

STATE OF COAST GUARD RULEMAKING DEVELOPMENT APRIL 2012

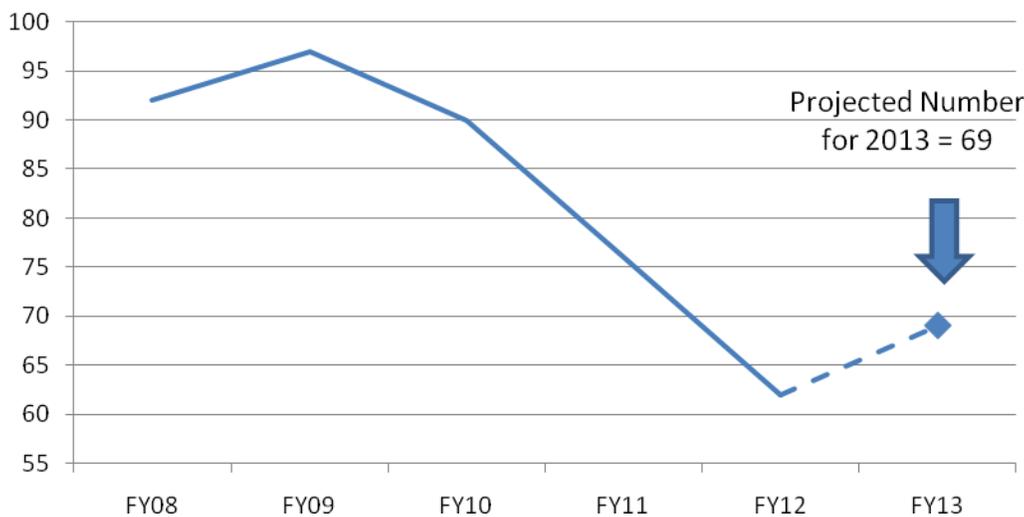
Summary: The Coast Guard Regulatory Development Program (RDP) continues to benefit from additional resources provided by Congress and investments in processes, training, software and other capabilities made by the Coast Guard since 2008. In particular, the number of active rules has been reduced from 97 at the start of fiscal year (FY) 2009 to 62 at the start of FY 2012, almost a 40% reduction. This net reduction was made even though numerous rules were added through a combination of Congressional mandates, in keeping with our obligations as a signatory nation to international codes and treaties, and/or meeting Coast Guard internally initiated projects in support of enhancing maritime safety, security and environmental protection. For example, the Coast Guard Authorization Act of 2010 included 28 mandates that led to 13 new rulemaking projects and the revision of 15 existing rulemaking projects. Although the Coast Guard anticipates a regulatory workload in FY 2012 that will once again rise given Congressional, international and internal requirements, the rulemaking capabilities are expected to meet these challenges and keep overall rule development time low through continued process improvements, better performance measurement, and experience with the evolving enterprise project management system.

Background: This document provides detail on this progress for FY11 since the report provided in January 2011 (“2011 Report”) and the update report provided in July 2011 (“2011 Update”). This document also provides detail on the progress made in FY12-to-date. The Coast Guard continues to review and refine its rulemaking process and will keep Congress apprised of its progress with reports and updates provided twice per fiscal year.

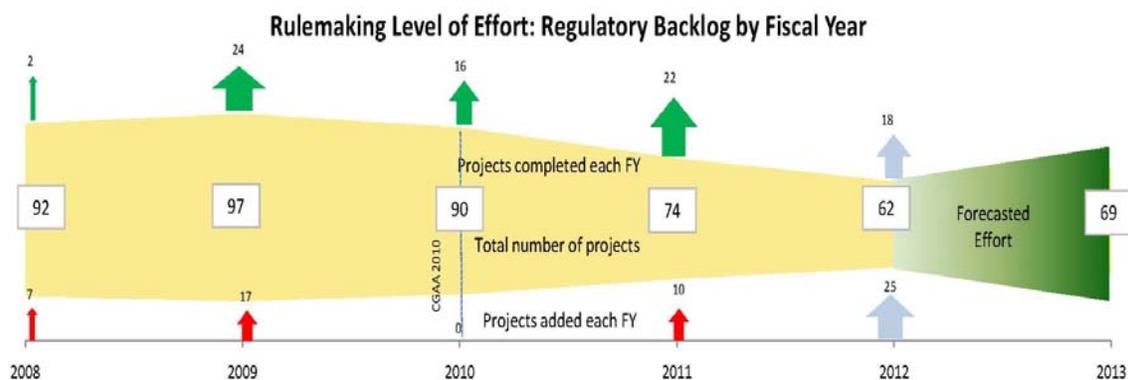
In 2008, out of concern over a backlog of rules that was both growing and aging, Congress and the Coast Guard initiated a series of reforms to the RDP that included additional resources provided by Congress and improvements in processes and training by the Coast Guard. In 2008, the regulatory backlog was 97 rulemaking projects and the average age of these projects was over 6 years. At the end of calendar year 2011, the regulatory backlog was 68 projects, including 34 new rulemaking projects added between 2008 and 2011, and the average age had been reduced to less than 4 years. In particular, of the rulemaking projects on the regulatory backlog in 2008, 42 are complete or withdrawn, and another 11 are in the final rule stage. These figures represent a close-out of more than 55% of the projects from the 2008 list in three years. This was accomplished through the resources provided by Congress and by process improvements, better performance measurement, and investments in an evolving enterprise project management system¹ performed by the Coast Guard.

¹ An enterprise project management system is a means to manage, monitor, and assess the status of all projects and resources in the enterprise through a set of uniform, usually IT-based processes and methods.

Number of Active Rules at Start of Fiscal Year



While the Coast Guard has closed out a significant number of rules since 2008, these reductions have been partially offset by rules added by Congressional mandates, to comply with international codes and treaties, and to enable Coast Guard maritime safety, security and environmental protection initiatives. The figure below shows this combination of rules being added (in red at the bottom of the figure) and closed out (in green at the top of the figure), with the resultant number of active rules (in yellow in the middle of the figure) by fiscal year. Figures for FY 2012 are projections, based on information available at this time.



In addition to the projects added since 2008, workload has been added through increases in the requirements for rulemaking analysis and justification. While the Coast Guard has always been attentive to the impacts of regulations, several changes in the rulemaking environment over the last year have expanded these efforts. In January 2011, Executive Order 13563, Improving Regulation and Regulatory Review, was issued, reinforcing the objectives of Executive Order 12866, Regulatory Planning and Review, namely that: the benefits of regulations justify their cumulative costs; the burden imposed on society be

the least possible to obtain regulatory objectives; performance standards be preferred over prescriptive requirements; and the public has the maximum opportunity to participate in the rulemaking process. Since then, the Coast Guard has further increased already significant scrutiny of each rule under development and our regulations in force. In May 2011, DHS (with USCG and other DHS component agencies) released the Preliminary Plan for Retrospective Review of Existing Regulations. Subsequently, the Office of Management and Budget (OMB) provided guidance to agencies for transforming their preliminary plans into final plans, and in August 2011, DHS (with USCG and other DHS component agencies) issued the Final Plan for the Retrospective Review of Existing Regulations². The Coast Guard has three studies underway as part of that plan and has several others under consideration, all of which consume rulemaking resources and may lead to further rulemaking projects to implement the findings (e.g., removal, modification and/or addition of regulatory requirements).

Rulemaking capability development: The Coast Guard continues to refine regulatory development capabilities as described in previous reports. Specific accomplishments from 2011 and/or plans for 2012 follow.

- The Coast Guard maintains and updates the Regulatory Development Program Mission Management System (RDP MMS) to standardize procedures for communication, training and professional development, rulemaking development processes, RDP roles and responsibilities, leveraging information technology, and overall program management. The MMS is an International Organization for Standardization (ISO) 9000 series system³ to ensure quality in execution and end product and is foundational to the Coast Guard's RDP. This system has evolved over the last several years and is planned for a complete review and overhaul in 2012.
- The Coast Guard continues to set and monitor progress toward strategic goals for the fiscal year. Last year, the Marine Safety and Security Council (MSSC) achieved all of its strategic goals, including progressing internal process improvements, focusing on completing older rulemakings, addressing resource shortfalls, and developing clear, meaningful measures of performance. This year, the MSSC goals include: further reductions in the average age of rulemakings; harmonizing the rulemaking program with the standards development program; and enhancing relationships with rulemaking counterparts at DHS and other agencies.
- The Coast Guard continues to implement a prototype enterprise project management system, achieving a preliminary capability in 2011. While limited at this time, this preliminary capability provides the ability to more systematically measure and manage rulemaking development projects, providing a revolutionary step forward in meeting Congressional and Coast Guard objectives for regulatory development. When this system is fully functional, the Coast Guard will be able

² Available at <http://www.dhs.gov/xlibrary/assets/dhs-ogc-final-retrospective-review-plan-8-22-11-final.pdf>

³ The ISO 9000 standards are a set of international quality management system standards and guidelines.

to track and analyze resource allocation, project planning effectiveness, obstacles to efficiency, and performance measures across the full complement of rulemaking projects, simultaneously, for the first time, further increasing timeliness, quality and capacity. This preliminary capability will be expanded upon in 2012, with the objective of being fully implemented in 2013.

Recent successes: The Coast Guard achieved several planned milestones in FY11 and FY12 to-date:

- The Coast Guard advanced a cumulative total of 85 ongoing, new, and completed rulemaking projects during FY11. Current resources and rulemaking processes were sufficient to ensure that no rulemakings became inactive.
- In FY11, the Coast Guard published 28 rulemaking documents. Of these, 14 were final rules, interim final rules, and direct final rules. Three rulemakings were technical and conforming amendments. Another 11 published rulemaking documents were notices of intent, advance notices of proposed rulemaking, supplemental notices of proposed rulemaking, or notices of proposed rulemaking. In FY11, the Coast Guard closed out 11 projects with final rules. In FY12 to-date, the Coast Guard has published 8 headquarters rulemaking documents: 1 final rule, 1 direct final rule, 2 interim final rules, 1 notice of proposed rulemaking, 1 supplemental notice of proposed rulemaking, and 2 notices of intent. Enclosure 1 (Published Coast Guard Rulemakings in FY11 and FY12 to-date) provides specifics on publications.
- The Coast Guard advanced all 19 rulemaking projects highlighted for 2011, publishing rulemaking documents for 8 of these projects. See Enclosure 2 (Progress on Coast Guard rulemaking Projects Highlighted for 2011).
- On August 11, 2011, the Coast Guard published the much anticipated notice of proposed rulemaking for Inspection of Towing Vessels (76FR49976). The comment period closed on December 9, 2011, and the Coast Guard is analyzing the comments and determining the best way forward to finalize this rulemaking.
- On November 11, 2011, the Department of Homeland Security forwarded the Coast Guard's final rule for Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters to the OMB for review. OMB approved the final rule on 24 February 2012. The Coast Guard published the final rule on 23 March 2012.

Planned milestones: The Coast Guard is aggressively moving ahead with its rulemaking objectives for FY12. Although efforts to reduce the existing backlog of rulemaking projects will proceed well beyond FY12, the Coast Guard has already seen a decline in the backlog, while continuing to undertake new, necessary rulemaking projects. The Coast Guard expects the decline in the original 2008 backlog to continue, but also anticipates an increase in new rulemaking projects from sources such as legislation

related to the Deepwater Horizon oil spill, growing commerce and a commensurate need for a Coast Guard presence in the Arctic region, and evolving treaty and code provisions from the International Maritime Organization:

- The Coast Guard expects to move forward at least the top 50 rulemaking projects, with continuing focus on rulemaking actions necessitated by the Coast Guard Authorization Act of 2010 (CGAA) and on completing older rulemaking projects;
- The Coast Guard is working diligently to publish a final rule on the Inspection of Towing Vessels, cognizant of the unmet CGAA deadline for issuing a final rule by October 14, 2011. As noted previously, the comment period closed on December 9, 2011, and the Coast Guard is analyzing the comments and determining the best way forward to finalize this rulemaking.
- The Coast Guard published a final rule on Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters on 23 March 2012.
- The Coast Guard plans to meet the statutory mandates of the Cruise Vessel Safety and Security Act.
- The Coast Guard is working aggressively toward achieving the CGAA rulemaking deadlines of:
 - April 15, 2012, for Marine Transportation-Related Facility Response Plans for Hazardous Substances;
 - April 15, 2012, for Tank Vessel Response Plans for Hazardous Substances;
 - April 15, 2012, for Nontank Vessel Response Plans.
- The Coast Guard plans to publish an interim rule to implement CGAA section 617 for Offshore Supply Vessels (deadline October 15, 2011), a notice of proposed rulemaking for section 702 on Oil Transfers from Vessels (deadline January 12, 2012), and a final rule for section 710 on the Higher Volume Port Area in the Strait of Juan de Fuca (October 15, 2011 deadline to initiate a rulemaking met).
- The Coast Guard plans to continue coordinating rulemaking priorities with the Department of Homeland Security rulemaking program to help streamline external approval of Coast Guard rulemakings.

Enclosure 3 provides a summary of highlighted rulemaking projects the Coast Guard expects to address in FY12.

Enclosure 1

Coast Guard Rulemaking Publications in FY11 and FY12 to-date

FY11

- Bulk Solid Hazardous Materials: Harmonization with the International Maritime Solid Bulk Cargoes (IMSBC) Code—Final Rule—October 19, 2010
- Marine Vapor Control Systems—Notice of Proposed Rulemaking—October 21, 2010
- Vessel Traffic Service Lower Mississippi River—Final Rule—October 28, 2010
- Limited Service Domestic Voyage Load Lines for River Barges on Lake Michigan—Final Rule—November 18, 2010⁴
- Passenger Weight and Inspected Vessel Stability Requirements—Final Rule—December 14, 2010
- Temporary Suspension of Spill Response Time—Emergency Interim Rule—December 21, 2010⁵
- Protection for Whistle Blowers in the Coast Guard—Direct Final Rule—December 21, 2010
- Notice of Arrival on the Outer Continental Shelf—Final Rule—January 13, 2011
- 2011 Rates for Pilotage on the Great Lakes—Final Rule—February 4, 2011
- Inflatable Personal Floatation Devices—Direct Final Rule—March 30, 2011
- Traffic Separation Schemes: In the Strait of Juan de Fuca and Its Approaches; in Puget Sound and Its Approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia—Final Rule—April 13, 2011⁶
- Traffic Separation Schemes: In the Approaches to Portland, ME; Boston, MA; Narragansett Bay, RI and Buzzards Bay, MA; Chesapeake Bay, VA, and Cape Fear River, NC —Final Rule—April 14, 2011⁷
- Technical Amendment: Sector North Carolina—Final Rule—May 9, 2011

⁴ Notice published December 17, 2010, delaying the effective date of certain amendments in this final rule and soliciting comments on those amendments. The final rule became effective on June 15, 2011.

⁵ Emergency Interim Rule in response to Deepwater Horizon oil spill.

⁶ Interim Rule and request for comments published November 19, 2010.

⁷ Interim Rule and request for comments published December 13, 2010.

Coast Guard Rulemaking Publications in FY11 and FY12 to-date (cont.)

- Title 33 CFR Technical Amendments—Final Rule—June 2, 2011
- Great Lakes Limited Service Domestic Load Lines—Final Rule—June 6, 2011
- Engine Cut-Off Switches for Recreational Vessels—Advance Notice of Proposed Rulemaking—June 8, 2011
- Merchant Mariner Licenses—Notice of Intent—June 19, 2011
- Merchant Mariner Documents—Notice of Intent—June 20, 2011
- Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978—Supplemental Notice of Proposed Rulemaking—August 1, 2011
- 2012 Great Lakes Pilotage Rates—Notice of Proposed Rulemaking—August 4, 2011
- Inspection of Towing Vessels—Notice of Proposed Rulemaking—August 9, 2011
- Propeller Injury Avoidance Measures for Certain Recreational Vessels when Operating a Vessel in Close Proximity to Persons in the Water—Advance Notice of Proposed Rulemaking—August 16, 2011
- Waiver of Citizenship Requirements for Crew on Commercial Fishing Vessels—Notice of Proposed Rulemaking—August 18, 2011
- International Anti-fouling system Certificate—Notice of Proposed Rulemaking—September 1, 2011
- Inflatable Personal Flotation Devices—Notice of Proposed Rulemaking—September 29, 2011
- Title 46 Code of Federal Regulations Technical Amendments—Final Rule—September 30, 2011

FY12

- Lifesaving Equipment: Production Testing and Harmonization with International Standards—Interim Rule—October 1, 2011
- Lifesaving Equipment: Production Testing and Harmonization with International Standards—Supplemental Notice of Proposed Rulemaking—October 2, 2011

Coast Guard Rulemaking Publications in FY11 and FY12 to-date (cont.)

- Claims Procedures under the Oil Pollution Act of 1990—Notice of Intent—November 1, 2011
- Higher Volume Port Area—Washington State—Notice of Intent—December 7, 2011
- International Anti-fouling System Certificate—Final Rule—December 9, 2011
- Alternate Tonnage Threshold for Oil Spill Response Vessels—Interim Rule—December 11, 2011⁸
- Seagoing Barges—Direct Final Rule—December 19, 2011
Reconsideration of Letters of Recommendation for Waterfront Facilities Handling LNG and LHG—
Notice of Proposed rulemaking—December 16, 2011

⁸ This rule is issued as an interpretive rule as authorized by section 702 of the Coast Guard Authorization Act of 1996 (the Act) (Pub. L. 104-324; October 19, 1996) (46 U.S.C. 14104).

Enclosure 2

Progress Made on Coast Guard Rulemaking Projects Highlighted for 2011

- Approval of Classification Societies (1625-AB14): Final Rule in progress
- Assessment Framework and Organizational Restatement Regarding Preemption for Certain Regulations (1625-AB32): Final Rule in final agency review
- Carbon Dioxide Fire Suppression Systems on Commercial Vessels (1625-AB44): Final Rule in progress
- Commercial Fishing Industry Vessels (1625-AA77): Original rulemaking replaced by CGAA mandates; Interim Rule in progress
- Consolidated Cruise Ship Regulations (1625-AB30): Notice of Proposed Rulemaking in final agency review
- Great Lakes Pilotage: 2011 Annual Review and Adjustment (1625-AB48): Final Rule published February 4, 2011
- Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978 (1625-AA16): Supplemental Notice of Proposed Rulemaking published August 1, 2011; Comment period closed September 30, 2011; Final Rule in progress
- Inspection of Towing Vessels (1625-AB06): Notice of Proposed Rulemaking published August 11, 2011; Comment period closed December 9, 2011; Final Rule in progress
- Installation and Use of Engine Cut-off Switches (1625-AB32): Advance Notice of Proposed Rulemaking published June 8, 2011; Comment period closed September 6, 2011; Notice of Proposed Rulemaking in progress
- Lifesaving Equipment: Production Testing and Harmonization With International Standards (1625-AB46): Notice of Proposed Rulemaking published August 31, 2011; Interim Rule published October 11, 2011; Supplemental Notice of Proposed Rulemaking published October 11, 2011; Interim Rule in progress
- Nontank Vessel Response Plans and Other Vessel Response Plan Requirements (1625-AA32): Final Rule in final agency review
- Potable Water Standards for Inspected Vessels (1625-AB51): Notice of Proposed Rulemaking in final agency review

Progress Made on Coast Guard Rulemaking Projects Highlighted for 2011 (cont.)

- Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (1625-AA32): OMB approved the final rule on 24 February 2012. The CG published the final rule on 23 March 2012.
- Traffic Separation Schemes: In the Strait of Juan de Fuca and Its Approaches; in Puget Sound and Its Approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia (1625-AB48): Final Rule published April 26, 2011
- Traffic Separation Schemes: In the Approaches to Portland, ME; Boston, MA; Narragansett Bay, RI and Buzzards Bay, MA; Chesapeake Bay, VA, and Cape Fear River, NC (1625-AB55): Final Rule published April 26, 2011
- Updates to Maritime Security (1625-AB38): Notice of Proposed Rulemaking in progress
- Vessel Requirements for Notice of Arrival and Departure, and Automatic Identification System (1625-AA99): Final Rule In final agency review

Enclosure 3

Highlighted Coast Guard Rulemaking Projects for FY12

- Alternate Tonnage Threshold for Oil Spill Response Vessels (1625-AB82)
- Approval of Classification Societies(1625-AB14): Implements section 413 of the Coast Guard and Maritime Transportation Act of 2004 and section 622 of the Coast Guard Authorization Act of 2010
- Aquaculture Vessels: In progress; Implements section 901 from the Coast Guard Authorization Act of 2010
- Assessment Framework and Organizational Restatement Regarding Preemption for Certain Regulations (1625-AB32)
- Commercial Fishing Industry Vessels (1625-AA77): Implements sections 604 and 608 from the Coast Guard Authorization Act of 2010
- Cruise Vessel Safety and Security: Implements statutory mandates from the Cruise Vessel Safety and Security Act
- Escort Tankers in Prince William Sound: Implements section 711 of the Coast Guard Authorization Act of 2010
- Extension of Financial Responsibility: Implements section 712 of the Coast Guard Authorization Act of 2010
- Facility Response Plans for Hazardous Substances (1625-AA12): Implements section 311 of the Federal Water Pollution Control Act and section 701 from the Coast Guard Authorization Act of 2010
- Great Lakes Pilotage: 2012 Annual Review and Adjustment (1625-AB70)
- Higher Volume Ports Area - Washington: Implements section 710 from the Coast Guard Authorization Act of 2010
- Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978 (1625-AA16): Implements sections 613, 614, 615, and 910 from the Coast Guard Authorization Act of 2010 and harmonizes with the International Maritime Organization

Highlighted Coast Guard Rulemaking Projects for FY12 (cont.)

- Inspection of Towing Vessels (1625-AB06): Implements section 415 from the Coast Guard and Maritime Transportation Act of 2004 and section 701 from the Coast Guard Authorization Act of 2010
- Integration of Security Plans and Systems: Implements section 822 of the Coast Guard Authorization Act of 2010
- Lifesaving Devices on Uninspected Vessels (1625-AB83): Implements section 619 from the Coast Guard Authorization Act of 2010
- Mariner Records: Implements section 605 from the Coast Guard Authorization Act of 2010
- MARPOL Annex I Updates (1625-AB57): Implements sections 612 and 702 from the Coast Guard Authorization Act of 2010
- Nontank Vessel Response Plans and Other Vessel Response Plan Requirements (1625-AA32): Implements section 311 of the Federal Water Pollution Control Act and section 701 from the Coast Guard Authorization Act of 2010
- Offshore Supply Vessels Greater than 6000 GT ITC (1625-AB62): Implements section 617 from the Coast Guard Authorization Act of 2010
- Phase out of Buoyant Apparatus and Life Floats: Implements section 609 of the Coast Guard Authorization Act of 2010
- Potable Water Standards for Inspected Vessels (1625-AB51): Implements section 416 of the Coast Guard and Maritime Transportation Act of 2004
- Revisions to Transportation Workers Identification Credential Requirements (1625-AB80): Implements section 809 from the Coast Guard Authorization Act of 2010
- Safety Management System for Domestic Passenger and Small Passenger Vessels: Implements section 610 from the Coast Guard Authorization Act of 2010
- Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (1625-AA32): rulemaking under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990
- Seafarer Access to MTSA Facilities: Implements section 811 of the Coast Guard Authorization Act of 2010

- Subchapter N Outer Continental Shelf Activities (1625-AA21): Implements sections 306 and 622 from the Coast Guard Authorization Act of 2010
- Tank Vessel Response Plans for Hazardous Substances (1625-AA13): Implements section 311 of the Federal Water Pollution Control Act and section 701 from the Coast Guard Authorization Act of 2010
- Tonnage Regulations Amendments (1625-AB74): Implements section 303 from the Coast Guard Authorization Act of 2010
- Transportation Workers Identification Credential (TWIC) – Reader Requirements (1625-AB21): Implements section 814 from the Coast Guard Authorization Act of 2010
- Numbering Undocumented Barges (1625-AA14): Implements statutory mandates of the Abandoned Barge Act of 1992
- Updates to Maritime Security Regulations (1625-AB38): Rulemaking that incorporates recommendations for security improvements and implements section 826 from the Coast Guard Authorization Act of 2010
- Vessel Requirements for Notice of Arrival and Departure, and Automatic Identification System (1625-AA99); Implements statutory requirements from section 701 of the Maritime Transportation Security Act of 2002