and the Federal Maritime Commission also have important roles respectively in promoting the U.S. merchant marine or in regulating the fair and efficient movement of cargo by ship into and out of the United States.

I remain concerned, however, that the Maritime Administration may be getting sucked into the same kind of back eddy as the Coast Guard's towing vessel safety rule. Specifically, MARAD's indifferent enforcement of cargo preference requirements is of immediate concern.

Despite the fact that our nation's cargo preference requirements have provided vital cargoes to sustain U.S. flag vessels and provide good-paying jobs for U.S. seafarers for the past half century, compliance by Federal agencies with these requirements remains spotty at best.

In 2008, Congress addressed this deficiency by including language in section 3511 of the Fiscal Year 2009 National Defense Authorization Act specifically directing MARAD to conduct annual reviews and to take enforcement actions against recalcitrant Federal agencies.

Yet here we are in 2013 and MARAD has failed to initiate any rulemaking to implement this requirement. Even worse, in the intervening years we have seen numerous attempts by the administration to further weaken cargo preference requirements, and as well, undercut enforcement of the Jones Act.

MARAD must stand up and fight for the U.S. merchant marine, and I hope that under Acting Maritime Administrator Jaenichen's leadership, MARAD will do just that. I am looking forward to hearing from Mr. Jaenichen this morning, and as well, from my friend and fellow Californian, FMC Chairman Cordero, concerning the Commission's rulemaking activities. Welcome to you all, and thank you again, Mr. Chairman, for convening this important oversight hearing.

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TESTIMONY OF
REAR ADMIRAL JOSEPH A. SERVIDIO
ASSISTANT COMMANDANT FOR PREVENTION POLICY

ON THE
COAST GUARD REGULATORY PROGRAM

BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD & MARITIME TRANSPORTATION

SEPTEMBER 10, 2013

Introduction

Good morning Chairman Hunter, Ranking Member Garamendi, and distinguished members of the subcommittee. It is my pleasure to be here today to discuss the Coast Guard's regulatory program.

The Coast Guard's regulatory process focuses on managing maritime risk through the establishment of proficiency and safety standards to protect life, property and the maritime and coastal environment, while facilitating the efficient flow of commerce and the safe recreational use of our Nation's waterways. To meet these objectives, the Coast Guard continues to build upon our Regulatory Development Program, which includes investing in the workforce, improving process transparency, streamlining processes, soliciting public input, and carefully scrutinizing all regulatory actions to ensure they are achieving desired outcomes.

Coast Guard Regulatory Program

Since implementation of the Regulatory Development Program, the Coast Guard has seen significant improvements in publishing new rules and managing its rulemaking backlog. Figure 1 shows the rules that have gone into effect and published following Congress' addition of resources in Fiscal Year (FY) 2008 and the Coast Guard's initiation of major reforms (numbers throughout this report are as of August 28, 2013). These published rules include all Final Rules (FR), Interim Rules (IR), Direct Final Rules (DFR), and Technical Amendments. As shown, the Coast Guard published 16 Effective Rules in FY 2012, and 11 to date in FY 2013 (dark blue in the graph), with another five projected by the end of the fiscal year (light blue). One of the Effective Rules published in 2012 was statutorily mandated. Two Effective Rules published to date in 2013 are statutorily mandated and we project an additional two statutorily mandated Effective Rules will be published in 2013. Additionally, the Coast Guard publishes approximately 20 Notices of Proposed Rulemaking (NPRMs), Advance NPRMs, and Supplemental NPRMs per year.

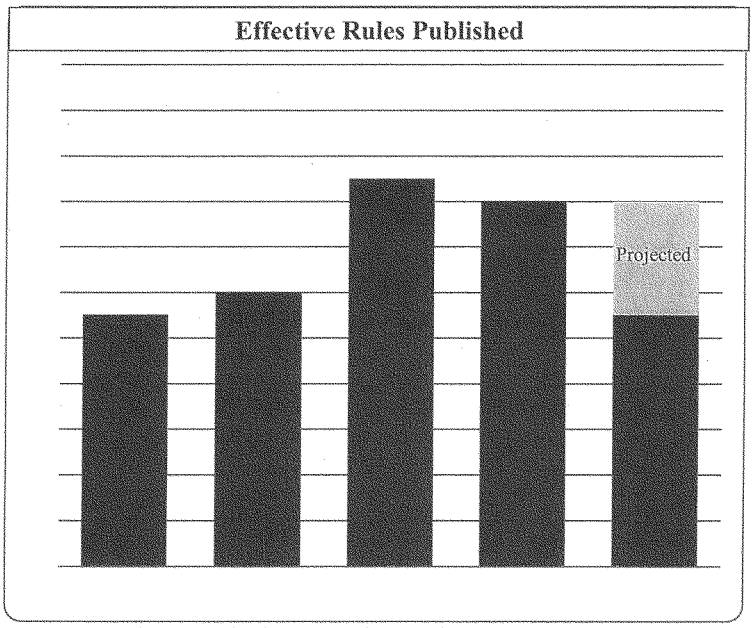

Figure 1: Published Rules That Have Gone Into Effect by Fiscal Year
***Indicates projection for 2013**

We currently have 68 projects in our rulemaking backlog, as noted in Figure 2, and progress continues on all active regulatory projects.

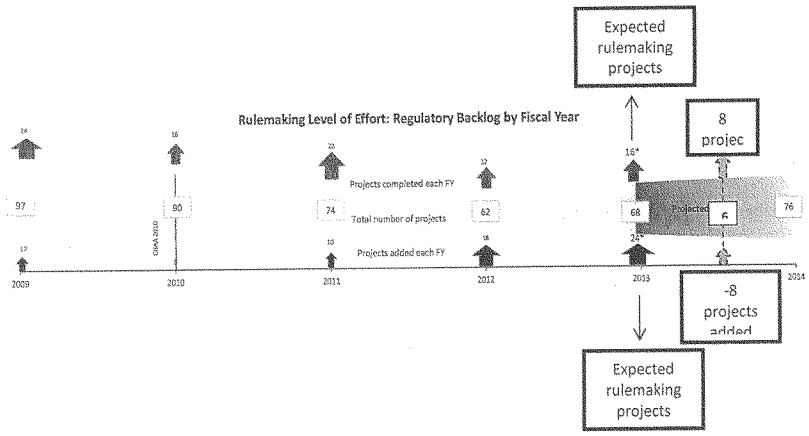

Figure 2: Number of Active Rulemaking Projects

With a significant focus on older rulemakings, the average rule development time has been reduced from 6.2 years at the end of FY 2009 to just over four years in FY 2013. This trend is shown in Figure 3. The Coast Guard anticipates further reductions by prioritizing the completion of older rulemaking projects. We recognize the value of soliciting industry and public comments in our rulemaking projects and clear cost-benefit analysis, which takes time but results in rules that do not impose unwarranted costs and can more rapidly achieve the required safety, security, and/or environmental stewardship outcomes.

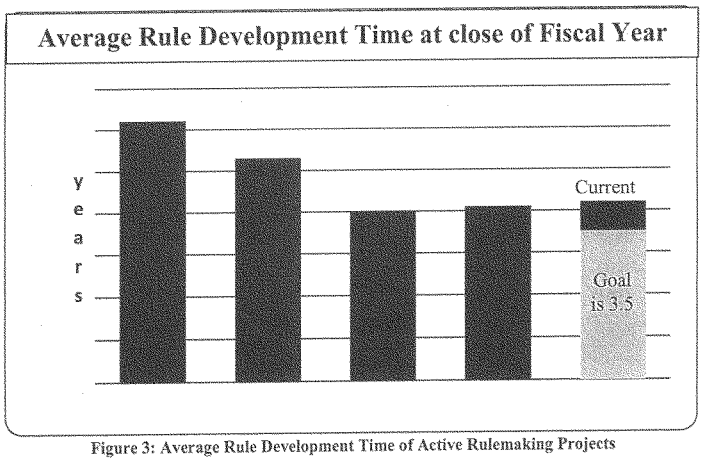

Figure 3: Average Rule Development Time of Active Rulemaking Projects

The Coast Guard is also working with DHS to implement the requirements of Executive Order 13563 ("Improving Regulation and Regulatory Review" January 18, 2011). Furthermore, the Coast Guard assisted in the development of the DHS-wide plan for the retrospective review of existing DHS regulations, and identified the four rules shown in Table 1 for detailed study. Each of these retrospective reviews consume rulemaking resources at approximately the same level as a large, significant rulemaking project. These reviews have been completed and integrated into updates to those regulations as appropriate.

Table 1: Regulations Currently Undergoing Retrospective Review

Rule	Year Published
Standards of Training, Certification and Watchkeeping (STCW)	1997
Facility Security Plans (Maritime Transportation Security Act of 2002)	2004
Vessel Security Plans (Maritime Transportation Security Act of 2002)	2004
Revisions to TWIC Requirements	2007
Inland Waterways Navigation Regulations	2010

Noteworthy Publications

Table 2 shows the notable publications in FY 2012 and thus far in FY 2013.

Table 2: Notable Publications

Fiscal Year	Rule (Date Published)	Phase
2012	International Anti-Fouling System Certificate (December 9, 2011) **Statutorily Required** • Implements revisions to international convention and meets statutory mandate.	Final Rule
	Ballast Water Discharge Standard (March 23, 2012) **Statutorily Required** • Aligns to international ballast water convention and establishes numeric discharge standard for living organisms in ships' ballast water discharged in U.S. waters.	Final Rule
	Carbon Dioxide Fire Suppression Systems (June 7, 2012) • Allows alternatives to and safety components in carbon dioxide systems increasing ship and crew safety and enhancing competitiveness.	Final Rule
2013	Nontank Vessel Response Plans* **Statutorily Required** • Establishes standards for the content and use of oil pollution response plans for nontank vessels.	Final Rule
	STCW* • Implements revisions to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).	Final Rule
	Transportation Worker Identification Credential (TWIC) Readers (March 22, 2013) **Statutorily Required** • Implements TWIC reader requirements and meets statutory mandate.	Notice of Proposed Rulemaking
	Double Hull Tanker Escorts on the Waters of Prince William Sound, Alaska (August 9, 2013) **Statutorily Required** • Improves oil pollution prevention measures in Prince William Sound.	Interim Rule

*** Anticipated**

The rules noted in Table 2 are priority rulemaking actions including: Congressional mandates (e.g., Double Hull Tanker Escorts, which was required by the 2010 Coast Guard Authorization Act), rules required for compliance with international conventions (e.g., STCW), and discretionary rulemakings to improve vessel and mariner safety or establish updated equipment standards (e.g., Carbon Dioxide Fire Suppression Systems). A current list of active regulatory projects, for which information is publicly available, is maintained at www.reginfo.gov, and at http://www.uscg.mil/hq/cg5/cg523/projects.asp, which contains links to the Unified Agenda, dockets, and other information sources.

Progress on Statutory Mandates

Of the 68 rules under development, 29 are derived from, or incorporate, statutory mandates. This includes 18 projects either added or modified by the 2010 and 2012 Coast Guard Authorization Acts. All 29 of these statutorily mandated projects are underway, with eight at either an Interim Rule or Final Rule stage or close to finalization/effective action. Table 3 lists 13 rules published in the Spring 2013 Regulatory Agenda that have an associated statutory mandate.

Table 3: Rules with Statutory Mandate listed in the Spring 2013 Regulatory Agenda

Title	RIN	Stage
Commercial Fishing Industry Vessels	1625-AA77	Prerule Stage
Outer Continental Shelf Activities	1625-AA18	Proposed Rule Stage
Updates to Maritime Security	1625-AB38	Proposed Rule Stage
Tonnage Regulations Amendments	1625-AB74	Proposed Rule Stage
Lifesaving Devices --Uninspected Commercial Barges and Sailing Vessels	1625-AB83	Proposed Rule Stage
Implementation of the 1995 Amendments to the STCW	1625-AA16	Anticipate Publication
Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System	1625-AA99	Final Rule Stage
Transportation Worker Identification Credential (TWIC); Card Reader Requirements	1625-AB21	Final Rule Stage
Nontank Vessel Response Plans and Other Vessel Response Plan Requirements	1625-AB27	Anticipate Publication
Offshore Supply Vessels of at Least 6000 GT ITC	1625-AB62	Final Rule Stage
Revision to Transportation Worker Identification Credential (TWIC) Requirements for Mariners	1625-AB80	Final Rule Stage
Commercial Fishing Vessels--Implementation of 2010 and 2012 Legislation	1625-AB85	Final Rule Stage
Double Hull Tanker Escorts on the Waters of Prince William Sound, AK	1625-AB96	Final Rule Stage

Conclusion

The Coast Guard continues to improve its regulatory program. Through streamlining internal processes, balancing input from maritime stakeholders, careful analysis of alternatives and thorough evaluation of the cost and benefit of each rule, we are focused on ensuring every regulatory action achieves the desired safety, security, and environmental protection outcomes without imposing unnecessary costs on U.S.-flag vessel operators competing in a global industry.

Thank you for your continued support and the opportunity to testify before you today. I am happy to answer any questions you may have.

Question#:	1
Topic:	towing vessel safety rulemaking
Hearing:	Maritime Transportation Regulations: Impacts on Safety, Security, Jobs, and the Environment; Part I
Primary:	The Honorable John Garamendi
Committee:	TRANSPORTATION (HOUSE)
Name:	Rear Admiral Joseph Servidio, USCG Assistant Commandant for Prevention Policy
Organization:	U.S. Department of Hom[illegible]nd Security

Question: Admiral Servidio, I remain concerned as to the status of the towing vessel safety inspection rulemaking. Specifically, in Table 3 of your written testimony that lists the regulatory agenda for Spring 2013, there is no reference to the status of towing vessel safety inspection rulemaking. The Coast Guard was directed in 2004 to promulgate this regulation and had a statutory deadline of October 2011 for the publication of a final rule.

What is the status of the towing vessel inspection final rule?

Response: Consistent with our latest published Unified Agenda (78 FR 44266, 44271, July 23, 2013), the Coast Guard is currently working on publishing a Final Rule.

Question: What is the reason for the delay?

Response: This is a complicated rulemaking that involves multiple stakeholders in industry, government, and the public. The Coast Guard seeks to balance the costs to the towing vessel industry and the expected strain on Coast Guard resources with the benefits to the public. The Coast Guard received over 3,000 comments on the Notice of Proposed Rulemaking published in August 2011. Due to the volume and complexity of the comments involved, including comments concerning safety management systems, vital equipment redundancies, grandfathering and third party organizations, the Coast Guard has been actively considering this array of inputs, and working to develop responses and adapt the rule as deemed necessary.

Question: What actions will the Coast Guard take to expedite the publication of a final rule?

Response: The Coast Guard is focused on developing the Final Rule as soon as possible.

Question: Are there obstacles to completing the towing vessel inspection rulemaking in a timely way this subcommittee needs to be aware of, or that we can help you get past?

Response: The current length of time a significant rulemaking takes to process through multiple levels of review ensures the most sound and responsible rule possible. In

Question#:	1
Topic:	towing vessel safety rulemaking
Hearing:	Maritime Transportation Regulations: Impacts on Safety, Security, Jobs, and the Environment; Part I
Primary:	The Honorable John Garamendi
Committee:	TRANSPORTATION (HOUSE)
Name:	Rear Admiral Joseph Servidio, USCG Assistant Commandant for Prevention Policy
Organization:	U.S. Department of Homeland Security

particular, this is one of the largest rulemakings ever undertaken by the Coast Guard, potentially bringing 6,000 towing vessels under inspection, and one that must be completed correctly. The Coast Guard appreciates the subcommittee's offer of assistance and will continue to work diligently to publish the Final Rule.

Question#:	2
Topic:	Cape Town Agreement
Hearing:	Maritime Transportation Regulations: Impacts on Safety, Security, Jobs, and the Environment; Part I
Primary:	The Honorable John Garamendi
Committee:	TRANSPORTATION (HOUSE)

Question: Maritime safety is a fundamental responsibility of the U.S. Coast Guard. Commercial fishing is one of the most dangerous occupations in the United States and globally. That economic sector experiences a large number of human fatalities and vessel casualties each year. The Cape Town Agreement adopted by the International Maritime Organization (IMO) in October 2012 is expected to reduce the loss of life in the fishing industry by setting uniform safety requirements for the construction and equipment of new, decked, seagoing fishing vessels of 24 meters in length or greater.

To enhance worker and vessel safety in the U.S. commercial fishing sector, Congress made numerous and significant changes to the U.S. Commercial Fishing Vessel Safety statutes in Section 604 of the Coast Guard Authorization Act of 2010. Title 46 USC §4503 is now applicable to fishing and fish tender vessels in addition to fish processing vessels, and requires classification of fishing vessels that are at least 50 feet overall in length, built after July 1, 2012, and which operate beyond 3 nautical miles. Fishing vessels must now submit to regular surveys and inspections in order to achieve and maintain class. It is my understanding that the fishing vessel safety requirements put forward in Section 604 nearly universally meet or exceed the safety provisions of the Cape Town Agreement.

It stands to follow that if the Coast Guard is authorized to mandate that "new build" commercial fishing vessels at least 50 feet overall in length must be built to class – which includes certificate issuance and necessitates regular surveys and inspections – then the Coast Guard must possess the legal authority to mandate surveys and inspections of new build commercial fishing vessels, as required in the Cape Town Agreement. Surprisingly, it is my understanding that the Coast Guard now maintains that the U.S. cannot ratify this convention because U.S. law prescribes commercial fishing vessel standards, but it does not authorize mandating the surveys required by this IMO instrument.

What is the Coast Guard doing to rectify this unconventional legal interpretation?

Response: Although the Coast Guard recognizes the potential benefits of the Cape Town Agreement in improving fishing vessel safety internationally, domestic statutory authority does not exist to implement this instrument. While the existing U.S. domestic regulatory regime is similar in many ways to the requirements proposed by the Agreement, significant authority would still be required before the Agreement could enter

Question#:	2
Topic:	Cape Town Agreement
Hearing:	Maritime Transportation Regulations: Impacts on Safety, Security, Jobs, and the Environment; Part I
Primary:	The Honorable John Garamendi
Committee:	TRANSPORTATION (HOUSE)

into force for the U.S. For example, the Cape Town Agreement includes provisions that require issuance of an international fishing vessel safety certificate validating that the vessel has been surveyed and found to be in compliance with the requirements of the instrument. However, U.S. law does not provide the Coast Guard the authority to issue such certificates nor mandate the surveys and inspections required for issuance under the Agreement.

Question: Does this require the Congress to legislate?

Response: The U.S. cannot implement the Cape Town Agreement unless appropriate implementing legislation is sought and obtained.

Question: Aside from this narrow legal interpretation, does the Coast Guard support the provisions within the Cape Town Agreement which will improve the safety of fishing fleets around the world?

Response: The Coast Guard supports the adoption of the Cape Town Agreement internationally. The Agreement should help establish a consistent regulatory regime that will shape international requirements for fishing fleets, including many that currently operate in grossly unsafe conditions leading to substantial loss of life at sea, to a level on par with U.S. safety standards.

STATEMENT OF
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BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES

September 10, 2013

Good morning Chairman Hunter, Ranking Member Garamendi, and members of the Subcommittee. Thank you for the opportunity to address you today on matters related to the Commission's regulations.

I am pleased to report that the Commission has taken a systematic approach in reviewing its regulations in order to minimize unnecessary burdens while ensuring a cost-effective regulatory regime that ensures economic security, both for parties involved in international oceanborne commerce, and the consumers that rely on it. While I understand that the Subcommittee is focused on the Commission's amendments to its regulations governing ocean transportation intermediaries, I think it is helpful to view this initiative within the broader context of the Commission's comprehensive review.

The Commission's regulatory review of its regulations is being conducted pursuant to Executive Orders 13563 and 13579. On January 18, 2011, Executive Order 13563 was issued to emphasize the importance of public participation in:

- Adopting regulations;
- Ensuring integration and innovation in regulatory actions;
- Promoting flexible approaches in achieving regulatory objectives; and
- Ensuring the objectivity of any scientific and technological information and processes used in regulatory actions.

The Executive Order required executive agencies to develop a plan to periodically review their existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make such regulatory programs more effective and less burdensome in achieving their regulatory objectives.

On July 11, 2011, Executive Order 13579 was issued to encourage independent regulatory agencies to also pursue the goals stated in Executive Order 13563.

In accordance with the spirit and intent of the Executive Orders, the Commission developed a plan for the Retrospective Review of Existing Rules (Plan) with respect to its regulations. We

have carried out the review with an eye toward maximizing public participation throughout the process.

The Commission's Plan includes an orderly review of regulations to be updated or modified. The Commission sought public comment on the preliminary plan and then adopted it on November 4, 2011. This plan was publicly updated at a Commission meeting in February of this year. The Commission's goals in these retrospective reviews are to determine a schedule for identifying and reconsidering certain significant rules that are obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. The review process is intended to facilitate the identification of rules that warrant repeal or modification; strengthening, complementing, or modernizing rules where necessary or appropriate, so as to make the agency's regulatory program more effective and less burdensome in achieving its regulatory objectives.

FMC Recognizes Changes to the Industry

I would like to take a moment to highlight some of the recent regulatory modifications that have been implemented, as well as some of the proposed regulations that are currently before the public:

- In the years since the original implementation of the Commission's regulation of ocean transportation intermediaries (OTIs), it has taken several actions to provide the regulated industry relief at its request. In 2004, the Commission addressed potentially restrictive practices by the Government of the People's Republic of China (PRC) by creating the ability for U.S. non-vessel-operating common carriers (NVOCCs) to obtain an alternative, U.S.-based, FMC-administered, financial instrument accepted in lieu of the PRC's cash deposit requirements. The Commission's optional bond rider to the NVOCC bond allowed regulated entities to use the Commission-sanctioned bond at a small fraction of the cost of tying up cash in a bank in China. This action allowed regulated entities to put into use tens of thousands of dollars in capital that would have otherwise been used as dollar-for-dollar collateral to satisfy the PRC. Recently, in 2011, the Commission continued to assist U.S. NVOCCs to update the optional bonds to reflect the change in currency valuation. Once again, this action of the Commission allowed NVOCCs to satisfy requirements of the PRC for pennies on the dollar that would otherwise have to be deposited in Chinese financial institutions.

- In February 2011, the Commission issued a final rule amending its Rules of Practice and Procedure to update, clarify, and reduce the burden on parties to proceedings before the Commission. Specifically, the Commission made its regulations less burdensome by streamlining document filings and other administrative processes while increasing protections related to parties' privacy rights in formal proceedings before the Commission. It has been estimated that these changes will allow parties to proceedings before the Commission to annually save a total of approximately $260,000 in reproduction, postal, and courier costs. In April 2011, the Commission issued an Advance Notice of Proposed Rulemaking to seek public comments on how to further update and clarify the Commission's Rules of Practice and Procedure to increase their effectiveness, enhance administrative efficiency, and reduce the burden on parties to proceedings before the Commission. The Commission also sought public

comment to revise its discovery rules to conform more closely to the Federal Rules of Civil Procedure. The review of the Commission's Rules of Practice and Procedure is ongoing. On July 22, 2013, the Commission issued a final rule to make it easier for parties to participate in proceedings and rulemakings; and to clarify the qualifications to allow non-attorneys to practice before the Commission.

- In March 2011, after extensive public participation, the Commission issued a final rule exempting licensed NVOCCs that enter into negotiated rate arrangements from the tariff rate publication requirements of the Shipping Act and certain provisions of the Commission's regulations. Before the exemption, NVOCCs were required to publish rate changes for each charge to a shipper. Publishing an amended tariff takes person-hours to perform and result in tariff publication costs. NVOCCs that handled many shipments and quoted different prices based on volume thus faced higher administrative costs to comply with the Shipping Act. Through this rule, the Commission lessened the burden and cost of rate publication requirements for licensed NVOCCs. It has been estimated that if 25% of licensed NVOCCs take advantage of the exemption, total annual savings could exceed 150,000 person-hours, or $10 million, including the fees paid to tariff publishers. If all 3,400 licensed NVOCCs take advantage of the exemption, total annual savings could exceed 600,000 person-hours, or $40 million. On July 12, 2013, after receiving input from the public, the Commission determined to extend this exemption to foreign-based registered NVOCCs.

- In March 2012, after issuing a proposed rule and receiving comments from the industry, the Commission issued a final rule that allows ocean carriers and shippers more freedom, flexibility, and certainty in their commercial arrangements. This final rule allows companies that enter into service contracts to reference freight indices or other external information in formulating their contracts. This rule recognizes new tools that common carriers and shippers may utilize in order to manage freight rate volatility and other market risks common to the commercial maritime industry.

- In February 2013, the Commission updated its passenger vessel operator (PVO) regulations by changing the financial responsibility nonperformance cap from $15 million to $30 million. The nonperformance cap had not been changed since 1990. In 1990, the total financial coverage provided by a PVO was nearly 25% of outstanding unearned passenger revenue (UPR). This year's modernization of the regulations equates to only 14% of UPR. The cap will be adjusted every two years, based on the Consumer Price Index for All Urban Consumers (CPI-U). The final rule also provides relief to smaller cruise lines by recognizing the existence of additional forms of financial protection. These measures strengthened protections for consumers with regard to their deposits and prepayments while at the same time reducing financial responsibility requirements imposed on smaller cruise lines.

I hope the explanation and examples I have outlined above give you a better understanding of the work the Commission has recently completed with respect to its reviewing and updating its regulatory mandate.

The Ocean Shipping Reform Act and FMC Regulation of OTIs

In 1998, the Ocean Shipping Reform Act (OSRA) redesignated both ocean freight forwarders and NVOCCs as OTIs. In 1999, as directed by OSRA, the Commission adopted new regulations to implement changes effectuated by the amendments to the law. The Commission has not substantially revisited the rules governing licensing, financial responsibility or general duties of OTIs since 1999.

Now, I will turn to the Commission's review of its OTI rules. As you will see, this review has been an open and transparent process.

- The Commission's November 2011 Retrospective Review Plan specifically noted that the Commission's OTI rules were under active Commission review, and that the Commission planned the issuance of a Notice of Proposed Rulemaking.

- On December 12, 2012, the Commission held a public meeting which included a briefing by the Commission's staff on OTI Regulations.

- The Retrospective Review Plan was revised in February 2013 at a public meeting, at which time it was noted that the Commission planned to seek comment on the OTI rules through an Advance Notice of Proposed Rulemaking (ANPRM).

- On May 15, 2013, the Commission held another public meeting to approve the issuance of ANPRM seeking public comment on possible revisions to the OTI rules it had been considering.

- On May 31, 2013, the ANPRM was issued and requested public comments by July 31, 2013, which the Commission later extended to August 30, 2013.

In addition to the formal hearings, meetings, and notices related to OTI modifications, Commissioners and staff have met and discussed informally with representatives of industry stakeholders at various industry forums. This included: the Pacific Coast Council of Customs Brokers and Freight Forwarders Association's Wesccon Conference in 2010, the National Customs Brokers and Freight Forwarders Association's 38th Annual Conference in 2012, the Transportation Intermediaries Association, and the International Federation of Freight Forwarders Associations.

To further advance the dialogue on Commission matters, in January 2013, I commented to the Transportation Research Board that the Commission was currently reviewing its OTI regulations to ensure that a credible licensing process is in place. On April 16, 2013, I apprised the Subcommittee that the Commission was reviewing its regulations concerning the licensing and oversight of OTIs. Last month, I addressed members of the Los Angeles Customs Brokers & Freight Forwarders Association to provide further discussion on the ANPRM. In addition, I have accepted the invitation of the Pacific Coast Council of Customs Brokers and Freight Forwarders Association's Wesccon Conference for next month to continue the dialogue on issues important to the maritime industry.

The above examples represent the Commission's deliberate efforts to reach out to our stakeholders and provide notice of the opportunity to participate in the regulatory process.

I will now summarize the current ANPRM for OTIs. The Commission's ANPRM suggests modifying the following bonding minimums originally set in 1999:

- NVOCC bond minimums from $75,000 to $100,000;
- Ocean freight forwarder bonds from $50,000 to $75,000; and
- Foreign NVOCCs registered to do business in the U.S. trades from $150,000 to $200,000.

The Commission noted that even these adjustments to the levels of financial responsibility set in 1999 would not, for the most part, fully reflect an inflation-adjusted increase (for example, the NVOCC bond adjusted for inflation would be calculated at $105,000). These bond levels have been unchanged by the FMC for 14 years. The Commission has observed the commercial disruption that has occurred with the failures of well-known NVOCCs and the inadequacy of the financial instruments intended to protect market participants against such failures. In the past three years alone, there have been over 40 federal lawsuits against OTIs, of which nearly 20 cases involved claims where the bond amount did not approximate the claims that would have been covered by the bond.

- The Commission's ANPRM proposes that licensed or registered OTIs be required to renew its license every two years. OTIs would be able to do this by submitting an updated renewal form. Currently, there is no requirement for an OTI to renew its license. The Commission's experience has shown that too many OTIs cannot be found at the address of record, operate without a current Qualifying Individual, with new or different branch offices, new or different officers, or with previously unknown or unregistered trade names. Out of date information has resulted in futile attempts to locate licensed OTIs in investigations, enforcement actions and private complaints.

- The ANPRM also proposes that OTIs require their agents to include the principal's name, address, and license number on shipping documents prepared or issued by agents on behalf of the principal. To address those harmful shipping practices such as failure to deliver the cargo and refusal to return the pre-paid ocean freight, loss of the cargo, significant delay in delivery, charges to the shipper for marine insurance that was never obtained, the list goes on – this proposal attempts to provide transparency and clarity on the agent and principal relationship of OTIs.

- To address practices in the OTI industry that harm the shipping public, the ANPRM proposes that the qualified individual representing the licensed OTI have three years of OTI experience with a registered or licensed OTI. That person would also have to be at least 21 years old, be responsible for the general supervision of the licensee's operations, and meet the statute's character requirements, in order to obtain an OTI license.

- The existing provision that foreign-based OTIs who wish to obtain an FMC license must establish a presence in the U.S. by opening an unincorporated office is clarified to newly

require that it is qualified to do business where it is located, and staffed and operated by a full-time bona fide employee.

- The ANPRM seeks comments on filing and payment of claims, priorities for claims, and methods of improving reporting provisions by surety companies to promote faster and fairer allocation to claimants.

- The ANPRM seeks to further streamline the Commission's processes by ensuring its records are up-to-date so that the Commission and the public do not waste valuable time attempting to contact licensees. Similarly, streamlining the revocation of the license will alert the shipping public that it should not do business with that OTI.

- The ANPRM proposes to reduce regulatory burdens on licensed OTIs by recognizing the developments in the law enabling their use of agents. Burdens are also reduced on OTIs that operate with branch offices: the ANPRM proposes eliminating the additional $10,000 bond amount currently required for each of a licensed OTI's branch offices.

- With smaller operators also in mind, the Commission specifically requested public comment in the ANPRM on how it might differentiate in its regulation between OTIs that operate in the small package or "barrel trade" and those that operate primarily in one cargo type or volume; and what might be the effects of lower financial responsibility requirements for some defined type of smaller OTI.

As the comment period ended only eleven days ago, on August 30, 2013, we are still in the process of carefully evaluating the comments and will be using those comments to further assess the proposed regulations. As this subcommittee is undoubtedly familiar, the Commission received numerous comments in the final days of the comment period. In the last week of the comment period alone, the Commission received 52 sets of comments.

Under the rulemaking process set forth in the Administrative Procedures Act and aforementioned Executive Orders, the Commission will review and consider all of the submitted comments. The Commission will then evaluate whether it is appropriate to make adjustments to the proposed amendments and seek further public participation.

Mr. Chairman, I hope that my testimony has provided you with an overview of the process by which the Commission is conducting the review of our regulations, and, specifically, the proposed amendments governing ocean transportation intermediaries. As we work through this process, I look forward to continuing to work closely, not only with this Subcommittee, but also with our stakeholders. I am happy to answer any questions you may have.

Mario Cordero, Chairman, Federal Maritime Commission
responses to questions from Representative John Garamendi of California

What kind of outreach has the Commission initiated beyond publishing the OTI ANPR in the Federal Register?

Response:

The Commission's regulatory review of our regulations is being conducted pursuant to Executive Orders 13563 and 13579. Executive Order 13563 requires executive agencies to develop a plan to periodically review their existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed, so as to make such regulatory programs more effective and less burdensome in achieving their regulatory objectives. Executive Order 13579 was issued to encourage independent regulatory agencies to also pursue the goals stated in E.O. 13563.

The Commission fully endorsed the E.O.'s recognition that agencies should develop a plan to review existing regulations to make regulatory programs more effective and less burdensome in achieving their regulatory objectives. Accordingly, the Commission developed a plan to review all of its regulations, including its regulations governing Ocean Transportation Intermediaries (OTIs).

The Commission adopted a Retrospective Plan to review its regulations and published it in November, 2011. The plan included the timeframe under which the Commission would also review its OTI regulations. The Commission requested comments on the plan at that time and received comments on behalf of the National Customs Brokers and Forwarder Association of America, Inc. (NCBFAA), which represents a substantial number of ocean transportation intermediaries, both NVOCCs and freight forwarders.

On December 12, 2012, the Commission held an open meeting during which Commission staff outlined possible significant changes for the Commission's information and input. The Commission commented on various aspects of the staff discussion draft of changes to the OTI rules and established a process by which they would provide additional guidance and suggested changes.

After the December Commission meeting, the staff arranged meetings with representatives of: NCBFAA, Transportation Intermediaries Association (representing transportation intermediaries, including OTIs of all disciplines doing business in domestic and international commerce); and two of the major companies representing providers of financial responsibility to OTIs – Roanoke Trade Services, Inc. and Avalon Risk Management. The results of these meetings were summarized by staff and communicated to the Commissioners for consideration in advance of their decision to issue the ANPR.

In addition to staff outreach, former Chairman Lidinsky apprised the industry of the Commission's intention to revise its OTI regulations in April, 2012 and January, 2013 in his

addresses to NCBFAA and the Transportation Research Board. Similar industry announcements were also made by Commissioners and staff before other trade groups during this time period, including the Pacific Coast Council of Customs Brokers and Freight Forwarders Association, the Transportation Intermediaries Association and the International Federation of Freight Forwarders Associations (FIATA).

Does the Commission intend to give the regulated industry and public ample opportunity to comment before proceeding to a final rule?

Response:

The ANPR process is only the first step in the public's vetting of ideas developed by the Commission, with input from Commission staff and input from the public. The period for comment closed on August 30, 2013. The Commission received over 85 comments in response to the ANPR. The Commission is in the process of carefully reviewing those comments.

Not only did the ANPR request comments on the substantive content of the proposed changes, the ANPR requested responses to specific questions seeking information relevant to the analysis required by the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act) (RFA). The RFA-related questions sought information with regard to each OTI's type of business, firm size, and estimated cost of compliance with the proposed rule. The Commission is also reviewing the comments that respond to those questions so that it can determine whether additional information from the industry may be needed for it to complete the assessment required by the RFA.

Only after the Commission completes its review of the public comments will it be in a position to determine what changes to the draft rule in the ANPR should be made. The Commission would then need to publish a Notice of Proposed Rulemaking (NOPR), and to commence an additional round of public comments. Parties who previously filed responses to the ANPR may file new or updated comments; parties not heard previously may also participate in the NOPR stage.

The Commission is grateful for the assistance by and the variety of comments from the OTI industry, the surety companies, carriers, and others, including FMC staff. The Advance Notice is a document crafted to continue that informative process, as the agency looks to improve, edit and refine these proposals in meaningful ways that improve transparency, recognize changing industry conditions, improve the effectiveness of FMC regulations, as well as streamline licensing processes and reduce burdens upon the industry.

Mario Cordero, Chairman, Federal Maritime Commission
responses to questions from Representative John Garamendi of California

How do you respond to the criticism that the Commission's OTI rulemaking is in summary, unnecessary, burdensome, costly to industry, and likely outside of the Commission's statutory authority under the Ocean Shipping Reform Act?

Response:

1. Changes to the OTI regulations are necessary:

Need for Accurate Information

The Commission has observed frequent and serious lapses in compliance with current regulations that require OTIs to advise the Commission within 30 days of changes in an OTI's organization structure and changes in fact included in its license application. These information lapses include changes in the identity of the Qualifying Individual upon whose industry experience the license was issued and changes in address and contact information of the licensee. Similarly, the Commission has experienced failures by foreign-based NVOCCs (that choose not to obtain a license) to update their company contact information and the contact information of their registered legal agents in the United States.

Recent experience within FMC in reviewing OTI compliance with the 30-day notice requirement indicates that compliance rate is insufficient, whether due to unwillingness or, more likely, inattention to the reporting requirement. For four specified categories of information (change of business address, retirement or resignation of QI, failure to notify/increase surety bond, failure to advise FMC of operation under new trade name), subsequent contacts with OTIs indicate failure to provide timely reporting is averaging 14.6% - 24.4% for 2012-2013.

The proposed requirement for license and registration renewals every two years is to address these failures and would require submission of simple online forms providing updated information. These updates focus upon items substantively affecting the FMC's ability to locate and communicate with licensees, to ensure the shipping public's ability to file legal process, and the continued availability of the OTI bond to claimants.

The information required by the Commission in promulgating the current OTI rules in 1999 was crucial to the Commission's oversight of OTIs. That information is no less necessary today. The ANPR renewal process reflects over ten years of Commission experience and the need to better ensure that the information necessary for Commission oversight and the public's reliance is reasonably accurate.

2. Burden and Costs of the ANPR rule.

License and Registration Renewals. In the spirit of the Commission's objective to streamline the application and renewal process, the license and registration renewals require licensees and registrants to fill out a simple online form updating information that is already required at the time a license is applied for, or at the time a foreign-based NVOCC commences operations after obtaining a bond, and publishing a tariff. The current requirements to keep information up-to-date are too often not being complied with and the Commission does not have the resources to find all such failures.

Bonds. The current bond amounts have been in place unchanged for 14 years and do not take into consideration the changes that have occurred over that period. For example, application of the Consumer Price Index for Urban Consumers alone reveals that the proposed new amounts are in line with inflation over that period:

	1999	2013	Proposed Amount
Forwarders	$50,000	$70,106.84	$75,000
NVOCCs	75,000	105,160.26	100,000
Foreign-based	150,000	210,320.53	200,000
Group Bonds	$3,000,000	$4,206,410.56	$4,000,000

Also, data developed by staff reveals that the court claims made by Vessel-Operating Common Carriers routinely exceed the bond amounts of individual OTIs. A staff search of court cases against NVOCCs filed by just four carriers over the past three years identified no fewer than 49 cases against OTIs, running from a low of $2,600 to as much as $449,290. Nineteen of these claims exceeded $75,000 on the part of the filing carrier alone. Further, there has been a great increase in the number of shipments per year covered at the current bond levels in comparison to the number of shipments covered in 1999. The Commission anticipates updating and expanding its discussion of bond sufficiency as this matter proceeds.

Bond levels are just one element of the OTI licensing process. Over the past several years, the FMC staff has consulted periodically with the surety industry as to issues of claims experience, surety practices in addressing multiple claims or as to claims exceeding the face amount of the bond, and concerns as to the adequacy of the bond amount. The proposal of possible increase in bond amounts comprises one aspect of a more comprehensive effort to review and revise our OTI licensing and financial responsibility programs. This broader

treatment also includes a priority system for bond claims (favoring shippers and U.S. importers and exporters), shortened time lines for handling certain claim processes (reducing burdens on claimants), improved reporting by sureties of bond claims and payments, online reporting of claims experience to allow shippers to make better-informed choices in selecting an NVOCC, and a requirement to restore the bond to its full face amount.

The Commission is reviewing the numerous comments that have raised issues with such a new approach. As with other issues raised by the public, the Commission takes seriously the industry's views, including those of financial responsibility providers, regarding possible effects of enacting claims priority or other bond-related elements. These issues will be analyzed and presented to the Commission for consideration as to whether they should be carried forward, modified or dropped in the event further rulemaking is pursued.

3. Authority to promulgate the ANPR rule changes.

Pursuant to section 305 of Title 46 provides the Commission "may prescribe regulations to carry out its duties and powers." 46 U.S.C. §305. FMC has been given sufficiently broad authority to implement the proposed changes in the ANPR.

License and registration renewals to refresh such OTI information would not appear to be substantively different from the Commission's implementation of its current regulations requiring licensees to update changed facts and to apply for and get Commission approval of significant changes of an OTI's business structure, QI and ownership.

The new hearing procedure provides a faster process by which an applicant or licensee may seek to reverse a denial, revocation or suspension, that provides the due process that is appropriate to the circumstances. The record before the hearing officer is normally sufficient because it includes all the information that the applicant or licensee elected to provide to the Bureau of Certification and Licensing to support approval of an application or reversal of a revocation or suspension, as the case may be.

After the hearing officer renders a decision based upon that record, the applicant or licensee may petition the Commission pursuant to Rule 69 of the Commission's Rules of Practice and Procedure, 46 CFR §502.69, to review the results of the section 515.17 hearing.

The ANPR seeks to increase transparency by clarifying licensing processes, requirements and even definitions. Our end goal is make the OTI industry better aware of the standards to which they are held – both through our rules and through better communication between the Commission and the individual OTIs.

STATEMENT OF PAUL N. JAENICHEN
MARITIME ACTING ADMINISTRATOR
MARITIME ADMINISTRATION

BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

Maritime Transportation Regulations:
Impacts on Safety, Security, Jobs and the Environment, Part I

September 10, 2013

Good morning, Chairman Hunter, Ranking Member Garamendi and members of the Subcommittee. Thank you for the opportunity to present testimony to the Subcommittee regarding maritime transportation regulations and their impact on safety, security, jobs and the environment.

The statutory mission of the Maritime Administration (MarAd) is to foster, promote and develop the merchant maritime industry of the United States. The purpose of this mission is to meet the Nation's economic and security needs. To achieve this mission, MarAd is focused not only on how to sustain the U.S. merchant marine as it exists today, but also how to improve and grow the industry to ensure its viability into the future.

Executive Order (E.O.) 13563, "Improving Regulation and Regulatory Review," requires that MarAd regulations protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. Regulations must be based on the best available science, and they must identify and use the best, most innovative and least burdensome tools for achieving regulatory ends. Re-affirming the principles of Executive Order 12866, E.O. 13563 requires, among other provisions, that MarAd select regulatory approaches that maximize net benefits. It requires public participation and the open exchange of ideas. MarAd is working to implement the principles and requirements of E.O. 13563 throughout its regulations. MarAd's regulatory program is aimed at supporting this goal.

Cargo Preference

As Congress has recognized, carriage of cargo and sealift capacity are central to the Marine Transportation System. The U.S.-flag fleet engaged in international trade contributes to national security through the employment of skilled U.S. citizen mariners with unlimited all-ocean credentials to operate Government-owned ships in times of national emergency and commercial ships to provide sustainment sealift capacity for the Department of Defense (DOD). The coastwise U.S.-flag domestic fleet supports the movement of commercial cargo within the

Nation. It also contributes to strategic objectives principally through mariner career progression, professional development and availability and adds valuable sealift capacity. Together these components of the Marine Transportation System provide reliable movement of cargo for U.S. businesses and DOD and support substantial economic activity and employment in shipbuilding and repair, port operations and related businesses.

One of MarAd's immediate goals is to increase cargo carried on U.S.-flag vessels by identifying additional federal programs with international transportation opportunities. MarAd currently is engaged in an intensive rule-development process to update its cargo preference regulations and to implement the statutory changes to cargo preference law contained in the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (FY 2009 NDAA). I acknowledge the frustration that has been expressed about the delay in implementing this rule. However, significant efforts have been put into a proposed rulemaking by the Department of Transportation (DOT) and MarAd over the past several years. These efforts will inform and guide the proposed rule MarAd currently is drafting.

Maritime Security Program

The Maritime Security Program (MSP) complements the Ready Reserve Force and the Military Sealift Command's reserve sealift vessels with a fleet of 60 commercial U.S.-flag, U.S.-citizen-crewed ships with sealift sustainment capabilities that support the Nation's security and competitiveness. Last year, Congress included language in the National Defense Authorization Act for Fiscal Year 2013 to extend existing MSP contractor agreements through 2025. As a result, the existing MSP regulations would update to reflect the statutory extension and include other technical changes.

Safety and Security: Cruise Vessel Security and Safety Act

The Cruise Vessel Security and Safety Act of 2010 (CVSSA) required new security and safety measures on cruise ships that carry 250 or more passengers. The CVSSA provided MarAd with discretionary authority to certify training providers administering the U.S. Coast Guard (USCG) model safety and security course. Following joint development of a model course, MarAd is preparing to implement a voluntary training-provider certification program to assist the cruise industry in locating qualified trainers and to help assure the general public that passenger vessel security and safety personnel have received proper training consistent with the model standards developed by the USCG, MarAd (including the U.S. Merchant Marine Academy), and the Federal Bureau of Investigation. Training providers seeking to be certified by MarAd would voluntarily submit training plans and supporting documentation for review. If the training provider's plans meet the model course criteria, the agency will offer certification, subject to the

training provider entering into an agreement which, in addition to other terms, would subject the organization to periodic program audits.

Jobs and Maritime Infrastructure: America's Marine Highways

MarAd's future regulations plan to include efforts to improve Marine Transportation System infrastructure and increase the carriage of cargo. MarAd is drafting a Notice of Proposed Rulemaking (NPRM) relating to the America's Marine Highways (AMH) Program. While the original AMH Program made eligible only those corridors and projects that would reduce landside congestion, recent statutory changes authorized the inclusion of projects that "promote short sea transportation" generally. MarAd plans to incorporate the statutory change into its regulations and to follow the requirements of E.O. 13563 in drafting the NPRM. Interested parties would be provided the opportunity to review and comment upon the proposed regulation.

Security: National Defense Reserve Fleet/Ready Reserve Force Ship-Manager Citizenship & Maritime Security Program

A second immediate goal of MarAd is ensuring the readiness and availability of a capable U.S. merchant marine fleet with modern U.S.-flag vessels, skilled labor and global logistics support to meet national maritime transportation requirements in peacetime emergencies and armed conflicts. The National Defense Reserve Fleet (NDRF) and its Ready Reserve Force (RRF) component provide valuable support to the DOD in time of war or national emergency. As part of its continuing effort to best manage these assets, MarAd plans to issue an Advance Notice of Proposed Rulemaking (ANPRM), inviting comments on whether the agency's existing U.S. citizenship criteria for its Vessel Operators (ship managers and agents) benefit the Nation's maritime commercial and national security interests and provide the most current, effective and best approach for supporting NDRF operations.

The agency last examined this regulation after seeking public comment over 20 years ago. Despite significant changes in the maritime industry, no change has been made to the citizenship requirements. Comments received in response to the ANPRM will help MarAd to determine whether to propose any changes to the existing regulation.

Future Opportunities to Strengthen the Marine Transportation System

The Marine Transportation System is a core component interwoven into the economic and security fabric of the Nation. Overall, it is strong and resilient, but there are opportunities for improvement and growth to ensure the availability of U.S.-flag vessels to carry cargo and its sustainability in the future. The strength of the U.S. as a maritime nation throughout history has resided individually and collectively in the separate but integral segments of the maritime

industry. Specifically, the discrete segments include the industry's global, coastal and inland commercial fleet, the ports and intermodal facilities that support global commerce, the U.S. Armed Forces and national security establishment, and most importantly the men and women who bring their expertise, energy and innovation to the Nation's maritime enterprise.

The challenges facing the Marine Transportation System offer opportunities for improvement and the ability to develop a strategy that can produce broad, long-lasting positive results. Not only are there economic opportunities, but achievement of those objectives can support attainment of other key national goals including job creation and employment, enhancing economic competitiveness through energy efficiency and innovation, pollution reduction and improved transportation capacity through modal interoperability. A new strategy, likely consisting of numerous interrelated actions and initiatives could lay the groundwork to capitalize on those opportunities and to enable the Nation to sustain leadership in the international maritime community.

To focus on a long-term strategy, MarAd is working to organize a public meeting to concentrate on U.S.-flag maritime cargo and sealift capacity. The public meeting would be designed to elicit an unconstrained set of ideas for improvement, expansion and strengthening key aspects of the Marine Transportation System, to vet those ideas in a public forum, and to derive an actionable list of items for further study, action or voluntary adoption.

Key areas, among others, to be addressed would include transportation speed, efficiency, reliability, availability and cost-effectiveness; the Maritime Transportation System's contribution to overall U.S. economic competitiveness; reduction of pollution and adverse environmental impacts; interoperability between modes; the number of qualified U.S.-citizen mariners; the number and quality of U.S.-flag ships engaged in commerce internationally and domestically; and the volume, value and innovation of U.S. shipbuilding and repair.

As part of its strategy, MarAd also plans to analyze the costs of operating under the U.S. flag compared to foreign flags and to determine if the agency can take actions to make the U.S. flag more competitive. In addition, MarAd will be looking at challenges facing the U.S. shipbuilding industry and options to promote this industry which has proven to be beneficial to the Nation from both an economic and defense perspective. MarAd expects to do extensive public outreach on these issues, and others, to identify changes that could strengthen the U.S. Merchant Marine.

Thank you for this opportunity to discuss maritime transportation regulations. I look forward to the subcommittee's questions.

Subcommittee on Coast Guard and Maritime Transportation
Hearing on Maritime Transportation Regulations; Impacts on Safety, Security, Jobs and the Environment; Part I
Tuesday, September 10, 2013

Questions for the Record to the Honorable Paul Jaenichen, Acting Administrator, Maritime Administration

Questions from the Honorable John Garamendi (D-CA)

Maritime Security Program Sequestration Cuts

MARAD has informed U.S. vessels that due to sequestration cuts, it will not be able to pay the full monthly MSP stipend in August 2013, and it will not pay any stipend in September 2013.

- *Have any vessels left the MSP program as a result of this situation? Have any vessels left the U.S. flag?*

  No vessels left the Maritime Security Program (MSP) in Fiscal Year (FY) 2013. By letter dated February 14, 2013, the Maritime Administrator offered existing MSP carriers the opportunity to extend their MSP Operating Agreements through FY 2025. By June 14, 2013, all 60 MSP Operating Agreements had been extended. In August, one vessel reflagged because it aged out of MSP program and the operator had enrolled a replacement vessel into the program as of October 1, 2013.

- *Looking to the future, what would the impact be on our national security and on the viability of our merchant marine if vessels were forced to leave the MSP program and if they then decided to leave the U.S. flag?*

  Without full funding, it is possible that MSP operating agreements would have to be terminated or modified. Given that MSP payments only partially offset the cost of operating under U.S. flag, many of the vessel owners could shift to foreign flag registry to continue operation. The loss of these vessels could mean the loss of many experienced U.S. mariners with unlimited all-ocean credentials needed to crew the Government-owned sealift fleet, which would diminish the country's ability to meet critical national security requirements. Such a loss could affect the Nation's ability to meet the demands for vessels and seamen in the event of an emergent sealift surge requirement.

- *Is there a specific step the Administration believes should be taken to ensure we don't have to drop vessels from the MSP program?*

Full funding for the rest of FY 2014 in the Omnibus will ensure no vessels are removed from the MSP due to lack of funding and will ensure that the Department of Defense (DOD) requirement for a 60-ship fleet is met with assured access to global multi-modal transportation logistics support for the U.S. Armed Forces. We are pleased that Congress prioritized the retention of MSP ships and services essential to supporting our Armed Forces deployed overseas and look forward to the completion of full-year appropriations for the MSP.

As bad as this is, a variety of different budget scenarios may cause MSP to actually have to push as many as 10 vessels out of the program – and it should be noted that these vessels can immediately re-flag into the flag of another nation.

- *Can you very briefly describe these various budget scenarios under consideration within the administration and the extent of possible vessel losses?*

  All 60 MSP operating agreements were renewed for FY 2014 upon the passage of P.L. 113-46, which provides full funding for the MSP through January 15, 2014. With full funding provided in the FY 2014 Omnibus, MARAD will pay the full monthly stipends the vessels are eligible to receive. In a constrained budget scenario with reduced resources, one option would have the Secretary of Transportation, in consultation with the Secretary of Defense, determine whether MSP operating agreements must be modified and/or which selected vessels should be retained within the funding level of the previous fiscal year. Vessels retained in the program would be those that are the most militarily useful and commercially viable.

The cuts required under sequestration are wrong. I think they are harmful to the United States and I think they should be ended. That said, right now, I think we need to be careful that we don't lose what remains of our U.S.-flagged ocean going fleet.

- *What steps will you take, right now, to address this urgent issue and to try to preserve and strengthen the U.S.-flagged fleet? Will the administration request reprogramming authority to allow the Secretary of Transportation to transfer funds from other accounts?*

  Given that full funding was provided in P.L. 113-46, all 60 MSP operating agreements have been renewed and full payments will be made to operating agreement holders as through the duration of the continuing resolution. With full funding provided in the Omnibus, reprogramming authority is not an issue in FY 2014.

Cargo Preference

MARAD was granted sole authority by Section 3511 of the *Duncan Hunter National Defense Authorization Act for Fiscal Year 2009* to ensure that Federal agencies shipping government impelled cargoes are complying with our cargo preference laws. Agencies that do not comply with these laws can face civil penalties for each day they remain in violation. As required by Section 3511, MARAD was required to conduct annual reviews to determine whether all federal agencies are in compliance with cargo preference rules. MARAD was also authorized to take enforcement actions against non-compliant agencies.

- *Has MARAD completed these annual reviews? What has been the record of compliance by Federal agencies?*

  Currently, MARAD reviews records of all preference cargo reported to the agency, which is used to track compliance. When a deficiency is identified, MARAD investigates the reason for the deficiency and works with the shipping agency to find opportunities for compensatory carriage aboard qualified U.S.-flag vessels to make up for the loss of cargo. MARAD has also worked with agency contracting officers to ensure contracts are administered in accordance with cargo preference law and consistent with the intent of the Federal Acquisition Regulations. MARAD will address annual reviews of Federal agencies to ensure compliance in a forthcoming rulemaking to implement the statutory changes to cargo preference law contained in the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (FY 2009 NDAA).

- *When will MARAD issue a rule to implement these provisions? What is the status of this rulemaking?*

  MARAD currently is engaged in an intensive rule-development process to update its cargo preference regulations and to implement the cargo preference provisions of the FY 2009 NDAA. I acknowledge the frustration that has been expressed about the delay in implementing this rule. However, significant efforts have been put into a proposed rulemaking by the Department of Transportation (DOT) and MARAD over the past several years. These efforts informed and guided the proposed rule that MARAD has drafted. DOT review of MARAD's current draft of the proposed rule is in progress.

- *Has MARAD initiated any studies to identify new government-impelled cargoes that should fall under cargo preference requirements?*

  While no formal studies have been initiated, one of MARAD's immediate goals is to increase cargo carried on U.S.-flag vessels by identifying additional Federal programs

with international transportation requirements. MARAD monitors trade publications and government websites for cargo preference opportunities.

Ready Reserve Chapter 2 Ownership Requirements

It has been brought to my attention that the Maritime Administration (MARAD) has cleared an advanced notice of proposed rulemaking (ANPRM) that would effectively amend existing procedures to allow foreign owned companies to compete to operate vessels in the U.S. Ready Reserve Force (RRF).

The mission of MARAD is to "foster, promote, and develop the merchant maritime industry of the United States." The RRF is an essential program emblematic of MARAD's important mission and responsibilities to promote the U.S. merchant marine. It is unfortunate that MARAD is now entertaining the idea of revising its RRF U.S. ownership requirements defined under 46 U.S.C. 50501 (known commonly as "Section 2 citizens") to allow foreign-owned companies to operate U.S. RRF vessels. This action runs counter to the very purpose of MARAD's own mission to promote the U.S. flag.

- *In the absence of any information indicating that the Ready Reserve is poorly served at present by its U.S. Flag operators, why is MARAD proceeding with this ANPR to potentially revise its Section 2 citizenship requirements?*

  As part of its continuing effort to best manage the assets of the National Defense Reserve Fleet (NDRF) and its Ready Reserve Force (RRF), MARAD plans to issue an ANPRM inviting comments on whether the agency's existing U.S. citizenship criteria for its Vessel Operators (ship managers and agents) benefit the Nation's maritime commercial and national security interests and provide the most current, effective and best approach for supporting NDRF operations. The agency last examined this regulation after seeking public comment in 1993. At that time, no changes to the existing citizenship requirement were proposed.

  MARAD has no pre-determined judgment regarding changes to its citizenship regulations for Vessel Operators, and no changes are being proposed at this time. Comments received in response to the ANPRM will assist MARAD in determining whether any changes to the existing regulation should be proposed. In the event that MARAD were to propose any changes to the citizenship requirement, the agency would issue a Notice of Proposed Rulemaking (NPRM) providing the public and stakeholders with an opportunity to provide comments regarding any proposed changes.

- *What does it hope to gain? Is this consistent with MARAD's mission to promote the U.S. Merchant Marine?*

  MARAD's consistent focus is on its mission to promote the U.S. Merchant Marine with the goal of furthering the commercial and national defense interests of the United States. The ANPRM merely seeks to information upon which future policy determinations might be based.

  The primary goal of the ANPRM is to invite comments examining the agency's existing U.S. citizenship criteria for its Vessel Operators. Comments will be requested regarding specific issues affected by the citizenship eligibility requirements. MARAD wants to ensure that our citizenship standard best fulfills our role as the commercial and government-owned sealift fleet manager for the United States.

  The ANRPM also would provide an opportunity to receive related comments on how to improve NDRF operations more generally. MARAD believes that an ANPRM related to ship manager and general agent citizenship criteria is entirely consistent with the agency's mission to foster, promote and develop the U.S. merchant marine.

Statement of

Thomas A. Allegretti
President & CEO
The American Waterways Operators

Maritime Transportation Regulations:
Impacts on Safety, Security, Jobs and the Environment, Part I

Before the
Subcommittee on Coast Guard and Maritime Transportation
Committee on Transportation and Infrastructure
United States House of Representatives
Washington, DC

September 10, 2013

Good morning, Chairman Hunter, Ranking Member Garamendi, and Members of the Subcommittee. Thank you for the opportunity to testify today. I am Tom Allegretti, President & CEO of The American Waterways Operators, the national trade association for the tugboat, towboat and barge industry. AWO's 350 member companies own and operate barges and towing vessels operating on the U.S. inland and intracoastal waterways; the Atlantic, Pacific and Gulf coasts; and the Great Lakes. Our industry's 5,000 towing vessels and 27,000 barges comprise the largest segment of the U.S.-flag fleet, providing family-wage jobs and meaningful career opportunities for tens of thousands of American mariners. Each year, our industry safely, securely and efficiently moves more than 800 million tons of cargo critical to the U.S. economy, including petroleum products, chemicals, coal, grain, steel, aggregates, and containers. Tugboats also provide essential services in our nation's ports and harbors, including shipdocking, tanker escort and bunkering.

AWO very much appreciates your holding this hearing on maritime transportation regulations and their impacts on safety, security, jobs and the environment – and I assure you, AWO members have much to say on this subject! But, the message I bring to you on their behalf today focuses on just one of the scores of regulations promulgated by the Coast Guard and other federal agencies that affect our industry. We are here today to emphasize the need for prompt publication, either later this year or early next year, of a Coast Guard rule on towing vessel inspection (or "Subchapter M") that is consistent with the intent of Congress and with the recommendations of the congressionally authorized Towing Safety Advisory Committee. Said differently, we need to get the towing vessel inspection rule done, and done right, right away.

Doing so will advance our shared goals of improving safety, security and environmental stewardship in a way that supports and sustains high-quality American jobs.

As you know, Congress directed the Coast Guard to undertake this rulemaking more than nine years ago, in the Coast Guard and Maritime Transportation Act of 2004. Three years ago, the 2010 Coast Guard and Maritime Transportation Act established a statutory deadline of October 15, 2011, for issuance of a final rule – a deadline that is now nearly two years in arrears. Those facts alone create a cause for immediate action.

But, the dry language of dates and deadlines does not tell the whole story, a story of opportunity, vulnerability, and widespread public support that only makes the cause for action more compelling. Simply put, the towing vessel inspection rulemaking offers a historic opportunity to take safety in the tugboat, towboat and barge industry to a new level, akin to the transformation of the oil transportation industry after the Oil Pollution Act of 1990. We collectively – the Administration, Congress, and our industry – have real vulnerability and will face hard questions from the American public if this long-overdue rulemaking is not finalized soon and, God forbid, a serious accident occurs. Moreover, there is widespread – indeed, overwhelming – industry and public support for moving forward with this rule; rather remarkably for a regulatory undertaking of this significance, AWO is aware of no organized constituency arguing against it. Taken together, these facts underscore that the way forward is clear and the time to act is now.

Let me elaborate a bit on each of these points, starting with the opportunity that we have, and that we fail to seize, each day that this rulemaking continues on its slow course through the

federal bureaucracy. For more than 20 years, the tugboat, towboat and barge industry has been engaged on a journey of continuous improvement. (We have tried to capture graphically the highlights of this journey on the attachment to this testimony.) The Coast Guard, Congress, and our industry's shipper-customers have been active partners in that journey, encouraging and rightly demanding that we strive daily to achieve the goal of zero harm to human life, to the environment, and to property as we transport the nation's waterborne commerce. The journey has been marked by private sector leadership – the AWO Responsible Carrier Program, the Coast Guard-AWO Safety Partnership, rigorous customer vetting of companies and vessels – and responsible public policymaking, from OPA 90 to the 2004 law that gave rise to this rulemaking to the inclusive and thoughtful process by which the Coast Guard has engaged stakeholders throughout the development of the proposed Subchapter M.

That journey has produced meaningful results; a 2012 Coast Guard Report to Congress credited the combination of these private and public sector initiatives with producing a dramatic decline in oil spills from tank barges over the past two decades. But, we have not yet achieved our goal of zero harm, and we believe the most important step that we can take – a critical missing link in the safety chain – is publication of the towing vessel inspection rule. This rule will raise safety standards throughout the tugboat, towboat and barge industry, incorporating and building on the safeguards that quality companies have already put in place and ensuring that <u>all</u> vessels achieve a minimum threshold of safety that is necessary to protect lives, the environment and property.

The flip side of opportunity is vulnerability, and I submit that we face real vulnerability if these important regulations are not promulgated soon. Thirteen years ago, the National Transportation

Safety Board published a report on the 1998 accident involving the ramming of the Eads Bridge in St. Louis Harbor by barges in tow of the *M/V Ann Holly*, and the subsequent ramming and near breakaway of the *President Casino on the Admiral*, with 2,000 passengers aboard. The NTSB recommended that the Coast Guard seek the statutory authority to require domestic towing companies to develop and implement safety management systems, writing that "the lack of a safety management system requirement for all U.S. towing industry companies represents a threat to waterway safety." Use of a safety management system to ensure continuous oversight of the operation and maintenance of a company's towing vessels is a key component of the Subchapter M rulemaking that has been strongly and repeatedly endorsed by TSAC. AWO has also voiced our strong support for the inclusion of a safety management system requirement in the forthcoming rule.

Five years ago, after another serious accident – the 2008 *Mel Oliver/Tintomara* collision in which more than 282,000 gallons of oil was spilled into the Lower Mississippi River – I testified before this subcommittee on actions needed to prevent such incidents. Two of the three actions I recommended have been implemented – changes to the AWO procedure for notifying members when a company has failed a Responsible Carrier Program audit, and a targeted Coast Guard enforcement program to focus governmental attention on companies with marginal operating practices and poor safety records. My third recommendation focused on the need for prompt publication of the towing vessel inspection rulemaking. I said then, and I believe today, that had the Subchapter M regulations been in place, including the safety management system requirement recommended by TSAC, the *Mel Oliver/Tintomara* collision might have been prevented. Non-compliance with a safety management system is a leading indicator of casualties,

and the Coast Guard would have been notified when the operator of the *Mel Oliver* failed a safety management system audit prior to the casualty. This would have forced the company to improve its procedures or risk losing its license to operate – its vessels' Certificate of Inspection.

Mr. Chairman, Ranking Member Garamendi, AWO understands that the federal rulemaking process takes time. We know that there are procedural requirements that must be met and economic impact studies that must be conducted. We recognize that these requirements are meant to protect industry and the public by ensuring that federal regulations are well thought out and not unduly burdensome. But, we are very frustrated that this congressionally mandated rulemaking has taken so long, and that there is no clear end in sight. We are especially frustrated because the benefits of action are so great, the consequences of inaction are so severe, and our industry is asking to be regulated! (Yes, you heard that right.) The fact is that while there are a myriad of technical details to get right, this rulemaking is not particularly controversial. There is widespread support from industry, from the public, and from bipartisan Members of Congress for moving forward with the central tenets of this rulemaking. There is a nine-year history of TSAC recommendations that offer a clear roadmap for finalizing the proposed rule. And, there is a very strong public docket that contains all the information needed to refine the notice of proposed rulemaking and get the regulation right.

AWO is especially concerned about the potential for delays given the transition at the Department of Homeland Security and the recent departure of Secretary Napolitano. We are very concerned that the Coast Guard will finish its work on the Subchapter M rulemaking, only to have it languish at the department. This is not a hypothetical concern; the notice of proposed

rulemaking on towing vessel inspection was sent to DHS in early 2009 and was not published in the *Federal Register* until August 2011 – more than two years later! We cannot afford a delay of that magnitude again.

In conclusion, here is what we recommend:

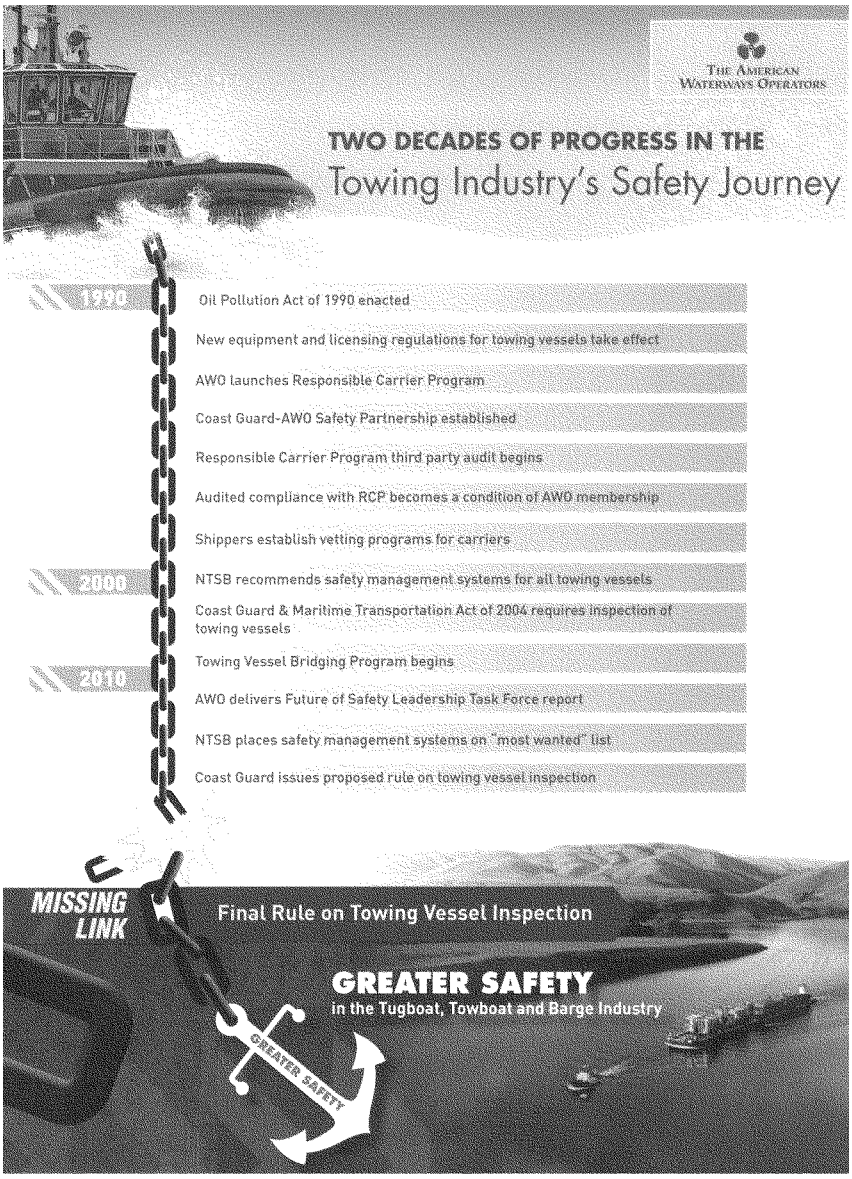
- First, we urge the Coast Guard to commit to finalizing the towing vessel inspection rule and sending it to DHS for review this fall. Recognizing the importance of getting the rule right as well as getting it done fast, we urge the agency to carefully review the TSAC recommendations – and in particular, the committee's 2011 report on the notice of proposed rulemaking – and use those recommendations to perfect the proposed rule. Given the numerous technical details involved in a rule of this scope, we also urge that the regulations be published as an interim final rule with request for public comment. This procedural mechanism will allow the Coast Guard to identify any final technical changes needed before the regulations take full effect.

- Second, we urge the Coast Guard to work with DHS to develop a mechanism for prompt review of the towing vessel inspection rulemaking when it is sent to the department. We urge the department to complete its review process this year, so that the rule can be published next spring following final review by the Office of Management and Budget, during this Commandant's watch.

- Third, we urge Congress to continue to exercise its oversight mission and ensure that the towing vessel inspection rule is published without further delay. Today's hearing is a

useful step in that oversight process, and we urge you to encourage the Coast Guard and the Department of Homeland Security to publish an interim final rule early next year.

Chairman Hunter, Ranking Member Garamendi, thank you again for the opportunity to testify today on a matter of utmost concern to our industry, and more importantly, an issue of utmost importance to marine safety. We appreciate your leadership and we look forward to your continued partnership with the Coast Guard and with our industry to advance our mutual goal of a safe, secure, environmentally sound marine transportation system that is good for America and for the Americans who work in our industry.


The American Waterways Operators
TWO DECADES OF PROGRESS IN THE
Towing Industry's Safety Journey
1990
Oil Pollution Act of 1990 enacted
New equipment and licensing regulations for towing vessels take effect
AWO launches Responsible Carrier Program
Coast Guard-AWO Safety Partnership established
Responsible Carrier Program third party audit begins
Audited compliance with RCP becomes a condition of AWO membership
Shippers establish vetting programs for carriers
2000
NTSB recommends safety management systems for all towing vessels
Coast Guard & Maritime Transportation Act of 2004 requires inspection of towing vessels
Towing Vessel Bridging Program begins
2010
AWO delivers Future of Safety Leadership Task Force report
NTSB places safety management systems on "most wanted" list
Coast Guard issues proposed rule on towing vessel inspection
MISSING LINK
Final Rule on Towing Vessel Inspection
GREATER SAFETY
in the Tugboat, Towboat and Barge Industry
GREATER SAFETY

Subcommittee on Coast Guard and Maritime Transportation
Hearing on Maritime Transportation Regulations:
Impact on Safety, Security, Jobs and the Environment; Part I
Tuesday, September 10, 2013

Questions for the Record to Mr. Thomas A. Allegretti,
President, The American Waterways Operators

Questions from the Honorable John Garamendi (D-CA)

Towing Vessel Safety Rulemaking

Mr. Allegretti, in your written testimony for the hearing, you stated that there are technical details the Coast Guard needs to get right in finalizing the towing vessel inspection rulemaking.

- *What are the most important of these from AWO's perspective?*

A: I would cite three issues that have been the subject of extensive commentary by the congressionally established Towing Safety Advisory Committee, as well as by AWO:

- First, the importance of requiring all towing vessels to be covered by a safety management system. The safety benefits of a safety management system are too great to make an SMS voluntary, as we discussed in our written testimony for the hearing.

- Second, the need to fix certain proposed equipment requirements that were not vetted with TSAC prior to publication of the proposed rule and that impose costs vastly out of proportion to risks and benefits. These include requirements for fully independent, redundant means of propulsion, steering and related control measures for towing vessels moving tank barges and electrical system requirements for existing towing vessels. The proposed requirements are problematic, but TSAC, AWO, and many other stakeholders have provided solid information on the docket that gives the Coast Guard all the information it needs to correct the proposal.

- And third, the need for conforming amendments to certain manning and credentialing regulations so that mariners working on towing vessels today can continue to work on the same types of vessels once Subchapter M is in place without having to get a new or different Coast Guard credential. The Coast Guard has been very clear that its intent is not to use the Subchapter M regulations to change manning requirements for towing vessels, and TSAC has strongly supported this approach. There is a need to make minor modifications to certain requirements regarding persons in charge of fuel transfers,

pilotage, and engineers so that mariners on towing vessels are not disenfranchised from working on the same vessels or types of vessels after Subchapter M is finalized. Again, there are real consequences to getting this wrong, but there is also a solid docket of information that the Coast Guard can use to amend the regulations to avoid these problems.

- *Is your organization opposed to the "Coast Guard option," which would give a company a choice of whether to implement a safety management system as part of the towing vessel inspection rulemaking?*

A: AWO is not opposed to a company using a Coast Guard inspector to directly verify compliance with Subchapter M. However, we are opposed to making a safety management system optional. The benefits of safety management systems are too great—as the NTSB, the Coast Guard, and companies throughout our industry have recognized from their own experience. In our view, it should be entirely possible for the Coast Guard to issue a final rule that requires all towing companies to have a safety management system appropriate to the size and scale of their operation, but that also allows a company to use a "Coast Guard option" for verifying compliance with the regulations.

Good companies already understand that the Coast Guard can't be the conscience of every towing vessel operator, 24 hours a day, 365 days a year. The great value of a safety management system is that it instills that responsibility for safety with each company and with each crew on every boat. That is essential to improve safety performance.

According to briefings provided by the Coast Guard, it sounds as if there are a lot of things in the proposed rule that need to be fixed before they can publish a final rule. Nonetheless, your organization is strongly supportive of the Coast Guard publishing a final rule.

- *Are you sure you want the Coast Guard to hurry up and get the final rule out? What issues for your industry will be resolved once the Coast Guard publishes a final rule?*

A: In our view, the proposition that the Coast Guard must choose between "hurrying up" and producing a quick rule or taking the time to produce a good rule is a false choice. The public comment period for the notice of proposed rulemaking closed nearly two years ago, in December 2011. There are 265 comment letters on the docket, many of which make very similar points. The Coast Guard has all of the information it needs on the docket to make the needed changes and get the rule right, and it has had ample time to do so. It is noteworthy that the biggest problems with the proposed rule – the issues that generated the largest number of critical

comments – are areas where the Coast Guard either deviated from the recommendations of TSAC or included provisions that it hadn't fully vetted with TSAC. We would urge the Coast Guard to give the TSAC recommendations great weight as it works to finalize the rule.

We also recommend that the Coast Guard use the mechanism of an interim final rule, with a request for public comments, so that if the agency does get an important technical detail wrong, it can use public comment to correct it. Taking this approach, the Coast Guard would publish the rule with an effective date sometime in the future and then request public comment for some period of time after the interim final rule is published. If public comments brought to light issues that must be fixed before the rule takes effect, the agency could either publish a revision to the rule before the effective date, or suspend the effective date of the problematic provision while it does the additional work necessary to fix it. This process has been used before and it can certainly work in this case. It has the obvious benefit of allowing this much-needed regulation to go forward expeditiously, but also providing a safety net for any technical detail that needs correction.

As I stated in my testimony, putting this long-overdue rulemaking in place is a critical step in our industry's safety journey. It is necessary to raise safety standards throughout the tugboat, towboat and barge industry and take us to the next level of safety, security and environmental performance. While safety is a process of continuous improvement and not something that can ever be considered "resolved," getting the final rule published will go a long way toward further reducing fatalities, accidents, and pollution incidents in the largest segment of the U.S.-flag vessel fleet.

It is also worth noting that, given the Coast Guard's personnel rotation practices, delay begets further delay in the rulemaking process. When a decisionmaker in the chain of command on this rulemaking moves on to a new assignment, his or her successor cannot simply pick up where the previous officer left off. There is a "one step forward, one step back" dynamic as new decisionmakers get educated on the background, the details, etc., and then have the opportunity to put their own stamp on the rulemaking. We believe the Coast Guard has all the information it needs to finalize this rulemaking before another round of personnel rotations takes place.

The preamble to the towing vessel inspection NPRM proposed that towing vessel watch standing schedules be altered to require a daily minimum of seven to eight hours of uninterrupted sleep for personnel working on tug and tow vessels.

- *Does AWO agree with the Coast Guard's position as outlined in the NPRM?*

- *Was this not also the recommendation of the National Transportation Safety Board? Does your organization also disagree with the analysis compiled by the NTSB regarding appropriate hours of service?*
- *Why should tug and towboat operators not be subject to the same STCW hours of service requirements as other marine operators?*

A: We do not agree with the approach proposed in the preamble to the towing vessel inspection NPRM, and we note that the comment to the docket from the NTSB on this subject contained no independent analysis, but simply restated and expressed support for the Coast Guard's proposal.

The approach proposed in the preamble to the NPRM would subject towing vessel operators to a standard required of no one else in the maritime industry. Moreover, there is a significant and growing body of scientific evidence that there is more than one way for transportation workers to get the quality and quantity of sleep that they need to operate safely, and that "split sleep" – that is, obtaining the necessary seven to eight hours of sleep in two blocks – is a scientifically valid approach. AWO's comments on the NPRM include an appendix authored by Dr. Fred Turek and Dr. Kathy Reid of the Center for Sleep and Circadian Biology at Northwestern University that presents a thorough critique of the preamble discussion and demonstrates persuasively that the Coast Guard has failed to make the case that the proposed changes are supported by the scientific literature.

AWO believes that a better and more effective approach to addressing fatigue prevention and crew endurance management is to require companies to include a fatigue/crew endurance program in their safety management system, as recommended by TSAC. We are continuing to work with the Coast Guard to define the essential elements of a fatigue and crew endurance management program and establish performance indicators to measure the effectiveness of such programs.

With respect to STCW, seagoing towing vessels are subject to the requirements of the Convention just as other seagoing vessels are. STCW requires that mariners on vessels subject to the Convention obtain a minimum of 10 hours of rest in any 24-hour period and 77 hours of rest in any seven-day period. The hours of rest may be divided into no more than two periods, one of which must be at least six hours in length. AWO members operating towing vessels subject to STCW comply fully with these requirements, which are compatible with current watchstanding practices in the tugboat, towboat and barge industry and do not include a requirement for 7-8 hours of uninterrupted sleep as discussed in the preamble to the towing vessel inspection NPRM.

Written Statement for the Record of

USA MARITIME

Before the

Subcommittee on Coast Guard and Maritime Transportation
Committee on Transportation and Infrastructure
U.S. House of Representatives

Maritime Transportation Regulations: Impacts on Safety, Security, Jobs and the Environment, Part I

September 10, 2013

Statement of

USA MARITIME

Maritime Transportation Regulations: Impacts on Safety, Security, Jobs and the Environment, Part I

September 10, 2013

I. Introduction

USA Maritime is a coalition of ship owning companies, maritime labor organizations and maritime trade associations which directly or indirectly represent virtually every one of the privately owned U.S.-flag oceangoing commercial vessels operating regularly in the U.S. foreign trade which participate in the Maritime Security Program and which depend on cargo preference. USA Maritime is pleased to provide a statement for the record in the examination by the Subcommittee on Coast Guard and Maritime Transportation of some of the issues facing the U.S.-flag fleet trading internationally.

II. Summary

USA Maritime strongly supports existing cargo preference laws and existing cargo preference regulations. Cargo preference is a necessary and cost-efficient way to help sustain the privately owned U.S.-flag commercial fleet, which is a critical national defense asset. Without a fully funded Maritime Security Program and full compliance with cargo preference requirements, the U.S. Government would have to spend far in excess of the cost of these programs to replicate the national security capabilities of the privately owned U.S.-flag commercial fleet. Unfortunately, the history of cargo

preference administration indicates that cargo reservation requirements are often not self-enforcing and strict U.S. Maritime Administration (MARAD) oversight is necessary to ensure that the law is followed and its purposes fulfilled across the U.S. Government. Now, more than ever, rigorous enforcement of cargo preference requirements is needed to preserve and grow the existing fleet of militarily useful U.S.-flag oceangoing vessels in an era of budget austerity. Through this review, the Subcommittee on Coast Guard and Maritime Transportation has an opportunity to improve MARAD's oversight of cargo preference requirements and thereby achieve MARAD's mission of promoting the U.S. merchant marine by ensuring that U.S. Government-impelled cargo is in fact carried by U.S.-flag vessels.

III. Cargo Preference is a Necessary and Cost-Efficient Way to Sustain the Privately Owned U.S.-Flag Commercial Fleet – a Critical National Defense Asset

A. The Private U.S. Merchant Marine is Critical to National Defense

Throughout its history, the United States has depended upon a viable U.S.-flag merchant marine for its economic and military national security. In his second annual address to Congress on December 8, 1790, President George Washington encouraged Congress to "render our commerce and agriculture less dependent on foreign bottoms."[1] This proscription remains just as relevant 223 years later.

The maintenance of a strong privately owned U.S.-flag merchant marine is an essential part of our Nation's official national security strategy. According to National Security Directive 28, which was signed by President Bush in 1989, and which still governs sealift policy:

[1] Second Annual Address of George Washington (Dec. 8, 1790), in Edwin Williams, The Statesman's Manual 37 (1854).

> Sealift is essential both to executing this country's forward defense strategy and to maintaining a wartime economy. The United States' national sealift objective is to ensure that sufficient military and civil maritime resources will be available to meet defense deployment, and essential economic requirements in support of our national security strategy.[2]

This policy is reflected in current pronouncements. For example, the Department of the Navy's fiscal year 2012 budget request provides that:

> This budget supports maintaining a robust strategic sealift capability to rapidly concentrate and sustain forces and to enable joint and/or combined campaigns. This capability relies on maintaining a strong U.S. commercial maritime transportation industry and its critical intermodal assets.

As stated succinctly by General John W. Handy (then Commander, U.S. Transportation Command) in 2002 – "We simply cannot, as a nation fight the fight without the partnership of the commercial maritime industry."[3]

The fleet of privately owned U.S.-flag vessels supported by cargo preference laws and the Maritime Security Program has proven in recent years to be instrumental to the supply and support of our troops abroad. The privately owned U.S. merchant fleet has transported over 90 percent of the equipment and supplies used in the conflicts in Iraq and Afghanistan at a fraction of the cost of other alternatives.[4] As

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[2] National Security Directive 28 (Oct. 5, 1989).

[3] Statement of General John W. Handy, Commander, U.S. Transportation Command before the House Armed Services Committee, Merchant Marine Panel on the Maritime Security Program (MSP) (Oct. 8, 2002). Similarly, the Navy League of the United States has indicated that "[t]he ability to access this maritime capability of ships [the U.S.-flag commercial fleet] and seafarers is essential to our national and economic security." Navy League of the United States, Maritime Policy 2011-12 at 17.

[4] Senate Armed Services Committee, Hearing on the Defense Authorization Proposed Budget Request for Fiscal Year 2012 and Future Years, U.S. Transportation Command and U.S. Africa Command (April 7, 2011) (Statement of General Duncan J. McNabb) at 14.

General Duncan J. McNabb, then Commander, U.S. Transportation Command informed the U.S. Congress – "USTRANSCOM's partnership with the U.S. commercial sealift industry and the Department of Transportation has been vitally important in developing new routes for conveying cargo around the globe – particularly to regions with undeveloped infrastructure."[5]

The fleet of privately owned U.S.-flag vessels also employs the pool of trained U.S. citizen merchant mariners essential to support the U.S. Government's sealift objectives. As indicated by the Navy League of the United States – "Skilled Mariners are more critical than ever to ensuring our ability to sustain U.S. national and global security interests."[6] As we know this Subcommittee is well aware, the U.S. Government cannot mobilize its fleet of reserve vessels held in inactive and active status without that pool of mariners actively employed by the privately owned U.S.-flag fleet.

B. The U.S.-Flag Fleet Depends on Cargo Preference

The cargo preference laws are essential to maintaining a commercial U.S. -flag merchant marine. Virtually every privately owned U.S.-flag vessel engaged in the foreign trade depends to some degree on cargo preference to remain economically viable.[7] Indeed, absent cargo preference, it is no exaggeration at all to say that the U.S.-flag fleet in foreign commerce would disappear and the U.S. Government would have to duplicate that sealift capability at enormous expense with government-owned

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[5] Id. at 15.

[6] Navy League of the United States, Maritime Policy 2011-12 at 17.

[7] *E.g.* Econometrica, Inc., "Maritime Security Program Impact Evaluation," Submitted to the U.S. Department of Transportation, Maritime Administration (July 2009) at 26-27, 45.

vessels. As then Senator Barack Obama indicated in 2008 – "A strong U.S.-flag commercial fleet needs our nation's cargo preference laws."[8]

As stated by General Duncan J. McNabb, then Commander, U.S. Transportation Command, on April 7, 2011 to the Senate Armed Services Committee (emphasis added) –

> We have a commercial-first if we can use commercial. It's the cheapest way to do it. It keeps our U.S.-flag fleet strong. It's good for jobs. All of those things are positive and that's what we do. They have done superbly.
>
> . . . so what happens to the U.S.-flag fleet as we come down perhaps on some of the requirements that we're depending on them now, and we are working closely with them to make sure that we maintain the robustness. *They do depend absolutely on cargo preference. They absolutely do depend on our maritime security program, MSP. And those two programs are really valuable so that we keep a very, very strong U.S.-flag fleet, which is in the interest of the taxpayer and in the interest of the warfighter.*[9]

Similarly, in a May 4, 2011 letter to Rep. Steven C. LaTourette, Gen. McNabb stated that –

> The movement of U.S. international food aid has been a major contributor to the cargo we have moved under the cargo preference law that our U.S. commercial sealift industry depends on. Any reductions will have to be offset in other ways to maintain current DoD sealift readiness.

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[8] Letter from Sen. Barack Obama to Presidents of Maritime Unions, available at http://www.maritimetrades.or/article.php?sid=18&pid=992.

[9] Senate Armed Services Committee, Hearing on the Defense Authorization Proposed Budget Request for Fiscal Year 2012 and Future Years on the U.S. Transportation Command and U.S. Africa Command (April 7, 2011) (testimony of General Duncan J. McNabb).

C. Cargo Preference is a Cost-Efficient Way to Support a Privately Owned U.S.-Flag Fleet

Cargo preference rests on the common sense idea that the U.S. Government should reserve a portion of the ocean cargo it generates, either directly or indirectly, to U.S. companies, just as it generally makes its other purchases within the United States. U.S.-flag vessels fly the American flag, are owned by American companies and employ civilian American officers and crews.

Cargo preference is a highly cost efficient way to support a privately owned U.S.-flag commercial fleet. Cargo preference leverages the cost of shipping goods and commodities to provide a national security benefit. Specifically, the cost of shipping -- which if spent on foreign vessels would provide the U.S. no national security benefit and virtually no U.S.- economic activity -- is used under cargo preference to obtain a national security capability (a fleet of militarily useful U.S.-flag vessels), support U.S. jobs, stimulate U.S. economic activity *and* obtain the needed ocean transportation services. In fact, a July 2009 study for MARAD determined that it would cost approximately $13 billion in capital cost just to duplicate a portion of the commercial sealift capability provided by the commercial fleet of U.S.-flag vessels supported by cargo preference and the Maritime Security Program.[10] The U.S. Transportation Command estimates that it would cost an additional $52 billion to replicate the

[10] Econometrica, Inc., "Maritime Security Program Impact Evaluation," Submitted to the U.S. Department of Transportation, Maritime Administration (July 2009) at 2.

intermodal systems developed by U.S.-flag carriers and their affiliates operating in the foreign trade.[11]

Even if U.S.-flag transportation costs more, it is more than offset by the direct purchases made by U.S. ship owners and crews throughout the United States and the Federal, state and local taxes paid by ship owners and their crews. A 1995 study determined that every dollar spent by the federal government on U.S.-flag transportation led to $1.26 in federal income tax revenue when all of the economic impact was considered.[12]

IV. Cargo Preference Cannot Achieve Its Purpose Without Effective MARAD Enforcement

A. The Purpose of Cargo Preference is to Support a Private U.S. Merchant Marine

As an amendment to the Merchant Marine Act, 1936, the Cargo Preference Act of 1954 became part and parcel of the overall statutory purposes driving U.S. maritime policy contained in the 1936 Act. As codified in 2006, these purposes remain the guide for all policies affecting the U.S. merchant marine. Thus, one purpose of cargo preference, like other U.S. Government maritime programs is to promote having "a merchant marine . . . capable of serving as a naval and military auxiliary in time of war or national emergency . . . owned and operated as vessels of the United States by citizens of the United States . . . manned with a trained and efficient citizen personnel."

In the words of a Presidential Directive issued by President John F. Kennedy in 1962—

[11] Id. at 29.

[12] Nathan Associates Inc., "Economic Analysis of Federal Support for the Private Merchant Marine" (Jan. 1995).

> The policy of the United States is to have a modern, privately owned, merchant marine sufficient to carry a substantial portion of the waterborne export and import foreign commerce of the United States and capable of serving as a naval and military auxiliary in time of war or national emergency. The achievement of this national policy is even more essential now because of the worldwide economic and defense burdens facing the United States. For these reasons, I stated in my message on transportation to the Congress of the United States, on April 4, 1962, that I was directing all executive agencies to comply fully with the purpose of our various cargo preference laws.[13]

In the words of President Obama's fiscal year 2012 budget request and MARAD's fiscal year 2012 budget request – "Cargo preference provides a revenue source to help sustain a privately-owned U.S. flag merchant marine . . . ".[14]

B. MARAD is Responsible for Promoting the Merchant Marine Through Cargo Preference

MARAD is chiefly responsible for promoting the maritime objectives of the U.S. Government. According to MARAD's 2008 Annual Report to Congress – "The Maritime Administration is at the forefront in maintaining a strong and visible U.S.-flag fleet through a number of statutory programs, including the reservation for transportation on U.S.-flag vessels of certain government-impelled, ocean-borne cargo in international trade."[15] Regrettably, MARAD has not kept up its part since 2008.

MARAD's responsibilities are reflected in the Cargo Preference Act of 1954. From 1970 to 2008 that Act provided that any "agency having responsibility under this

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[13] Senate Committee on Commerce, Report on Implementation of the Cargo Preference Laws by the Administrative Departments and Agencies," 87th Cong., 2d Sess. (Report No. 2286) (Oct. 8, 1962) at 43.

[14] Office of Management and Budget, Fiscal Year 2012, Appendix, Budget of the U.S. Government at 962; Maritime Administration, Budget Estimates, Fiscal Year 2012 at 80.

[15] The Maritime Administration Annual Report to Congress 2008 at 15.

section shall administer its programs with respect to this section under regulations prescribed by the Secretary of Transportation." In 2008, Congress made it even clearer that it was MARAD's responsibility to enforce the Cargo Preference Act of 1954 by adding language as follows—

> Each department or agency that has responsibility for a program under this section shall administer that program with respect to this section under regulations and guidance issued by the Secretary of Transportation. The Secretary, after consulting with the department or agency or organization or person involved, *shall have the sole responsibility* for determining if a program is subject to the requirements of this section.[16]

The Congressional conference report accompanying the enactment of MARAD's cargo preference authority states clearly that Congress placed these responsibilities on MARAD for two reasons – (1) to ensure uniform administration of cargo preference agency-by-agency; and (2) to ensure that the purpose of promoting the U.S. merchant marine via cargo preference was fulfilled. Specifically, the conference report provided that—

> There is a clear need for a centralized control over the administration of preference cargoes. In the absence of such control, the various agencies charged with administration of cargo preference laws have adopted varying practices and policies, many of which are not American shipping oriented. *Since these laws were designed by Congress to benefit American shipping, they should be administered to provide maximum benefits to the American merchant marine.* Localizing responsibility in the Secretary to issue standards to administer these cargo preference laws gives the best assurance that the objectives of these laws will be realized.[17]

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[16] Pub. L. No. 110-417, § 3511, 122 Stat. 4356, 4769-70 (2008) (emphasis added).

[17] Conf. Report No. 91-1555 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4260 (emphasis added).

USA Maritime believes strongly that these MARAD responsibilities remain as important today, if not more important, than they have been in the last 45 years.

C. Cargo Preference Compliance Has Not Always Been Automatic

All too often, cargo preference is either not complied with at all or applied in a way as to make it ineffective. This is not a new phenomenon. For example, the U.S. Senate Commerce Committee found in 1962 that –

> [T]here has been evidenced in at least several of the administrative departments an apparent desire on the part of those responsible for shipping arrangements to evade the cargo preference requirement whenever opportunity offered.

And, unfortunately, the 1962 Senate Commerce Committee Report could have been written today. In that report, the Committee found, among other things, that agencies shipping international food aid "had revised certain procedures [charter terms] for the handling of Government-financed cargoes, to the detriment of U.S.-flag vessel owners," that petroleum had been purchased on a "destination delivered basis" which excluded U.S.-flag carriers and that U.S.-flag ship owners were not given sufficient opportunity to bid for the carriage of materials sent overseas by the U.S. Government for overseas construction of aid projects.

For example, the U.S. Agency for International Development has undertaken procurements in the billions of dollars in Iraq, Afghanistan and Pakistan and has routinely avoided cargo preference when ocean transportation was involved. Numerous cargo preference waivers have been granted by USAID for shipments without USAID involving MARAD in the waiver process or canvassing the U.S.-flag carriers to validate

assumptions that no U.S.-flag service was available. Had either MARAD or the carriers been involved, they would have had the opportunity offer service for the shipments.

In another instance, the U.S. Department of Energy issued billions of dollars of loan guarantees and avoided cargo preference throughout until the industry prompted MARAD to take a stand on the application of cargo preference. Although the application of cargo preference to those guarantees should not have been in doubt, it took months to persuade DOE to alter its position and even then U.S.-flag carriers have carried virtually none of the cargoes shipped under that program.

These and many other instances show that MARAD should make it a top priority to improve its regulations so as to ensure cargo preference compliance.

V. MARAD Should Improve Its Oversight of Cargo Preference Requirements

The need to improve oversight of cargo preference is greater than ever. Over time, the U.S. Department of Defense has increased reliance on the privately owned U.S.-flag commercial fleet. Yet, the cargo base that supports the U.S.-flag fleet is in decline. The United States has closed many bases around the world. The conflict in Iraq has drawn down, and the conflict in Afghanistan is drawing down. The reservation percentage applicable to U.S. international food aid cargoes was reduced from 75 percent to 50 percent in 2012 – with disastrous effects on the U.S.-flag fleet. Moreover, the U.S. Government has already reduced significantly its spending on international food aid and the Obama Administration has proposed eliminating in-kind U.S. international food aid altogether in favor of cash assistance – a proposal to which USA Maritime is adamantly opposed.

The need, therefore, is great for MARAD to undertake rigorous enforcement of the existing cargo preference laws to ensure that the requirements apply where, by law, they should apply and to ensure that agencies and contracting officers follow the letter and spirit of the requirements. President Kennedy's direction to federal agencies not to treat cargo preference as a minimum but rather a proscription that U.S.-flag vessels should be followed as much as possible.

Almost exactly two years ago – on September 30, 2011 – MARAD held a listening session on what it could do to improve its administration of cargo preference. Industry commenters universally demanded that MARAD do its job and promulgate regulations to implement the 2008 cargo preference amendment enacted by Congress as soon as possible.

Now it is two years later and nothing has been done. The industry can no longer wait for MARAD and implores this Subcommittee and the full Committee to use its influence to institute the long overdue regulations.

VI. Conclusion

Perhaps nothing is more important to the viability of the privately owned U.S.-flag commercial fleet than adequate cargo preference enforcement. MARAD must substantially improve its cargo preference efforts to prevent a significant decrease in the number of vessels under U.S.-flag.

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- Seafarers International Union (SIU)
- Transportation Institute
- United Maritime Group LLC
- Waterman Steamship Corporation

Captain William G. Schubert
on behalf of USA Maritime
responses to questions from Representative John Garamendi of California

Cargo Preference

Since 1954, passage of the Cargo Preference Act has required that at least 50 percent (expanded later to 75 percent in 1989 and recently reduced to 50 percent as part of MAP-21) of Federal agency cargo exported abroad must be reserved for U.S. flagged vessels. This policy has provided an invaluable source of cargo to allow U.S. flag foreign trade carriers to remain viable and has complemented other programs to sustain the U.S. Merchant Marine, notably the Maritime Security Program (MSP). Even though it has been longstanding law, compliance by Federal agencies has been poor and MARAD's enforcement indifferent or ineffective. Recent proposals to cut back cargo preference by restructuring the Food for Peace Program (PL 480) reaffirms that cargo preference requirements are under scrutiny and subject to revisions which may undermine an important pillar supporting the U.S. Merchant Marine.

- *MARAD's effectiveness at enforcing existing cargo preference requirements has been called into question. What should MARAD do to improve compliance with existing law? Are there statutory changes that the Congress should consider making?*
- *Are there additional Federal agency cargoes that should fall under existing cargo preference requirements?*

1. Over the years, uncertainty about the applicability of the cargo preference laws to the programs of various federal departments and agencies has resulted in uneven enforcement, which has led to the U.S.-flag fleet losing cargo to foreign-flag competition. The 2009 National Defense Authorization Act (P.L. 110-417) clarified that cargo preference applies whenever the federal government provides financing in any way to any person or organization (unless otherwise exempted). Further, it required MARAD to issue regulations that clearly identify the agency as the sole federal entity charged with determining and enforcing the application of cargo preference laws within the government. As such, all affected agencies, organizations, and persons will be held to the obligation to comply with cargo preference requirements.

   The FY09 NDAA provided MARAD with real enforcement authority, including the ability to require that agencies make up for cargo volumes improperly shipped via foreign-flag vessels. It also allowed for MARAD to impose civil penalties for willful violations, which is critically important to ensure that violators are held accountable for non-compliance. Without such enforcement, the other requirements in the FY09 NDAA provision will have far less value.

   Without further delay, MARAD should commence issuing these regulations and ensure that they are written in such a way that allows the agency to enforce the law as it was enacted by Congress. Unfortunately, it is our understanding that the Administration is not likely to approve regulations that are strong enough to ensure compliance with cargo preference laws. Further, it does not appear that the regulations under consideration provide MARAD with the necessary authority to properly enforce the law. Congress should consider clarifying the intent of the FY09 NDAA to ensure that the regulations put

forth by MARAD contain adequate enforcement authority, in order to provide support to the U.S.-flag commercial fleet and the U.S. merchant marine.

MARAD should also establish a formal education and outreach program that will ensure that contracting officers at each civilian agency, and shippers who contract with those agencies, are aware of the cargo preference laws and understand how to comply with the law.

2. Under current law: 100% of items purchased for or owned by DOD must be carried exclusively on U.S.-flag vessels at fair and reasonable rates (Cargo Preference Act of 1904); 100% of cargos generated by Export-Import Bank loans and guarantees must be shipped on U.S.-flag vessels unless a waiver is granted (Public Resolution 17, 73rd Congress, 1934); and at least 50% of civilian agency cargos must be transported on U.S.-flag vessels (Cargo Preference Act of 1954).

   The cargo preference statute is written broadly, and there is room for increased application of cargo preference on civilian agencies. Recognizing the importance of a strong U.S. Merchant Marine, in 1962 President Kennedy issued a directive that all government-generated cargoes be moved in substantial volume on U.S.-flag vessels and that agencies should strive for the highest U.S.-flag participation possible, notwithstanding statutory requirements. The sealift value of the U.S.-flag industry today is no less important and federal agencies should maximize the use of U.S.-flag vessels. Given the substantial decline in peacetime military cargo movements due to the drawdown of forces deployed overseas during the past decade, Congress should explore options for expanding cargo preferences within civilian agencies.

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Subcommittee on Coast Guard and Maritime Transportation
U.S. House of Representatives
Washington D.C. 20515

September 10, 2013

Subject: "Maritime Transportation Regulations: Impacts on Safety, Security, Jobs and the Environment"

Testimony of: Kenneth D. Franke, President, Sportfishing Association of California

Thank you Chairman Hunter and Subcommittee members for providing this opportunity to make comment on the U.S. Coast Guard report to Congress on "Survival Craft Safety".

I am Ken Franke, President of the Sportfishing Association of California (SAC) and additionally speaking on behalf of the Golden Gate Fisherman's Association (GGFA) and the National Association of Charterboat Operators (NACO). SAC, GGFA, and NACO are industry associations that represent over 3,000 small passenger vessel companies based on all maritime borders of the United States. This fleet transports several million passengers annually. Rest assured, passenger safety and appropriate lifesaving equipment aboard our vessels is the absolute number one priority.

With regard to the Coast Guard report on Survival Craft Safety, we applaud the level of detail and factual clarity contained in the document. A review of the report makes it easy to conclude that the current system of equipping the small passenger vessels with safety equipment is working. At issue however is what do we do with the information and how do we proceed effectively without incurring waste or even harm to the national small passenger vessel fleet.

Key comments we felt were applicable to small passenger vessels in the report are quoted as follows:

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A. "Based on analysis of available casualty data, carriage of out-of-water survival craft in place of life floats and buoyant apparatus is not anticipated to have a significant effect on vessel safety."

B. "For inspected small passenger vessels, for which the vessel data and casualty reports are more complete, the absence of fatalities attributed to type or number of survival craft since 1996 suggest that the current requirements phased in between 1996 and 2006 have provided adequate protection, and does not support a compelling need for additional requirements for out-of-water survival craft for these vessels."

C. "For passenger vessels where the passenger capacity is limited by weight, in some cases, the increased weight of inflatable survival craft may require some reduction in the number of persons that can be carried, with possible consequential long-term loss of passenger revenue."

D. "It is important to note that, in a significant number of cases on small passenger vessels, other lifesaving equipment that might have mitigated the severity of a casualty was not used, or may have been used improperly."

Based on these comments it would seem that retrofitting the vessels with inflatable life rafts would not be reducing threat to life. What it would do is cost the small business owner to incur a $350 million dollar bill over ten years that in some cases would put them out of business.

We feel it is important to mention that our vessels and passenger safety have been a progressive evolving story with emphasis on improved design, training and technology over the past ten years. This results in a reduction in those incidents where a survival craft is employed. The statistics in the Coast Guard report support this as fact. We refer to the following examples:

1. GPS positioning ensures precise navigation, improved safe vessel movement, and ensures high-speed response by rescuers when necessary;

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2. Plotting software and improved radar and sonar systems further reduces the risk of collision or grounding;

3. EPIRB emergency transmitters provide improved response times by first responders;

4. Communications equipment has vastly improved with movement to Satellite intercoms and networks capable of broadcasting to entire fleets with clarity during an emergency;

5. Vessel design and bulkheads to divide compartments substantially reduces the likelihood of a vessel sinking;

6. Vessel traffic centers help reduce conflict on the water by ensuring separation of vessels in congested areas;

7. Licensing requirements and crew training have become much more intensive.

These factors, all of which reduce the risk of the need to deploy a survival craft, combined with the intensive annual and random inspections by Coast Guard personnel, have lead to a robust and layered life protection system aboard our vessels.

Therefore it is our opinion that retrofitting in many cases large portions of small passengers vessels to accommodate inflatable life rafts is inappropriate and a waste of money. Additionally, we feel it is not prudent to move forward with implementing a rule that there is no basis to indicate will save a life any more than the current risk based survival craft requirements in place.

Based on all of the above comments we recommend to this subcommittee that action be taken to legislatively amend the previous instructions to the U.S. Coast Guard to continue to utilize risk based survival craft guidelines. Further if as a result of this report they feel there is an area that can be improved on by policy development then the Coast Guard should pursue addressing the deficiencies and report back to the subcommittee on the actions taken.

Speaking specific to my own fleet to which the statistics are most familiar to me, with the Coast Guards oversight our fleet moved 10 million passengers over ten years with no death attributed to lack of an inflatable life raft. The system works!

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In closing, we compliment the hard work of the Coast Guard in both protecting our fleet and preparing this report. This was an outstanding document. I would venture to guess everyone wishes we had it two years ago. We commend them for their achievement. With that I submit to any questions you may have.

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September 23, 2013

To: Subcommittee on Coast Guard and Marine Transportation
Hearing on Maritime transportation Regulations: Impact on Safety, Security, Jobs and the Environment; Part 1
Tuesday, September 10, 2013

From: Ken Franke, Sportfishing Association of California (SAC), also representing:
Golden Gate Fisherman's Association (GGFA)
National Association of Charterboat Owners (NACO)

Response to "Questions for the Record to Mr. Ken Franke, President, Sportfishing Association of California"

Questions from the Honorable John Garamendi, (D-CA)

Survival Craft Study

The Sportfishing Association of California lauded the recently published Coast Guard study on survival craft safety. Generally the SAC finds that the report reaffirms their position that the requirement contained in the 2010 Coast Guard Authorization Act to require the carriage of out-of-water survival craft on U.S. flag vessels is a bad idea (note: the effective e date for this requirement was pushed back until 30 months after the date of publication of the aforementioned report). Moreover, the requirement is unlikely to improve vessel safety while simultaneously creating a financial hardship for vessel owners and operators. Consequently, the SAC recommends that the Congress repeal the 2010 provision.

- ***The National Transportation Safety Board has been recommending the adoption of out-of-water survival craft for decades. Do you disagree with the NTSB's recommendation, which is based upon their analysis of multiple marine casualties where there was the loss of human life?***
- ***What accommodations do the SAC's members presently make for disabled or elderly patrons?***
- ***Did SAC members have to retrofit their vessels or modify their operations to accommodate these customers?***
- ***How many SAC members went out of business due to Federal or State requirements to provide access for the disabled and elderly onboard your members' vessels?***

RESPONSE

The initial statement prefacing the questions we respectfully feel mischaracterizes our position. We acknowledge that carriage of out-of-water survival craft by U.S.-flagged vessels is appropriate for many locations, routes, and types of vessels. In

fact, longstanding U.S. Coast Guard rules mandate the carriage of out-of-water survival craft on many U.S.-flagged passenger vessels when they are operating in waters with temperatures below a certain threshold, when they travel specified distances from shore, and when rapid third-party assistance in the event of an emergency cannot be expected to be reasonably available.

We take exception to the proposition, unsupported by objective analysis of actual casualty data, that a "one-size-fits-all" out-of-water survival craft requirement should apply to all U.S.-flagged passenger vessels, regardless of the specific vessel type, operation, or route.

QUESTION

- ***The National Transportation Safety Board has been recommending the adoption of out-of-water survival craft for decades. Do you disagree with the NTSB's recommendation, which is based upon their analysis of multiple marine casualties where there was the loss of human life?***

REPONSE

We advocate that the U.S. Coast Guard (not the National Transportation Safety Board NTSB) is the federal agency **most qualified** to determine when a U.S.-flagged passenger vessel needs out-of-water survival craft and that Congress should place its reliance on the U.S. Coast Guard's expert judgment as expressed in the normal administrative rulemaking process. This is the U.S. Coast Guard's job and they are doing it well. The proof is in the excellent safety record of the small passenger vessel fleet. Additionally, NTSB does not take into consideration economic impact when they make their recommendations. and in this case appears to have concluded on what is the most conservative extreme general remedy.

It is quite important to reiterate we are not opposed to out-of-water survival craft when the analysis by the USCG indicates it is appropriate. It is our opinion that every life is priceless. Through the current system of inspections and route analysis by the USCG, many of the membership vessels have 1) SOLAS Inflatable Life Rafts, or 2) Inflatable Buoyant Apparatus, or 3) life floats. The vessels in question go through rigorous inspections by the USCG, are designed with many watertight compartments to prevent sinking, are equipped with extensive equipment for life protection, and are manned by crew trained to manage emergencies. The USCG report characterizes the facts clearly that the current system of equipping the boats based on where they operate is working well. Further, these USCG Certified small passenger vessels from a safety standpoint should not be put into the same category as private recreational watercraft or commercial fishing vessels. A review of the statistics clearly depicts the difference. A careful review of the USCG Report to Congress on those incidents involving small passenger vessels, or actually lack of incidents, shows that the USCG inspected small passenger vessel program is outstanding from a safety aspect.

Quoting from the USCG Report:

"Based on analysis of available casualty data, carriage of out-of-water survival craft in place of life floats and buoyant apparatus is not anticipated to have a significant effect on vessel safety."

"For inspected small passenger vessels, for which the vessel data and casualty reports are more complete, the absence of fatalities attributed to type or number of survival craft since 1996 suggest that the current requirements phased in between 1996 and 2006 have provided adequate protection, and does not support a compelling need for additional requirements for out-of-water survival craft for these vessels."

We feel it is important to state that our vessels and passenger safety have been a progressive evolving story with emphasis on improved design, training and technology over the past ten years. This results in a reduction in those incidents where a survival craft is employed. The statistics in the Coast Guard report support this as fact. We refer to the following examples:

1. GPS positioning ensures precise navigation, improved safe vessel movement, and ensures high-speed response by rescuers when necessary;

2. Plotting software and improved radar and sonar systems further reduces the risk of collision or grounding;

3. EPIRB emergency transmitters provide improved response times by first responders;

4. Communications equipment has vastly improved with movement to Satellite intercoms and networks capable of broadcasting to entire fleets with clarity during an emergency;

5. Vessel design and bulkheads to divide compartments substantially reduces the likelihood of a vessel sinking;

6. Vessel traffic centers help reduce conflict on the water by ensuring separation of vessels in congested areas;

7. Licensing requirements and crew training have become much more intensive.

These factors, all of which reduce the risk of the need to deploy a survival craft, combined with the intensive annual and random inspections by U.S. Coast Guard personnel, have lead to a robust and layered life protection system aboard our vessels.

That said, do we really need to make these small businesses spend hundreds of millions of dollars to replace a piece of equipment that is working?

QUESTION

- ***What accommodations do the SAC's members presently make for disabled or elderly patrons? Did SAC members have to retrofit their vessels or modify their operations to accommodate these customers? How many SAC members went out of business due to Federal or State requirements to provide access for the disabled and elderly onboard your members' vessels?***

RESPONSE

SAC, GGFA, and NACO are quite sensitive to the needs of the disabled and elderly. They have long standing relationships with these important visitors to our boats. Many of them are the most frequent riders.

We are aware of and comply with our obligations under the Americans with Disabilities Act and the revised "service" regulations issued recently by the U.S. Department of Justice for "public accommodations" (a U.S. charter fishing vessel is considered to be a "public accommodation" pursuant to the Justice Department's rule). Under the rule, our members must not discriminate in their treatment of persons with disabilities, and they have an affirmative duty to adjust their procedures and policies to accommodate customers with disabilities. This duty certainly includes policies for vessel evacuation and lifesaving in an emergency. However, the rule allows the vessel operator flexibility in determining the best non-discriminatory method to be used to comply with the regulatory obligation. Neither the ADA nor the implementing rule mandate the use of out-of-water survival craft for all passenger vessels.

We also have many events in which we host wounded veterans, the disabled and the elderly. Our effort is to create an inviting environment in which they can safely enjoy the ocean with their families. We truly care about these visitors and we want them to be safe. We have one program in particular in which we take approximately 7,000 children per year out to sea, many seriously disabled, at no cost to enjoy a day of fishing. The crews go the extra mile to accommodate every disabled person to have it be a positive experience. Their care and safety comes first.

While the USCG mandates the construction of the small passenger vessels through the Code of Federal Regulations, improved access to facilities has in many cases been in the form of new sidewalk access points; new ramps to the boarding areas and some vessels have been retrofitted with additional handholds. On a national level the entire marine industry and our support staff and boat crews have been working hard and successfully to provide reasonable accommodations for the disabled and elderly. Regardless of the type of raft used, a crewmember will still be

providing the assistance in the same fashion to assist every passenger into a survival craft.

We are committed to continue to work with ADA access groups to improve access to disabled persons and to provide for their safety and well being in all situations, including any possible emergency situation.

In response to the final question no vessel we are aware of went out of business during efforts to comply with the ADA.

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

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

September 10, 2013

Mr. Chairman: Thank you for this opportunity to testify on behalf of the National Customs Brokers and Forwarders Association of America (NCBFAA). I am Geoffrey C. Powell, Vice President of NCBFAA. I am also President of C.H. Powell Company, which is an integrated forwarder and customs broker that is headquartered in Canton, Massachusetts. My office is located in Linthicum, Maryland.

The NCBFAA is the national trade association representing the interests of ocean freight forwarders, non-vessel-operating common carriers ("NVOCCs") and customs brokers in the ocean shipping industry. The NCBFAA's 800 member companies and 28 affiliated regional associations represent the majority of licensed ocean freight forwarders and NVOCCs and are therefore directly affected by maritime regulation. Consequently, NCBFAA has been active in working with the various federal agencies that regulate international ocean shipping and that are responsible for ensuring the security and safety of international U.S. trade. Your invitation to us to testify is extremely timely. NCBFAA is greatly concerned that a recent rulemaking by the Federal Maritime Commission (FMC) is inconsistent with the important goals of job creation, improving the national economy, and reducing – not increasing – the burdens of unnecessary regulation. In that regard, in its Docket No. 13-05, entitled *Amendments to Regulations Governing Ocean Transportation Intermediary Licensing and Financial Responsibility*

Requirements, and General Duties (published at 78 Fed. Reg. 32946, May 31, 2013), the Commission initiated an Advanced Notice of Proposed Rulemaking ("ANPRM") that, if implemented, would significantly and unnecessarily increase the costs and burdens of government regulation on the important segment of the maritime industry that is generally referred to as ocean transportation intermediaries (or OTIs).

OTIs are defined by the U.S. Shipping Act to include both ocean freight forwarders and NVOCCs. 46 U.S.C. §40102(18). OTIs play an important role in ensuring that U.S. importers and exporters can move their goods in international commerce efficiently and economically. These entities typically consolidate smaller shipments that could not otherwise be economically shipped into larger volume lots. They provide their customers with routing and service options that they could not otherwise obtain for themselves. And, they provide the full range of logistical services that are necessary to export or import cargo from and to the United States. Unlike ocean carriers, OTIs do not enjoy antitrust immunity and instead provide their services at low cost to their customers in an extraordinarily competitive environment.

I. Background

Before I address the issues raised by the rulemaking, it may be helpful for the Subcommittee to understand the genesis of this particular initiative by the FMC. In response to numerous complaints the FMC had received from individual consumers that ship their household goods and personal effects between the United States and various foreign countries, the Commission initiated its Fact Finding Investigation No. 27, *Potentially Unlawful, Unfair or Deceptive Ocean Transportation Practices Related to the Movement of Household Goods or Personal Property in U.S.-Foreign Oceanborne Trades*. That proceeding was initiated on June 23, 2010, and was conducted by the FMC's staff under the direction of Commissioner Michael

Khouri. It culminated with the issuance of a Final Report on April 15, 2011. In the course of that investigation, the Commission determined that the consumer complaints being investigated focused almost exclusively on the movement of household goods for individuals and had nothing to do with the movement of commercial cargo by OTIs. Despite these findings, the Commission has not implemented any of its recommendations. Instead, the FMC – over the objection of Commissioner Khouri – used the Fact Finding investigation as a springboard to initiate a proposed rulemaking that had nothing to do with the problems discussed there. The Commission voted to release an ANPRM which would – if implemented – significantly increase unnecessary burdens and expense on OTIs, raise significant due process concerns and create needless administrative burdens on the agency's own staff.

To justify the publication of the ANPRM, the Commission offered several explanations, none of which have any merit. None of the proposed new requirements are based upon changes in industry conditions; they will complicate rather than streamline the agency's internal processes; they will not increase transparency in any meaningful way; and, they will clearly impose rather than reduce unwarranted regulatory barriers and costs. And, of course, none of the contemplated regulations have any rational relationship to any issues reviewed or discussed in the FMC's Fact Finding Investigation No. 27.

The ANRPM is a lengthy document, taking up 33 pages in the Federal Register. Consequently, this testimony does not intend to address the myriad of issues raised by the proposal that will adversely affect this industry. Instead, I feel that highlighting a few of the more problematic areas will give this Subcommittee an appreciation for an administrative process that seems to have lost its way.

II. License Renewal

The Shipping Act provides for OTIs to obtain licenses, without term limits, as a condition for doing business. (46 U.S.C. §40901) Without any explanation, justification or statutory authority, the ANPRM proposes to convert all licenses to two-year terms that require biennial renewals. This will be a burdensome, time-consuming and expensive proposition, as the Commission also proposes to require parties to pay as yet undetermined filing fees for the privilege of renewing their licenses.

It is not clear why the Commission did this. But, if the Commission was influenced by the recent enactment of the Moving Ahead for Progress in the Twenty-First Century Act ("MAP-21"), they failed to see very important distinctions between OTIs and motor carriers, property brokers and domestic surface freight forwarders, which now will have term limits and renewal obligations. In drafting MAP-21, this Committee sought to curb abuses in the domestic transportation industry. There is no such comparable record of abuses, specific legislative authority under the Shipping Act, or direction from the Congress for the FMC to take these steps with respect to OTIs servicing commercial cargo in international trade.

Even if the Commission had the authority to require this, the question becomes: Why should it do so and require all OTIs to submit to periodic license renewals? In the President's Executive Order 13563 (dated January 18, 2011; 76 Fed. Reg. 3821), the order stressed the need to promote "economic growth, innovation, competitiveness and job creation," adding that agencies should:

- ". . . identify and use the best, most innovative, and *least burdensome* tools for achieving regulatory ends."

- "Propose or adopt a regulation only upon a reasoned determination that its *benefits justify its costs*."
- "Tailor its regulations to impose the *least burden* on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, *the cost of cumulative regulations*." (Emphasis added.)

The Commission has failed to take any of these common sense principles into account. There is no question that adding the evaluation and approval process to FMC staff's obligations will significantly slow down other agency procedures that, in contrast to this, are very likely more necessary. To the extent the FMC purports to justify this burden on the need to ensure that it has current corporate information concerning its licensees, its existing regulations already require that changes in corporate structure or officers and directors must be provided as those events occur. (46 C.F.R. §515.18.)

It is also significant to note that the FMC cannot effectively meet the challenge of issuing new licenses under existing regulations, a process which often takes 2-3 months or more. Adding this additional renewal requirement would inundate FMC staff and grind the entire process to a halt.

One of the fundamental flaws in the Commission's processes with respect to the entire ANPRM was its failure to meet with the industry in order to identify any problems it perceived to exist and then ascertain how that might be ameliorated in the least burdensome way. Had it done so, and if it was clear that existing regulations were inadequate, the NCBFAA would at least have recommended that the Commission consider requiring all licensees to file a list of its current officers, directors and any other information the Commission deemed relevant on an annual basis. That would not have required a license renewal process and evaluation of the

renewal application by FMC staff or the wasteful and time-consuming accumulation of corporate certificates and other documentation that the Commission staff normally reviews during any evaluation process. Nor would it have incurred the use of scant resources to assemble and submit information that in most instances does not change, or the assessment of filing fees.

It is important to note that, for commercial enterprises, expiring licenses and required renewal is not a minor administrative event. A license is a condition of doing business. For a large company or a small one, a delay or administrative error has consequences that are serious. To put a business in this position every two years fails to understand the appropriate role for regulation.

III. Due Process Issues

As we have discussed, it goes without saying that an OTI license is a valuable asset. Without one, a company can no longer provide services to its customers or otherwise continue to operate. Taking a license away is accordingly a very serious matter.

Unfortunately, the ANPRM now proposes to put all licensees at risk of suspension or revocation of their licenses. Without any apparent supporting rationale, the proposal would now authorize suspension or revocation of a license: (1) for doing business in any manner with a company that is not licensed, bonded or tariffed; (2) if the Commission somehow deems the licensee "not qualified" to provide service; or (3) for "any act, omission or matter that would provide the basis for denial of a license to a new applicant." It appears that the Commission feels – without any foundation – that there is an endemic problem in the OTI industry by which non-compliant companies somehow need to be culled out. Whatever the Commission's motivation, this proposal puts every licensee's ability to remain in business at risk. Further, it

now establishes grounds for suspension or revocation that are vague, overbroad and, in some instances, unreasonable.

In a related vein, the proposed regulations that establish what are euphemistically called "hearing procedures" for license revocations raise due process concerns that contravene both the U.S. Constitution and the Administrative Procedure Act. As proposed, the new regulations would create a "streamlined" procedure by which the only hearing to which a licensee is entitled is that conducted by a hearing officer designated for that purpose by the Commission's Office of General Counsel. There is no specification of who might be designated to be the hearing officer, no right of discovery (other than being given a copy of the materials, the Commission staff may be relied upon to support their proposed action), no apparent right to a hearing and no right to cross-examine witnesses or test the veracity of the record other than through the filing of written statements. Nor does there appear to be any right of appeal from the decision of the designated hearing officer.

The NCBFAA agrees that the Commission should properly police the industry so as to ensure that its licensees are properly qualified and conduct their affairs in accordance with all applicable laws and ethical standards. So, while we agree that OTIs may properly be subject to license suspension or revocation, the proposed regulations omit any reference to one of the APA's significant protections, such as the so-called "right to cure." This is a serious matter, and it appears to have been treated in a cavalier manner.

While it appears clear that there is a problem in the small segment of the industry relating to the movement of household goods for individual consumers, it is inappropriate for the Commission to short-circuit due process rights that threaten the livelihood of reputable licensees that provide an important service to exporters and importers alike.

IV. OTI Bonds

Citing just two examples of situations where OTIs went out of business facing claims that significantly exceeded their bonds, the Commission is proposing to increase ocean forwarder and NVOCC bonds by 50% and 33-1/3%, respectively. This will result in increased bond premiums for the several thousands of licensees on an annual basis, despite the fact that the Commission was able to cite only two instances in which a bond was insufficient to cover outstanding claims. Yet, this proposed increase would not dramatically increase any potential claimant's level of protection, since the proposed increased bond would still fall far short of the amounts that were cited in the two examples relied upon by the Commission.

Interestingly, at the same time it is proposing these increases of bond amounts, the Commission is proposing to eliminate the additional bonds required for companies having branch offices. By doing so, the proposal would actually reduce the bonds required for companies doing business out of multiple offices, notwithstanding the fact that they would presumably be conducting more business and perhaps become exposed to greater risk.

Regardless, the fact remains that the Commission does not have a record justifying a wholesale change in the financial security that is appropriate for its licensees. Moreover, the FMC is making an ill-conceived attempt to create a type of priority system by which the sureties will pay claims on these rare instances that an OTI actually goes out of business owing money to third parties. Worse, it is proposing to have requirements that would lead to publication of any claims that may be made against an OTI, regardless of their merit or lack of it, on the Commission's website. It is difficult to understand why the Commission felt it was not unreasonable to post non-verified claims, that are obviously commercially damaging, on a government website.

V. Conclusion

The OTI industry is one of the most competitive and most efficient segments of the U.S. economy. The members of the NCBFAA take their profession and responsibilities seriously, are often regulated by other agencies, and are entrusted by their customers with ensuring the integrity of the supply chain. These companies make significant investments in computer and software systems. They are able to exchange information concerning the movement of international cargo to their customers, the carriers and government agencies. They invest in educational programs so they can keep pace with a rapidly evolving industry and are recognized as being a key element both in the security of the logistics supply chain and in implementing U.S. export and import controls.

Regrettably, the Commission has failed to exercise its presumed expertise to act judiciously in its treatment of this essential segment of the maritime industry.

The Commission's proposals will increase OTI costs and impair efficient operations for no apparent reason other than to create greater regulatory scrutiny over thousands of companies, many of which are small businesses, without any advance input from the stakeholders or evidentiary justification for the significant new regulatory burdens.

For these reasons, the NCBFAA respectfully requests that this Subcommittee require that the FMC explain why it is proceeding along the path outlined by the ANPRM. Mr. Chairman, we are grateful for the subcommittee's interest in this matter.

Subcommittee on Coast Guard and Maritime Transportation

Hearing on Maritime Transportation Regulations: Impacts on Safety, Security, Jobs and the Environment; Part I

Tuesday, September 10, 2013

Questions for the Record to Mr. Geoffrey C. Powell, Vice President, National Customs Brokers and Forwarders Association of America

Questions from the Honorable John Garamendi (D-CA)

License Renewal

- *Your written testimony indicates that the NCBFFA is concerned with the proposed 2-year renewal period for OTI licenses. This is surprising because most licenses - such as a driver's license or passport - are issued for limited terms and need to be renewed. What term would be acceptable? Three years? Five years?*

Initially, we would point out that, unlike the other licenses you mentioned (as well as the custom broker licenses and permits issued by US Customs and Border Protection and the property broker, forwarder and motor carrier licenses that are now renewable by the Federal Motor Carrier Safety Administration ("FMCSA") under the MAP-21 legislation), the Shipping Act does not give the agency the statutory authority to require license renewals. As Congress has not determined that there is a legitimate purpose to having limited term licenses issued for OTIs, the FMC does not have the authority.

As is the case with the driver's licenses and passports mentioned in your question, a 5 year period for renewal would be preferable to the 2 year period proposed by the FMC's ANPRM. However, we would also point out that the government has a legitimate reason to require renewals of drivers' licenses and passports in order to ensure the competency and legitimacy of the licensee; and, those renewal requirements are invariable based on statutory requirements. OTIs must maintain significant financial security in the form of bonds and, in the case of non-vessel-operating common carriers ("NVOCCs") tariffs, with the FMC and are already required to report any changes in their corporate structure or business locations. And, as is the case with all corporations, OTIs are required by all states in which they are incorporated and in which they maintain offices, to file annual certifications and pay franchise tax and other fees in order to continue to do business. As the FMC has advanced no cogent reason explaining what necessary purpose is served by its license "renewal" proposal, as Congress has not seen a need to amend the Shipping Act to mandate this change, the ANPRM just imposes another regulatory filing and an as yet undetermined fee that is targeted at OTIs, the majority of whom are small businesses.

Parenthetically, we cannot help but note the FMC has not sought to impose any comparable obligation on the vessel operators, despite the fact that most of the complaints that arise with respect to the movement of commercial cargo are caused by the steamship lines, virtually all of which are foreign owned. Yet, the FMC has not required any public listing of their responsible officers or agent to serve with process; nor has it mandated any bond that can be attached by claimants when issues do arise. This is not to say that any requirements of that nature are necessary, but only to point out that the FMC here is seeking to impose regulations that are only cumulative in nature upon the most competitive and most consumer-oriented segment of the industry, most of which are small US owned companies.

- *Please provide a list of other licenses or certifications that OTIs are required to have and the terms of such licenses and certifications if they are subject to renewal.*

To operate subject to the Shipping Act, and in addition to their state corporate registrations, OTIs are only required to have ocean forwarder or NVOCC licenses, neither of which are term limited. However, many OTIs are integrated logistics companies and accordingly possess the following licenses, permit and/or registrations:

- Customs broker corporate permits and licenses - - A status report of their continued operations is required by CBP every 3 years.

- Indirect Air Carrier ("IAC") certification - - All IACs are required to be vetted by the Transportation Security Administration and have an approved IAC Standard Security Program; there is no term limit for this.

- ITAR Registration - - Many OTIs are registered to handle defense related items that are regulated under the International Traffic in Arms Regulations of the State Department's Directorate of Defense Trade Controls ("DDTC"); there is no term limit for this.

- FMCSA licenses and registrations - - Many OTIs have also provided domestic logistics services for their customers and accordingly have been registered as motor carrier property brokers, surface freight forwarders and even motor carriers; the recently enacted MAP-21 legislation changed the unlimited terms for those registrations into 3 year licenses that need to be renewed.

- C-TPAT - - Many OTIs have been certified by CBP as participants in the Customs Trade Partnership Against Terrorism. To obtain this certification, companies are required to provide information to CBP relating to the security of their operational processes. There are no term limits on this certification.

- PRC registration - - NVOCCs that do business in the US/People's Republic of China are required to register their bill of lading with the PRC Ministry of Transport. There are no term limits on this certification

Compliance Costs and Burdens

- *Considering that the logistics supply chain market in which OTIs must operate requires companies to invest heavily in information technologies, it is difficult to understand why OTIs would have difficulty complying with the modest administrative reforms proposed by the FA1C. Why would the FMC OTI regulations present challenges unlike those that OTIs live with every day?*

In answering this question, the NCBFAA respectfully must first take issue with the word "modest" that is used here. In the first place, we do not know what the proposed filing fee will be, since the FMC has not yet indicated what that would be. Nor has it done any analysis as required under the Regulatory Flexibility Act to determine what the effect of the proposal or the filing fees would be.

You correctly note that OTIs do invest heavily in information technologies and, we would add, are in the forefront in establishing procedures to both move cargo efficiently and at the lowest possible cost to American consumers and at the same time ensuring the security and safety of the supply chain. These efforts and accomplishments are costly and time consuming, but are essential in order for OTIs to provide the service demanded by commercial shippers and thereby remain competitive in this industry. So, while the NCBFAA does object to the burden and costs that the redundant "renewal" procedure would impose, this is not the biggest problem with the ANPRM. If this was only about spending another $100 to $350 ever 2 years, the NCBFAA would not be raising these objections.

The real "challenges" were set forth at length in the NCBFAA's Comments to the ANPRM, and the following is a partial list of the serious issues that the proposal raises:

1. The so-called "renewal" process is actually a formal application process that FMC staff would be required to review, process and approve and does not entail merely filing current business information. If implemented, the process will significantly interfere with the agency's ability to process applications for new licenses, approve applications involving the purchase of companies or approve the appointment of replacement "qualifying individuals." It presently takes 3 months or longer to process existing applications; adding this requirement for the thousands of OTIs will bog the entire process down, adversely affecting any company that actually does need to get the agency's approval for some important function.

2. The proposal would establish amorphous criteria in determining whether any "renewal" should be approved. For example, a renewal would be subject to denial if the applicant is "deemed unqualified", thus subjecting the company's ability to do business to the whim of the agency's enforcement staff.

3. In the event a renewal is denied, an OTI whose license was not renewed has no right to discovery, no right to cross examine witnesses, no right to appeal a denial order from an FMC staff "hearing officer" and no right to cure before a license is revoked, contrary to specific requirements of the Administrative Procedure Act and the U.S. Constitution. In other words, a company's ability to do business can be arbitrarily terminated through this "renewal" procedure that would trample due process rights and threaten the livelihood of every OTI.

4. Another unnecessary cost would result from the higher bond obligations that the ANPRM would impose on all OTIs, even though no justification was provided other than "these limits have not been adjusted for some time."

5. The proposal contains an ill-conceived process for establishing a priority system for making claims against bonds. Aside from the fact that its implementation would likely conflict with the application of bankruptcy laws in the event an OTI became insolvent, the Commission has pointed to only two instances out of the millions of shipments handled by OTIs in which there were conflicting claims against an OTI's bond.

6. Another unnecessary, but poorly thought through proposal, is that claims against OTIs, regardless of merit, would need to be posted on the FMC website. Having such untested information appear on a government website would obviously damage the business reputation of companies without any need or justification, especially given the remarkably low incidence of claims that are ever made against commercial OTIs.

7. Although the Chinese government has consistently implemented its own regulations on the maritime industry serving that market that copy the FMC's regulations, the ANPRM has failed to consider the possibility of comparable regulatory action by foreign governments and the burdens that would cause US OTIs.

In sum, the NCBFAA takes it as a basic principle that parties should not be subjected to government regulation unless there is some demonstrable public benefit. In this situation, the FMC did investigate problems that existed in the so-called "barrel trade" involving the movement of household goods in several trades and issued a report containing a number of possible recommendations to address those issues. But, this ANPRM addresses none of those issues and is a bureaucratic initiative, initiated without any consultations with the stakeholders, benefitting no one.

#320858

Testimony

of

RADM Richard G. Gurnon, USMS

President, Massachusetts Maritime Academy

Representing the Consortium of State Maritime Academies

Before the Subcommittee on Coast Guard and Maritime Transportation of the

House Transportation & Infrastructure Committee

U.S. House of Representatives

Washington, DC

September 10, 2013

Good morning Chairman Hunter, Ranking Member Garamendi and Members of the Subcommittee. I am RADM Richard G. Gurnon, President of Massachusetts Maritime Academy. I am here today on behalf of the Consortium of State Maritime Academies, which represents a vital component of the federal maritime education and training partnership. The expertise that resides within these six state maritime academies is arguably the most important maritime education and training knowledge base in the country. The administrators of these six state academies serve on behalf of elected officers of their respective states and thus, under federal law, can serve as coequal partners with federal officials in the management and implementation of federal maritime education and training programs.

I thank you for the opportunity to appear before you today to discuss two very important issues of great concern to the six state maritime academies, which are located in Massachusetts, New York, Maine, California, Texas and Michigan – (1) the ever-increasing regulatory burden on our institutions and the impact it is having, and (2) the need and importance of replacing our aging training ships which are linked to our ability to train our students for jobs, while meeting federal merchant mariner credentialing requirements. I would like to take a moment and introduce the other academy presidents who are here with me today.

For over 100 years, in times of conflict and peace, the state maritime academies have prepared our students for a variety of maritime-related careers, while receiving a quality education in a Bachelor's degree program. Our students are well prepared for employment in the maritime industry in an increasingly globalized world through a rigorous curriculum comprised of intellectual learning opportunities, applied technology experiences, study at sea and in ports around the world, and professional development and leadership opportunities that prepare them for positions of significant responsibility and technical difficulty. Today, our students come from

all states around the country and our graduates enjoy a high level of success. They are senior leaders, entrepreneurs and innovators across many industries, in government and the military, from seabed to space.

In recent years, all the state maritime academies have enjoyed full enrollments by students (and their grateful parents) who seek the many opportunities we have to offer, and especially the prospects for lucrative employment following graduation in an industry that appreciates and desires the qualities our students possess. The market demand for our graduates is increasing and is related to an aging workforce and employer demands for well-educated and trained personnel who hold the appropriate domestic and international credentials issued by the Coast Guard. We are also witnessing a shift in demand for our graduates to serve on domestic inland, coastal and offshore vessels in support of our national economy.

Collectively, the state maritime academies graduate approximately 650 students per year which equates to over 70% of the newly licensed deck and engineering officers in our country each year. This number is significant in terms of ensuring a sufficient pool of merchant mariners in the event of a national emergency and providing highly trained and qualified individuals to companies operating in all segments of the maritime industry. But the academies now find themselves facing a number of challenges, despite our excellent records in enrollment and job placement, which threaten our future success.

Throughout our history, the maritime academies have seen many changes and have had to adapt to an ever-changing regulatory and fiscal environment at both the state and federal levels. At the same time, while expectations have increased, budgetary support has declined, or at best remained constant. This past April, the Maritime Administrator reported to this subcommittee that the President's FY 2014 budget request of $17.1 million for the state academies remains unchanged from FY 2012 levels. At the same time, the states are looking to cut costs to make education more affordable to more students. Reduced funding from the states and the federal government simultaneously will hamper our ability to provide a quality education and fulfill ever-increasing federal requirements for our students to meet domestic and international merchant mariner credentialing requirements.

Regulatory Burden Due to Coast Guard's Implementation of STCW

The United States Coast Guard is the federal agency charged with prescribing regulations and policies related to merchant mariner credentialing. The Coast Guard along with the Maritime Administration approves and oversees our academy training programs. We are grateful for the Coast Guard, work with them every day, and recognize that they are the chief regulatory agency when it comes to merchant mariner training and credentialing. But what we have observed since the late 1990's, when the International Convention and Standards of Training, Certification and Watch-keeping (STCW) Code was first implemented, is an ever-increasing layered set of

requirements and policy, which when taken collectively are onerous, in many cases considered unnecessary, and result in unfunded mandates and higher costs for the academies.

STCW dramatically changed the way the academies train our students. Prior to the late 1990's the academies had much more flexibility to train students who were deemed competent by demonstrating that they could pass a comprehensive licensing exam at the completion of their training, much the same as airline pilots, nurses and doctors, who sit for professional examinations before receiving a license. Since the Coast Guard began implementing STCW, the academies have had to make significant changes to their curricula and now assess each individual student in numerous practical assessments or demonstrations of skill. This requires an enormous amount of time for our faculty to satisfy checklist-type requirements for each student, as well as the time and cost to maintain records of their assessments and training.

The original intent of STCW was to increase the training and professionalism of other nations' mariners. The unintended consequence is that in the U.S. where mariners already met high standards for training and professionalism, our mariners were placed under the microscope with added requirements. These additional time-consuming and costly requirements do little to improve safety, while driving many mariners out of the profession because they no longer wish to invest so much energy, time and cost to attain or retain their qualifications.

Despite over a decade of having to comply with STCW requirements, it is questionable whether STCW has actually been effective in producing more qualified mariners and reducing marine casualties. To date, we are not aware of any study that has looked at the benefits of STCW, and whether it has had a quantifiable impact on improving safety and reducing marine casualties. Furthermore, many of our international maritime university partners report that their flag state administrations do not require the same level of requirements or oversight that we have in the U.S.

In the U.S., there is still no published final rulemaking since the academies were asked to implement the STCW in the late 1990's. The Coast Guard continues to interpret the STCW, while the academies are unable to participate in discussions about new requirements or policy. This has led to a great deal of speculation as to what the Coast Guard might find acceptable, and the academies being forced to implement additional requirements based on assurances that the requirements will eventually be contained in a final STCW rulemaking.

Unfortunately, the collective expertise that resides within our institutions is continually ignored by federal agencies under the cover of the Federal Advisory Committees Act (FACA); this despite a specific exemption to FACA under provisions of Section 204 of the Unfunded Mandate Reform Act of 1995, P.L. 104-4, concerning intergovernmental communications. The purpose of this exemption is to "provide meaningful and timely input into the development of regulatory proposals containing significant Federal intergovernmental mandates." This issue has been brought to the attention of the Coast Guard.

The six state maritime academies represent a vital component of the federal maritime education and training partnership. The expertise that resides within these six state maritime academies is arguably the most important maritime education and training knowledge base in the country. Were the USCG to engage with the academies in a collaborative partnership and not be dismissive of the expertise that resides within these six institutions, a far better outcome for the taxpayers of this country could be realized.

Need To Replace Aging Training Ships

The six state maritime academies use their training ships throughout the year to train our nation's future merchant mariners. They are the primary vessels by which our graduates receive the required sea time experience for unlimited tonnage and horsepower credentials each year. Therefore, the academy training ships are an essential component to our approved training programs and to our national security and national economy.

The need to replace the training vessels furnished to the state maritime academies by the Maritime Administration is recurring in nature. Over the past thirty years, various means have been pursued to provide replacement vessels, with the actual method usually a function of the specific circumstances at a given moment in time. Several replacements have arisen after "catastrophic" loss of an existing vessel; most others have been either planned or opportunistic acquisitions. However, none of these methods are cost effective. A programmatic-holistic approach would lead to a more efficient and effective approach that would drive down the total cost of procurement and ownership while delivering increased capability.

Previously many of the training ship conversions had been funded by Congressional earmarks because there was no other way to secure funding. Now, of course, Congressional earmarks are no longer an option, and there is no path of any kind to secure funding to convert these vessels.

MARAD has asked the state maritime academies to provide a consolidated input for a business case they will present to the Secretary of Transportation for the construction of new training ships.

The state maritime academy training ships' average age is now 35 years old; therefore, they are increasingly costly (from a maintenance and operations aspect) and make environmental compliance a growing challenge. The SUNY Maritime College training ship (*EMPIRE STATE VI*), the oldest of the ships, is now over 51 years old and must be replaced not later than 2019. Originally designed as a break bulk cargo ship, it has outlived its design life and no longer meets various international environmental standards. This substantially limits where the ship can sail.

There are several ways to reduce the cost of training ships. Converting aging ships that are in the National Defense Force or on the market would be initially less expensive. However, over the long term this would be more costly since a converted ship would be good for about 20 -25 years

compared to 40 plus years for a purpose-built training ship. Constructing new, multipurpose, purpose-built training ships would also provide a stimulus for shipyards and ensure that critical skill sets essential for our national security are retained. A new construction project would also support thousands of high-value, high-paying manufacturing jobs in the U.S. at one or more shipyards. New ship construction would generate approximately 600-1,000 jobs directly. For every wage dollar earned by these jobs, the multiple is approximately 2.5 times for the indirect impact. Comparatively, the conversion of a ship periodically to meet the latest training ship needs would have much less of an economic impact. Additionally, conversion does not produce a state-of-the-art education and training platform and may not meet emerging global or U.S. environmental operating standards.

New construction, multipurpose built ships designed for training cadets for unlimited tonnage and horsepower credentials, could also be capable of serving multi-mission purposes (disaster relief assistance, humanitarian assistance, and logistics support for DOD). Training ships have been utilized in this role (e.g., Hurricanes Sandy and Katrina post-disaster relief efforts, and Haiti and Mogadishu Humanitarian Assistance deployments). A ship built from the keel up to support these missions could encourage investment from other departments such as DHS and DOD. This would benefit the state maritime academies, MARAD, and the public. Building a new construction multi-mission vessel would result in lower training and maintenance costs over the near term, and increased capability well into the future for multiple agencies (DOT/MARAD, DHS/FEMA, and DOD). As has been demonstrated previously, using DOD ships to support post-disaster operations is much more costly to the public and significantly impacts the operational tempo of DOD assets and personnel. During Hurricane Sandy, MARAD testified that there was a cost avoidance of approximately $3.7M to the taxpayer because of the ability to use state maritime academy training vessels to house relief workers.

Building a class of training ships for the state maritime academies has several advantages. First would be the cost savings associated with a multi-hull build. Second would be the savings associated with recurring maintenance, spare parts and upkeep. As vessel equipment ages and needs to be upgraded, a "bulk buy" for similar equipment would save maintenance money. Currently, the academies have six different aging ships for which unique, and sometimes non-existent, spare parts drive maintenance costs up, especially as the ships no longer reflect the industry standard. Third, there would be a cost savings associated with administrative oversight of a class of ships compared to individual ships. For example, implementing a Safety Management System for one ship type instead of five different ship types would save MARAD money.

Since the primary role of the ships would be to train cadets at sea, there are some areas where the cost could be picked up by the respective states. Since the ships will be "public vessels" owned by the USDOT-MARAD and operated by respective state maritime academies, a cooperative arrangement might be explored, whereby the federal government pays for the hull, machinery

and navigational systems, and the academy pays for outfitting the ship with specialized maritime educational technology (e.g., classrooms, berthing areas, labs, simulation). Potential academy sources of funding might include the states, alumni, foundations and private donors.

The most significant impact of taking no action (or delaying a decision) is the eventual result of inoperative and/or unsafe training ships which would bring a halt to academies' license programs. Disrupting that source of available mariners would have substantial negative (some would say dire) consequences affecting all segments of the maritime industry that require Coast Guard credentialed mariners, well beyond the national defense aspect, to include near coastal, inland, rivers, offshore energy, etc. Second and third order impacts would be realized in key areas such as port operations and maritime security.

Sea service requirements under the STCW Manila Amendments require the U.S. to satisfy 360 days of sea service for the mates and engineers. Each maritime academy satisfies this requirement by having cadets train, perform maintenance and stand watches aboard the training ships while the ships are underway or tied up alongside our piers.

Without training ships, the academies would be forced to send cadets out on commercial vessels to obtain their required sea time. This would put a significant strain on all the academies, including the U.S. Merchant Marine Academy, due to the limited number of available commercial vessel berths.

Shortages of available licensed mariners would be realized at all credential levels, and the future availability of licensed mariners in the event of a national emergency would be severely impacted. Furthermore, it is already well documented that the mariner workforce is aging, and the country cannot afford to lose experienced and new officers simultaneously.

It would be unrealistic to think that the level of education and training and the total numbers of fully qualified mariners would not substantially decline. This would in turn significantly impact maritime safety and security.

Conclusion

In closing, let me emphasize that the state maritime academies hold the U.S. Coast Guard and the Maritime Administration in high regard. We all place great importance on training our students to become competent, professional leaders, but that task is becoming ever more challenging. This is due to an ever-increasing regulatory burden on the academies and the challenges of funding new public vessel training ships for our academies, so that our students can continue to meet federally imposed credentialing requirements.

Subcommittee on Coast Guard and Maritime Transportation
Hearing on Maritime Transportation Regulations: Impacts on Safety, Security, Jobs and the Environment; Part I
Tuesday, September 10, 2013

Questions for the Record to Rear Admiral Rick Gurnon, USMS,
President Massachusetts Maritime Academy
on behalf of Consortium of State Maritime Academies

Questions from the Honorable John Garamendi (D-CA)

Stringent STCW Requirements

The International Convention for Standards of Training, Certification and Watchkeeping for Seafarers, or STCW, was the first to establish basic requirements on training, certification and watchkeeping for seafarers on an international level. Previously the standards of training, certification and watchkeeping of officers and ratings were established by individual governments, usually without reference to practices in other countries. As a result standards and procedures varied widely, even though shipping is the most international of all industries. Now, all seafarers are required to meet minimum international standards to ensure competence and the safe operation of vessels. The STCW was last substantively amended by the International Maritime Organization (IMO) in 2010 (i.e., the Manila Amendments). The Coast Guard is responsible for the certification and licensing of all U.S. seafarers and ensures compliance with STCW standards.

- ***What aspects of the Coast Guard's implementation of the STCW standards put State merchant marine academy cadets at a disadvantage? What requirements are specific to the United States that are not commonly required by other major maritime nations?***

ANSWER: There is a long list of requirements that put State Maritime Academy cadets at a disadvantage by imposing redundant requirements that add to the cost and training time. Most frustrating to us is that there is no study or data that shows any benefit whatsoever to these overlapping requirements. One particular example is that STCW requires testing of specific elements that are tested again, redundantly during the Coast Guard license exam. We do not have a complete understanding of which U.S. requirements are not commonly required by other major maritime nations but we believe, anecdotally, that there are many. That's why we have asked for a study to fully identify those that go beyond the norm. Again, we would not object to requirements that go beyond the norm if we had any data to show those additional requirements increased safety or quality.

- ***It is my understanding that the Coast Guard has issued guidance regarding implementation of the Manila amendments to the STCW to provide clarity about new requirements and policy. Did the Coast Guard consult with state maritime academies concerning this guidance? Are there mechanisms in place for regular communication between the Coast Guard and state merchant marine academies and the U.S. Merchant Marine Academy?***

ANSWER: The communication between the State Maritime Academies and Coast Guard about issues like the latest guidance regarding implementation of the Manila amendments is sporadic at best. One of the most significant complaints of the State Academies, as I testified, is the lack of mechanisms for a regular, sustained dialogue with Coast Guard about implementation of STCW. We find it odd that Coast Guard would not want at least input from the largest most experienced cadre of professional maritime educators in the U.S. about the implementation of STCW.

Recapitalization of State Training Vessels

State maritime academies operate training vessels to ensure that cadets receive the ship time necessary to satisfy licensing requirements and to operate as competent deck officers and engineers. These vessels, often old, surplus vessels, are aged beyond their service lives and in need of replacement. State maritime academies request having the Federal Government recapitalize the training fleet through a construction program of new, multi-purpose training ships built by the Federal government and leased for operation to state merchant marine academies.

- ***What comparative cost/benefit analyses have the state maritime academies conducted a to determine the differences between replacing state training vessels with ships from the National Defense Reserve Fleet or the Ready Reserve Fleet compared with newly built vessels?***

ANSWER: The U.S. Maritime Administration has conducted detailed cost/benefit analyses, we are told, and has concluded that the best path forward is a series of purpose-built dual mission training ships that will both serve State Academies but only be configured for active participation in the federal emergency, disaster, and humanitarian relief efforts. One obvious advantage is a marked life expectancy for the vessels compared to existing training ships, which often enter into training service near the end of their useful life.

- ***What funding can we expect the respective states that have merchant marine academies to invest in cost-sharing for the construction of new training vessels?***

ANSWER: We fully understand that the states will need to contribute in many ways to costs associated with the new vessels, including via equipment, maintenance, operations and staffing, and we are prepared to do so. We support this type of cost-sharing, recognizing, of course, that the vessels are federally owned.

Commemorating 40 Years
Of Disability Advocacy
1973-2013

"Maritime Transportation Regulations: Impacts on Safety, Security, Jobs and the Environment, Part 1"
Committee on Transportation and Infrastructure
Subcommittee on Coast Guard and Maritime Transportation
Tuesday, September 10, 2013, 10:30 am

On behalf of the Consortium of Citizens with Disabilities (CCD) Transportation Task Force, I thank you for holding this hearing today, and appreciate the opportunity to testify on this important safety and civil rights issue.

CCD is a coalition of national disability organizations working together to advocate for national public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. Since 1973, the CCD has advocated on behalf of people of all ages with physical, sensory, cognitive, and mental disabilities. CCD has worked to achieve federal legislation and regulations that assure that the 54 million children and adults with disabilities are fully integrated into the mainstream of society. The Transportation Task Force focuses on ensuring that national policy regarding transportation, including both disability-specific programs and broader transportation programs and policies, move society toward the ultimate goal of access to adequate transportation to accommodate the needs of employment, housing and recreation for all people with disabilities. The CCD Transportation Task Force includes a diverse range of organizations across the disability spectrum, including the National Disability Rights Network, Easter Seals, the United Spinal Association, Paralyzed Veterans of America, the National Council on

Independent Living, the Disability Rights and Education Fund, and the American Association of People with Disabilities.

Many individuals, including veterans, who have disabilities enjoy sport fishing and other outdoor activities involving boats. This sort of therapeutic recreational activity provides people with disabilities, like anyone else, a way to enjoy nature and recreation. Americans with disabilities should be provided the same opportunity to participate in these activities as Americans without disabilities, and without fear of greater risk of dying due to inadequate survival craft.

The federal government has long recognized accessibility for people with disabilities as a civil right for people with disabilities. The Rehabilitation Act of 1973, 29 U.S.C. § 701(a)(6), recognized the goal of "providing individuals with disabilities with the tools necessary to ... achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency." The Americans with Disabilities Act, 42 U.S.C. § 12101(a)(7), found that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals." These laws establish accessibility as a civil right for all people with disabilities. My testimony this morning will focus on why the accessibility principles enshrined in federal law require that survival craft ensure that no part of an individual is immersed in water, and why the cost-benefit analysis conducted by the Coast Guard in its August 26, 2013, report to Congress fails to take that into account. I will also discuss other flaws in the Coast Guard's cost-benefit analysis and how this report did not provide adequate regard for the value of lives of veterans and others with disabilities. The requirement that

survival craft provide out-of-water protection ensures that veterans with disabilities who risked their lives for our country should not have to unduly risk their lives to go sport fishing or ride a ferry.

I. Federal principles of accessibility for people with disabilities as a civil right, as well as the need to protect other passengers, require that owners of surface vessels provide survival craft that ensures no part of an individual is immersed in water.

In order for surface vessels to be accessible to people with disabilities on an equal basis as they are for people without disabilities, those vessels must be provided on an equal basis, with the same level of security and protection from risk that people without disabilities have. In order to be effective for people with disabilities, survival craft must provide out-of-water protection. Many people with disabilities lack the ability to hold on to survival craft in such a way as to keep themselves out of water when the craft leaves any part of them immersed. This may be a matter of life and death, in that many people with disabilities are unable to use life floats or buoyant apparatus that do not keep them fully out of water for their protection. Many people with disabilities, elderly people and infants are simply unable to hang onto these devices.

The requirement that survival craft keep people fully out of the water has been well understood for at least 70 years. In 1944, the Navy Department's Emergency Rescue Equipment Section, indicated in its biweekly report dated February 12 that Balsa "Doughnut" life floats, also known as "Carley floats," had a serious drawback "in that the survivors are partially immersed."[1] In 1973, the M/V *Comet* sank off Point

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[1] Furer, J.A., U.S.N., Coordinator of Research & Development, U.S. Navy and Liaison Committee on Emergency Rescue Equipment, "Emergency Rescue Equipment," February 12, 1944, at 3.

Judith in Rhode Island. An examination by the National Transportation Safety Board examined the issue of "lack of protection in cold water" and concurred with the Coast Guard's Marine Board recommendation that "primary lifesaving devices should keep people out of the water when water temperature is expected to be 60 degrees F or less."[2] In a 1989 study entitled "Passenger Vessels Operating from U.S. Ports," the NTSB recommended that the Coast Guard:

> Require that all passenger vessels except ferries on river routes operating on short runs of 30 minutes or less have primary lifesaving equipment that prevents immersion in the water for all passengers and crew.[3]

Shortly after the 1989 report, the *Bronx Queen* sank near the entrance to New York harbor, resulting in two deaths. An investigation by the Coast Guard revealed that, although the boat had a more than sufficient number of "life-floats" on board, because they did not provide out-of-the-water protection, it was not adequate in cold water operations. As a result, the NTSB again reiterated its 1989 recommendation.[4]

Moreover, the Americans with Disabilities Act (ADA) requires provision of out-of-the-water surface vessels to accommodate people with disabilities. The ADA prohibits discrimination against individuals on the basis of disability "in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." 42 U.S.C. § 12182(b)(1)(A)(i). Discrimination includes the failure to make "reasonable accommodations" to a service provided, unless the place of public accommodation can show that such modification "would

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[2] National Transportation Safety Board, "M/V Comet, Point Judith, Rhode Island, May 19, 1973, available at <http://www.uscg.mil/hq/cg5/cg545/docs/boards/comet.pdf>, at 28.

[3] Nov. 28, 1989, Safety Recommendation from James L. Kolstad, Acting Chairman, National Transportation Safety Board, available at <http://www.ntsb.gov/doclib/recletters/1989/m89_111_145.pdf>, at 4.

[4] National Transportation Safety Board, *Safety Recommendation* dated December 11, 1990, available at

fundamentally alter" the nature of the service provided. 42 U.S.C. § 12812(b)(2)(A)(iii). Determination of whether an accommodation is a reasonable one and would create an undue burden is a "fact-specific, case-by-case inquiry." *Staron v. McDonald's Corp.*, 51 F.3d 353 (2d Cir. Conn.). Modifications that create a moderate cost to a place of public accommodation are generally considered reasonable. *See, e.g.,, Feldman v. Pro Football, Inc.*, 579 F.Supp.2d 697, 710 (requiring modifications to ensure that deaf patrons of football game receive auxiliary services to enjoy access to aural information at stadium).

Out-of-the-water survival craft are an example of the principle of "universal design," where techniques that provide accessibility for people with disabilities also provide a benefit to the population as a whole. In this case, a technique that allows people with disabilities to survive out of water in the event of a catastrophe also ensures that people without disabilities are protected from hypothermia. These benefits must be considered when determining the appropriate rules to be set for safety on vessels, particularly those transporting passengers.

II. The Coast Guard Report to Congress on Survival Craft Safety includes a flawed cost-benefit analysis of the rule requiring that survival craft provide out-of-water protection.

Unfortunately, the cost-benefit analysis of the requirement of out-of-water protection included in the August 26, 2013 Coast Guard Report to Congress[5] ("Report") does not consider many of these factors indicated above, and includes a flawed

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<http://www.ntsb.gov/doclib/recletters/1990/M90_110_111.pdf>, at 4.

[5] U.S. Coast Guard, "Survival Craft Safety: Report to Congress," August 26, 2013.

analysis of the costs and benefits of this requirement. Overall, this analysis discounts the value of the lives of the people who die as a result of failure to provide adequate survival craft. The analysis also includes many gaps in determining the number of lives that would be saved by this requirement.

The Report acknowledges that there are a number of uncertainties in determining the number of lives that might be saved by out-of-water survival craft;[6] however, it appears to resolve these uncertainties in favor of indicating fewer lives saved in every case. For example, the report only looks at casualty cases where the vessel sank and/or was lost, failing to acknowledge cases where the vessel was not lost, such as in when a person went overboard.[7]

Also, the analysis does not consider those cases when the capsizing was "so sudden that the crew and passengers did not have time to don personal flotation devices (PFDs), sound alarms, board available survival craft, or make a 'Mayday' call."[8] Of the approximately 60 vessel casualties and over 160 deaths that occurred between 2002 and 2011,[9] the Coast Guard indicated that only 21 fatalities could have been prevented by an out-of-water survival craft.[10] The report does not make clear how the Coast Guard determined that only 1/3 of the lives could have been saved through out-of-water safety vessels. This is particularly astounding given the acknowledgement in the report that, based on a comparison of the fatality rate when out-of-water survival craft are available with fatalities when they are not, out-of-water survival craft decrease

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[6] *Id.* at 11.
[7] *Id.* at 5.
[8] *Id.* at 8.
[9] The exact number of incidents and number of fatalities that occurred between 2002 and 2011 is not clear from the report, although it is note that 224 vessel casualties occurred between 1994 and 2011.

the fatality rate for passengers in incidents by 73.74%.[11]

Additionally, the cost-benefit analysis undervalues the lives of people who die because of survival craft that do not protect them out of the water. The Coast Guard relies on a review of studies by the Department of Homeland Security that placed the value of a statistical life (VSL) at $6.3 million in 2007 dollars.[12] Other recent federal government studies, however, place the VSL at a higher amount. For example, a recent analysis of regulation of crystalline silica by the Occupational Safety and Health Administration (OSHA) determined that the value of each fatality avoided would be $8.7 million.[13] A recent cost-benefit analysis by the Environmental Protection Agency of regulation of particulate matter placed the value of statistical life at $8 million in 1990 dollars and $9.6 million in 2020 dollars.[14] There is at best a great deal of uncertainty regarding the appropriate measure of the value of a statistical life.

These numbers are a matter of life and death for people with disabilities. History is rife with examples of cost-benefit analyses coming out in favor of fewer precautionary measures until the point where people begin to die. In the case of the Ford Pinto, Ford conducted a cost-benefit analysis in order to obtain an exemption from the National Highway Traffic Safety Administration (NHTSA) indicating that the additional cost of addressing the problem of rear collisions would be more than the payoffs that Ford

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[10] *Id.* at 14.
[11] *Id.*
[12] *Id.*
[13] Occupational Safety and Health Administration, *Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis*, 2013, available at <https://www.osha.gov/silica/Silica_PEA.pdf>, at VII-12 and -13.
[14] Environmental Protection Agency, *Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter*, February 28, 2013, available at <http://www.epa.gov/ttn/ecas/regdata/ RIAs/finalria.pdf>, at 5-50.

would have to make as a result of the deaths caused.[15] Similarly, in determining what standards to require of the industry operating vessels transporting passengers, the stakes are high.

Indeed, the very act of valuing a human life in this way and comparing with the money saved by not using appropriate safety vessels may be difficult to justify. The value of human life cannot be monetized to the person whose life is lost, nor to that person's family. Who would want to be the one to contact the family of a veteran with a disability and inform them that the person died because Congress determined that the profit to the industry operating vessels transporting passengers was more important? The cost to use out-of-water survival craft is minimal compared to the benefit of saving someone's life.

III. Conclusion

I appreciate the opportunity to testify this morning before the Subcommittee. The Consortium for Citizens with Disabilities supports retaining the statute that requires the Coast Guard to approve only survival craft that keep people out-of-the water. Passenger vessels required to carry survival craft should only carry survival craft that provide out-of-the-water protection for ALL passengers. .

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[15] Mark Dowie, "Pinto Madness," MOTHER JONES, Sept./Oct. 1977, available at <http://www.motherjones.com/politics/1977/09/pinto-madness>.

CONSORTIUM FOR CITIZENS WITH DISABILITIES

Commemorating 40 Years
Of Disability Advocacy
1973-2013

"Maritime Transportation Regulations: Impacts on Safety, Security, Jobs and the Environment, Part 1"
House Transportation and Infrastructure Committee, Coast Guard and Maritime Transportation Subcommittee
Tuesday, September 10, 2013, 10:30 am

Responses to Questions for the Record
Submitted by Patrick Wojahn, Co-Chair, Transportation Task Force

Compliance Costs for Industry

Mr. Wojahn, in general, operators who oppose the out-of-water survival craft carriage requirement claim that the cost to implement this requirement will drive operators, at least those who are small operators, out of business. That raises the question: has this happened in other circumstances?

- *When transportation sectors have been required to modify operations or equipment to provide equal and safe access for the disabled or elderly, have the costs to comply with these requirements spurred the failure of operators?*

The history of the Americans with Disabilities Act and Rehabilitation Act are full of examples of different sectors claiming that they would be irreparably injured by the requirement that they provide accommodations for people with disabilities. These predictions of gloom and doom have never borne out, however. An example of how this occurred when the ADA first passed was Greyhound and the "over-the-road" passenger bus carriers. In 1989, Greyhound testified before Congress that if the ADA required Greyhound and other over-the-road bus companies to install lifts in their buses, it would cost the company between $40 and $100 million and force it to cut a number of lines, and even presented testimony before a House committee demonstrating which routes in their own districts would be cut. 135 Cong. Rec. S10619-20. Although Congress postponed the lift requirement for over-the-road buses, the record by Greyhound, which suffered in the 1990's even without installing lifts, and Peter Pan bus lines, which thrived in the 1980's even as it did install lifts, suggest that there was no merit to the argument that the accessibility requirements would cause the industry to fail.

Greyhound struggled in the 1990's before the Department of Transportation even required over-the-road bus carriers to have lifts, and then began to thrive more recently around the time that the lift requirement was fully implemented. The routes that Greyhound indicated would be cut due to the ADA were cut in the 1990's, even

without ADA requirements.[1] Greyhound lost 60% of the market share between 1996 and 2004 due to competition from so-called "Chinatown" curbside bus companies, not the requirement to comply with the ADA.[2] Under new ownership since 2007, Greyhound has expanded its service and grown with new subsidiaries with its new buses completely accessible.[3]

The Peter Pan bus company, on the other hand, which calls itself "the Northeast's Premier Bus Line," was able to thrive in the 1980's even while installing bus lifts. Peter Pan decided to provide accessible over-the-road buses in the 80s, before the ADA was even enacted. In fact, Peter Pan has been featured as a compliant provider in a number of hearings in Congress.[4] Not only were the costs of compliance with the ADA not onerous for Peter Pan; that company was in compliance before the ADA even passed.[5]

The subsequent history of the implementation of the ADA has borne out the predictions of the disability civil rights advocates. The transit industry has not collapsed due to the ADA's requirements for accessible vehicles, and the industry has been frequently outspoken about its pride in the many changes it has made in the wake of the passage of the ADA.[6] Provision of accessible buses and inclusion of riders with disabilities has become a point of honor, and source of revenue, on the part of that industry.

Industry resistance has historically been replete with claims that such changes are financially unsustainable. This is particularly true when a civil rights or life safety issue is involved. Years later, the company will likely be solvent, or may possibly be insolvent for business reasons completely unrelated to disability requirements. When Congress rises to the occasion and imposes appropriate requirements, an education process often ensues, and the industry, over time, generally buys into seeing people

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[1] *See, e.g.*, Alexa Hinton, "Budget Cuts Force Greyhound to Leave the Driving to Others," THE COURIER, August 1, 2004 (Greyhound cutting service to many Midwestern cities due to lack of ticket sales), available at < http://www.houmatoday.com/article/20040801/NEWS/408010314>.

[2] Theodore Schleifer, "Bus Travel is Picking Up, Aided by Discount Operators," PHILADELPHIA INQUIRER, August 8, 2013, available at < http://articles.philly.com/2013-08-08/business/41171232_1_megabus-boltbus-greyhound-express>.

[3] Mark Johanson, "Discount Bus Lines Like Megabus and Even Greyhound are 'Building Empires' Across America as Intercity Travel Booms," INTERNATIONAL BUSINESS TIMES, January 12, 2013, available at < http://www.ibtimes.com/discount-bus-lines-megabus-even-greyhound-are-building-empires-across-america-intercity-travel-booms>.

[4] Crean, Chris, Testimony before the House of Representatives Transportation and Infrastructure Committee Subcommittee on Highways, Transit and Pipelines, 2007 WL 294833 (March 20, 2007).

[5] H.R. Rep. 101-485 at *39.

[6] See <https://www.greyhound.com/en/ticketsandtravel/disabledtravelers.aspx>.

with disabilities as an expansion of its natural customer base. The costs of compliance become, over time, an accepted part of doing business. If, on the other hand, Congress provides weak safety guarantees that blithely disregard the legitimate safety needs of Americans with disabilities, progress toward accessibility and recognition of the civil rights of people with disabilities to equal access to safe rescue equipment will be stunted.

- *What is the history? Have actual compliance costs been less than first estimated by operators?*

The history of compliance by the over-the-road bus carriers demonstrates a case where the actual compliance costs were much less than initially reported. Compliance costs for public transit buses were also less than predicted. A key witness at the hearings held before enactment of the ADA was a Colorado engineer from the Denver Rapid Transit District (RTD) who testified that Denver RTD already, in the absence of a federal requirement, made some of its buses accessible at a cost far lower than the disastrous prediction that was estimated by the industry. This included over-the-road buses, which Denver RTD was able to make ADA-compliant without significant cost. This example was persuasive to the House Committee, which chose not to weaken the ADA's requirements for public transit buses.

The estimated costs provided by the Coast Guard report – that the cost to the industry would be $350 million – are overblown as well. Although the costs may be accurate for inflatable rafts, there are fixed rafts that do not require the same level of annual maintenance, and for which those costs would be considerably less.

Adequacy of Coast Guard Study

Mr. Wojahn, the Coast Guard's recent study relies on past marine casualty data, does not specifically address the effectiveness of out-of-water survival craft on survivability of disabled persons, the elderly or children, and relies on a skewed cost/benefit analysis.

- *In your opinion, is this report now discredited? Are there simply too many holes and uncertainties for it to be considered objective and reliable?*

Yes, the Coast Guard's report has a number of very significant flaws rendering its conclusions completely unreliable. As detailed in my written testimony, the report completely without explanation, disregards many of the lives that have been saved by the use of inflatable life rafts. The Coast Guard's calculation of the Value of a Statistical Life (VSL) also disregards the civil rights aspect of these provisions and the considerable precedent that the federal government has had in establishing a higher VSL than the Coast Guard used. Additionally, as noted above, if fixed life rafts are use in place of inflatable life rafts, the annual maintenance costs may be significantly less than what is stated in the Coast Guard report.

Furthermore, the cost-benefit analysis simply does not take into account the civil rights aspect of this issue – that a person with a disability should not be forced to accept greater risk on a vessel carrying passengers offshore than people without disabilities. Accordingly, the study is not reliable to provide any sort of cost-benefit analysis of this regulation.

NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA REPONSE TO QUESTIONS

During the Subcommittee hearing on September 10, 2013, Congresswoman Hahn asked FMC Chairman Cordero two questions about the FMC's ANPRM that proposes to amend the regulations for Ocean Transportation Intermediaries (OTIs). First, she inquired whether the proposal that would require OTIs to update their corporate information would be burdensome on the industry. Second, Congresswoman Hahn asked whether the proposed increase in the bonds for ocean freight forwarders and nvoccs was reasonable due to the passage of time since the existing requirements were set.

Chairman Cordero responded to the first by showing Congresswoman Hahn a two-page form that would take only a few minutes to fill out, stating that it was obvious that this would not be burdensome. The National Customs Brokers and Forwarders Association of America (NCBFFA) notes that the

- Commission has no statutory authority or legislative mandate to impose term limits on OTI licenses,
- "renewal" of information was actually an "application" that the FMC staff would need to review and approve,
- approval process would involve making substantive decisions about whether FMC staff felt that an OTI's license should be renewed,
- appeals process contemplated for this procedure has serious due process and constitutional defects,
- FMC staff is unable to timely process existing applications and is unprepared and understaffed to handle the large number of renewal applications that will be required,
- FMC also intends to impose an as yet undisclosed filing fee for processing the applications,
- FMC has not done a "RegFlex" analysis and has no idea what the cost burden on the industry would actually be,
- FMC can point to no instance in which the failure of an OTI to abide by its existing information to update its corporate information raised any substantive issue under the Shipping Act, or
- proposal was opposed by every party that filed comments to the ANPRM

With respect to the second question, Chairman Cordero stated that there had been no increase in these bonds for a number of years and that the required bond amounts would have been even higher had they been adjusted for inflation, so again the proposal must be reasonable. The NCBFFA notes that the

- proposed increase would be a significant burden for small companies and new applicants (the latter of which are generally required to post full cash collateral with the sureties),
- bond is almost never used by claimants against OTIs handling commercial cargo (e.g., the FMC's ANPRM cited only 2 instances in the millions of shipments handled by OTIs),

- procedures proposed in the ANPRM would have the FMC publish a list of all claims made against an OTI regardless of merit or lack thereof, which would damage business reputations for no reason, and
- proposed bond and related procedures are unnecessary because commercial shippers normally vet their OTI service providers to ensure they have appropriate bond and insurance coverage.

These and other actions proposed in the ANPRM would likely cause the government of the People's Republic of China to issue comparable regulations that would significantly increase the regulatory burdens for companies that do business in the US/PRC trades. This would likely include requiring biannual renewals of the non-term related registrations for US NVOCCs, formal applications rather than simple registration filings, and significantly increased and increasing financial security (i.e., bonding) requirements.

Finally, the NCBFFA notes that the ANPRM was prepared without any prior consultation with the stakeholders, and fails to document any need for new regulations.

These and the other issues raised by the ANPRM are detailed in the Comments to that document that were submitted by the NCBFAA. Those, and the other, comments are available on line at the FMC's website at www.fmc.gov.

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