3. **REGULATIONS**

A. Implementation of National Maritime Security Initiatives (CG)

On July 1, 2003, (68 FR 39239-39368), the Coast Guard (CG), U.S. Department of Homeland Security, published a series of six temporary interim rules to promulgate maritime security requirements mandated by the Maritime Transportation Security Act (MTSA) of 2002. The six interim rules address: (1) general provisions and national maritime transportation security (33 CFR parts 101 and 102); (2) area maritime security (33 CFR part 103); (3) vessel security (33 CFR parts 104, 160, and 165 and 46 CFR parts 2, 31, 71, 91, 115, 126, and 176); (4) facility security (33 CFR part 105); (5) outer continental shelf facility security (33 CFR part 106); and (6) vessel automatic identification system (33 CFR parts 26, 161, 164, and 165). In addition to the automatic identification system (AIS) interim rule, the Coast Guard issued a separate request for comments (68 FR 39369-39371) regarding further expanding the implementation of the AIS.

The general provisions/maritime security interim rule establishes the general regulations for the new subchapter H of Title 33 of the Code of Federal Regulations. It does so by providing a comprehensive discussion of industry-related maritime security requirements and a summary of the cost and benefit assessments of the entire suite of interim rules. Also addressed is the alignment of domestic maritime security requirements with the international maritime security standards in the International Code for the Security of Ships and of Port Facilities (ISPS Code) and chapter XI-2 of the of the International Convention for the Safety of Life at Sea (SOLAS Convention).

The area maritime security interim rule establishes U.S. Coast Guard Captains of the Ports as Federal Maritime Security Coordinators and establishes requirements for Area Maritime Security Plans and Area Maritime Security Committees.

The vessel security interim rule provides security measures for certain vessels calling on U.S. ports. It requires the owners or operators of vessels to designate security officers for vessels, develop security plans based on security assessments, implement security measures specific to each vessel's operation, and comply with Maritime Security Levels.

The facility security interim rule provides security measures for certain facilities in U.S. ports. It requires owners or operators of facilities to designate security officers for facilities, develop security plans based on security assessments and surveys, implement security measures specific to each facility's operation, and comply with Maritime Security Levels.

The outer continental shelf facility security interim rule provides security measures for mobile offshore drilling units (MODUs) not subject to the SOLAS Convention and certain fixed and floating facilities on the outer continental shelf (OCS) other than deepwater ports. For the purpose of this rule, non-SOLAS MODUs and certain fixed and floating facilities on the OCS are collectively referred to as OCS facilities. This rule requires the owners or operators of OCS facilities to designate security officers, develop security plans based on security assessments,

implement security measures specific to each OCS facility's operation, and comply with Maritime Security Levels.

With regard to the automatic identification system (AIS) interim rule, the Coast Guard has amended the port and waterway regulations to reflect vessel carriage requirements and establish technical and performance standards for AIS. This rule implements the AIS carriage requirements of the MTSA and the International Maritime Organization (IMO) requirements adopted under the SOLAS Convention. The changes will require AIS on all vessels subject to SOLAS, vessels using vessel traffic services, and certain other commercial vessels. The rule will facilitate vessel-to-vessel and vessel-to-shore communications, will enhance good order and predictability on the waterways, promote safe navigation, and contribute to maritime domain awareness to protect the security of the nation's ports and waterways.

For further information, contact Cdr. Suzanne Englebert, Administration and Coordination Staff, Office of the Assistant Commandant for Marine Safety, Security, and Environmental Protection (G-M), U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593, (telephone: (202) 267-1103, electronic mail: msregs@comdt.uscg.mil).

B. Electronic Presentation of Cargo Information (CBP)

On July 23, 2003, (68 FR 43573-43606), the Bureau of Customs and Border Protection (CBP), U.S. Department of Homeland Security, issued a proposed rule (19 CFR parts 4, 103, 113, 122, 123, and 192) that would amend the Customs Regulations to provide that CBP must receive, by way of a CBP-approved electronic data interchange system, information pertaining to cargo before the cargo is either brought into or sent from the United States by any mode of commercial transportation (sea, air, rail, or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified so as to prevent smuggling and ensure cargo safety and security pursuant to the laws enforced and administered by CBP. The proposed regulations are specifically intended to implement the provisions of section 343(a) of the Trade Act of 2002 (P.L. 107-210), as amended by the Maritime Transportation Security Act of 2002 (P.L. 107-295).

For further information, contact Mr. Glen E. Vereb, Office of Regulations and Rulings, Bureau of Customs and Border Protection, U.S. Department of Homeland Security, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, (telephone: (202) 572-8724).

C. Ballast Water Management (CG)

On July 30, 2003, (68 FR 44691-44696), the Coast Guard (CG), U.S. Department of Homeland Security, published a proposed rule (33 CFR part 151) regarding a mandatory program for ballast water management for U.S. waters. The unintentional introduction of nonindigenous species (NIS) into U.S. waters via the discharge of vessels' ballast water has had significant impacts on the nation's marine and freshwater resources, biological diversity, and coastal infrastructures. To address this continued threat, and to comply with the Nonindigenous Aquatic Nuisance

Prevention and Control Act of 1990, and the National Invasive Species Act of 1996, the Coast Guard is proposing mandatory ballast water management practices for all vessels equipped with ballast tanks bound for ports or places within the United States and/or entering U.S. waters. The Great Lakes ballast water management program would remain unchanged. This proposed rule would increase the Coast Guard's ability to protect U.S. waters against the introduction of NIS via ballast water discharges.

This mandatory program would require all vessels equipped with ballast water tanks entering U.S. waters after operating beyond the Exclusive Economic Zone (EEZ) to employ at least one of the following ballast water management practices: (1) prior to discharging ballast water in U.S. waters, perform complete ballast water exchange in an area no less than 200 nautical miles from any shore; (2) retain ballast water onboard the vessel; (3) prior to the vessel entering U.S. waters, use an alternative environmentally sound method of ballast water management that has been approved by the Coast Guard; and/or (4) discharge ballast water to an approved reception facility.

For further information, contact Mr. Bivan Patnaik, Environmental Standards Division, Office of Operating and Environmental Standards (G-MSO), U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593, (telephone: (202) 267-1744, electronic mail: bpatnaik@comdt.uscg.mil).

D. Harmonization of Hazardous Materials Regulations (RSPA)

On July 31, 2003, (68 FR 44991-45043), the Research and Special Programs Administration (RSPA), U.S. Department of Transportation, published a final rule (49 CFR parts 171, 172, 173, 175, 176, 178, and 180) that amends the Hazardous Materials Regulations (HMR) to maintain alignment with international standards. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code) of the International Maritime Organization (IMO), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), these revisions are necessary to facilitate the transport of hazardous materials in international commerce.

Amendments to the HMR in this final rule include, but are not limited to, the following: (1) amendments to the Hazardous Materials Table (HMT) which add, revise, or remove certain proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, bulk packaging requirements, passenger and cargo aircraft maximum quantity limitations, and vessel stowage provisions; (2) amendments to the List of Marine Pollutants; (3) revisions and additions of special provisions, including the addition of a special provision for assignment to aerosol entries setting forth the criteria for classifying aerosols; (4) addition of a requirement to enter the subsidiary hazard class or subsidiary division number on shipping papers; (5) addition of a requirement to indicate the number and types of packagings on shipping papers; (6) addition of an alternative basic description sequence on shipping papers; (7) revision of marking requirements for limited quantities; (8) addition of an air eligibility marking

requirement; (9) revision of the non-liquefied and liquefied compressed gases descriptions, and the addition of high pressure and low pressure liquefied gases categories; (10) revisions and additions to the Self-Reactive Materials Table; (11) revisions and additions to the Organic Peroxide Table; and (12) revision of the net weight restrictions for explosives in freight containers exceeding 20 feet (6 meters) in length.

For further information, contact Ms. Joan McIntyre, Office of Hazardous Materials Standards (DHM-10), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (telephone: (202) 366-8553).

E. Sea Turtle Conservation (NOAA)

On August 27, 2003, (68 FR 51508-51515), the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, promulgated a final rule (50 CFR part 223) that amends the turtle excluder device (TED) regulations that require most shrimp trawlers to use TEDs in the southeastern Atlantic Ocean and the Gulf of Mexico in order to reduce the incidental capture of endangered and threatened sea turtles during shrimp trawling. NMFS is allowing the use of a specific design of hooped hard TED (the large Coulon style TED) that is capable of releasing large loggerhead and green turtles as well as leatherback turtles.

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA). TEDs incorporate an escape opening, usually covered by a webbing flap, that allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during testing based upon specific testing protocols. Most approved hard TEDs are described in the regulations according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

For further information, contact Mr. Robert Hoffman, Protected Resources Division, Southeast Regional Office, National Marine Fisheries Service, 9721 Executive Center Drive, North, St. Petersburg, Florida 33702, (telephone: (727) 570-5312, electronic mail: robert.hoffman@noaa.gov).

F. Critical Habitat for North Atlantic Right Whales (NOAA)

On August 28, 2003, (68 FR 51758-51763), the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, published a finding regarding a petition to revise the critical habitat for North Atlantic Right Whales. On July 11, 2002, NMFS received a petition requesting that NMFS revise the present critical habitat designation for the western North Atlantic right whale under the Endangered Species Act (ESA) and 50 CFR part 226 by combining and expanding the current Cape Cod Bay and Great South Channel critical habitats in the Northeast and by expanding the current critical

habitat in the Southeast. NMFS has decided not to designate critical habitat in accordance with the petitioned revision because the information presented in the petition does not adequately support the petitioned new boundaries for critical habitat. However, NMFS intends to continue with planned research activities and evaluate new information to determine whether physical and biological features essential to the conservation of the North Atlantic right whale species exist that may warrant a revision of critical habitat.

The North Atlantic right whale is one of the world's most critically endangered species of large whale. More than 800 years of uncontrolled and intense hunting is the primary reason that the right whale population has declined to such a precarious level. Despite nearly three-quarters of a century of international legal protection, the right whale has not shown any recovery towards its pre-exploitation numbers. Today, ship strikes and entanglements in fishing gear are the primary, human-related causes of serious injury and mortality to right whales that impede the species' recovery.

For further information, contact Ms. Kristy Long, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, (telephone: (301) 713-1401, facsimile: (301) 713-0376). Background documents on right whales and the critical habitat designation process can be downloaded from the NOAA Fisheries Web Site at http://www.nmfs.noaa.gov.

G. Penalty Guidelines for Hazardous Materials Transportation (RSPA)

On September 8, 2003, (68 FR 52844-52856), the Research and Special Programs Administration (RSPA), U.S. Department of Transportation, issued a final rule (49 CFR parts 105, 107, and 171) that increases to $32,500 and $275, respectively, the maximum and minimum civil penalties for a knowing violation of federal hazardous materials transportation law or a regulation issued under that law. RSPA also published revised baseline assessments for frequently cited violations to provide the regulated community and the general public with more current information on RSPA's hazardous material penalty assessment process. The revisions to RSPA's baseline penalty assessments consider the increase in the maximum civil penalty to $32,500. In proposing or assessing a civil penalty, RSPA will not normally consider a prior violation in a case that was initiated in a calendar year more than 6 years prior to the year in which the current proceeding is initiated.

In addition, RSPA has updated the address to which civil penalty payments must be sent, and is making editorial changes to its procedural regulations for issuing an administrative determination of preemption.

For further information, contact Mr. John O'Connell, Office of Hazardous Materials Enforcement (DHM-40), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (telephone: (202) 366-4700).

H. Vertical Tandem Lifts (OSHA)

The Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, published a final standard on July 25, 1997, revising all of the Longshoring Safety and Health Standard and related sections of the Marine Terminals Standard. In the preamble to the final rule, OSHA discussed the practice, referred to as "vertical tandem lifts" (VTLs), of lifting two empty intermodal containers together, one on top of the other, connected by semi-automatic twistlocks. The final standard did not cover this practice because the rulemaking record contained insufficient information to enable OSHA to determine how to regulate the practice. In a proposed rule (29 CFR parts 1917 and 1918) of September 16, 2003, (68 FR 54298-54318), OSHA indicated that it would permit VTLs of two containers with a combined weight of the containers and cargo not exceeding 20 tons.

For further information, contact Ms. Bonnie Friedman, Office of Communications, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, (telephone: (202) 693-1999).