

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866, and because it is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement

because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The basic objective of the amendment is to allow a new party to assume a revoked permit and begin mining under the terms of that permit. Because the application of the rule is limited and because the party assuming the revoked permit stands to gain an economic benefit, we have concluded that the rule will not have a significant economic impact on a substantial number of small entities.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a. does not have an annual effect on the economy of \$100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or

geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based on the fact that the application of the rule is limited and the party assuming the revoked permit stands to gain an economic benefit.

*Unfunded Mandates*

OSM has determined under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on any local, State, or Tribal governments or private entities.

**List of Subjects in 30 CFR Part 926**

Intergovernmental relations, surface mining, underground mining.

Dated: November 6, 2001.

**Brent T. Wahlquist,**  
*Regional Director, Western Regional  
Coordinating Center.*

For the reasons set out in the preamble, 30 CFR 926 is amended as set forth below:

**PART 926—MONTANA**

1. The authority citation for part 926 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 926.15 is amended in the table by adding a new entry in chronological order by November 21, 2001 to read as follows:

**926.15 Approval of Montana regulatory program amendments.**

Original amendment submission date	Date of final publication	Citation/Description
April 27, 2001 .....	November 21, 2001 .....	MCA 82–4 Part 2 Operating permit revocation—permit transfer

[FR Doc. 01–29106 Filed 11–20–01; 8:45 am]  
BILLING CODE 4310–05–P

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 151**

[USCG–1998–3423]

RIN 2115–AF55

**Implementation of the National Invasive Species Act of 1996 (NISA)**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** To comply with the National Invasive Species Act of 1996 (NISA), the Coast Guard has established both regulations and voluntary guidelines to control the invasion of aquatic nuisance species (ANS). Ballast water from ships is one of the largest pathways for the intercontinental introduction and spread of ANS. This rule finalizes regulations for the Great Lakes ecosystem and voluntary ballast water management guidelines for all other waters of the United States, including mandatory reporting for nearly all

vessels entering waters of the United States.

**DATES:** This final rule is effective December 21, 2001.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1998–3423 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this

docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions on this rule, contact Lieutenant Commander Mary Pat McKeown, Project Manager, U.S. Coast Guard Headquarters, Office of Operating and Environmental Standards (G–MSO), telephone 202–267–0500. For questions on viewing, or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory History**

On April 8, 1993, the Coast Guard published a final rule titled “Ballast Water Management for Vessels Entering the Great Lakes” in the **Federal Register** [58 FR 18330]. The rule established mandatory procedures for the Great Lakes in 33 CFR part 151, subpart C.

On December 30, 1994, we published a final rule titled “Ballast Water Management for Vessels Entering the Hudson River” in the **Federal Register** [59 FR 67632]. The rule amended the regulations in 33 CFR part 151 to include requirements for portions of the Hudson River, which connects to the Great Lakes.

On April 10, 1998, we published a notice of proposed rulemaking (NPRM) titled “Implementation of the National Invasive Species Act of 1996 (NISA)” in the **Federal Register** [63 FR 17782].

On May 17, 1999, we published an interim rule [64 FR 26672] that implemented the National Invasive Species Act of 1996 (NISA). We received 27 letters commenting on the interim rule.

##### **Background and Purpose**

Aquatic nuisance species invasions through ballast water are now recognized as a serious problem threatening global biological diversity and human health.

On November 29, 1990, Congress enacted the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA) [Public Law 101–646; 16 U.S.C. 4711]. Congress enacted NANPCA to prevent and control infestations of zebra mussels and other nonindigenous aquatic nuisance species in coastal and inland waters of the United States.

On October 26, 1996, Congress enacted the National Invasive Species Act of 1996 (NISA) [Public Law 104–332], which amended and reauthorized NANPCA (the Act). The purpose of the Act was to provide for ballast water management to prevent the introduction

and spread of nonindigenous species into the waters of the United States.

On November 27, 1997, the IMO Marine Environment Protection Committee (MEPC) adopted Resolution A.868(20), “Guidelines for the Control and Management of Ships’ Ballast Water to Minimize the Transfer of Harmful Aquatic Organisms and Pathogens.” The IMO recommends that all maritime nations of the world adopt and use these voluntary guidelines.

The regulations and guidelines in this rule will implement the Act by—

- Requiring operators of vessels entering waters of the United States from beyond the Exclusive Economic Zone (EEZ) to submit a ballast water management report;
- Providing voluntary ballast water management guidelines for operators of vessels entering waters of the United States from beyond the EEZ; and
- Promoting ballast water management for operators of all vessels in waters of the United States.

##### **Discussion of Comments and Changes**

The Coast Guard received 116 comments on the interim rule. The paragraphs in this section discuss the comments we received, provide the Coast Guard’s responses, and explain any changes we are making to the regulations. General comments are discussed first, followed by comments on specific sections of the regulations.

##### **General Comments**

Six comments expressed support for the rule and commended the Coast Guard for our effort to control the spread of ANS in U.S. waters and to develop realistic regulations that reflect industry input.

Ten comments discussed the importance of maintaining consistent national and international standards to control the spread of ANS. Some of these expressed concern that States or other levels of government may issue other regulations that exceed or significantly change the standards included in the rule. One respondent stated that solutions to the spread of ANS must be evaluated to ensure that they don’t exacerbate the ANS problem as it applies to individual ports. Another comment suggested that Federal government control of ballast water management is necessary to avoid having different requirements at individual ports.

It has long been the Coast Guard’s position that consistent standards of universal application, coupled with Federal initiatives to address unique regional concerns, are the best means of meeting local and national

environmental goals with the least disruption to international maritime commerce. To avoid potential conflicts between regulations and duplication of effort, we request that any political subdivision of the United States that is contemplating any laws, regulations, or requirements regarding the discharge of ballast water, consider this regulation prior to taking action.

The Coast Guard will try to maintain nationwide consistency in methods for the control of invasive species. We are committed to ensuring national consistency for regulations that are established as international rules and regulations, adopted by the IMO, and ratified by the United States, which are related to the design, construction, equipment, manning, and operation of vessels. However, this rulemaking isn’t intended to preempt any State, regional, or local efforts that exceed but don’t conflict with the standards set forth in this rule. Section 1205 of the Act states that—

Nothing in this title shall affect the authority of any State or political subdivision thereof to adopt or enforce control measures for aquatic nuisance species, or diminish or affect the jurisdiction of any State over species of fish and wildlife.

Eleven comments discussed the costs associated with compliance and noted that we did not accurately reflect these costs in the interim rule. Two respondents suggested that the task of filling out the report is the responsibility of the chief officer (chief mate or master), so the associated cost should be based on a chief officer’s salary. One of the respondents suggested basing the cost on the overtime rate of a master.

The Coast Guard has revised the cost of complying with the mandatory reporting requirement and has increased the estimated cost to industry to meet this requirement.

Many of the comments stated that the Coast Guard’s cost analysis does not accurately reflect the cost and impact of compliance with either the voluntary guidelines for ballast water management or the mandatory reporting requirements. Several comments stated that certain additional costs should be included in the analysis if the voluntary guidelines become mandatory. The examples of these costs the respondents note include those for fuel for ballast pump operations; shore reception facility fees; increased equipment usage (*i.e.*, wear and tear), and maintenance and repairs; decreased efficiency of vessels due to reduced speeds; and

postponement or cancellation of other operational priorities.

The Coast Guard disagrees. The only costs the Coast Guard can consider in this Final Rule are those associated with the mandatory reporting requirements. However, we agree that the costs identified by the commenter will need to be addressed if the Coast Guard determines that a mandatory ballast water exchange program is needed. We will be evaluating the voluntary program in the coming months in order to accurately report to Congress on the success (or lack thereof) of the voluntary program. Should that report indicate our intent to promulgate a mandatory program, we will issue a new regulation that will consider the costs of the mandatory program.

We received two letters prior to the close of the comment period from respondents who notified us that they were compiling comments from numerous sources and requested that we consider those group comments even if they were not received prior to the comment period closing. We did accept these comments.

Ten comments discussed research and alternative technologies. One comment commended the Coast Guard for our research in developing alternatives to exchanging ballast water at sea. Five comments emphasized the importance of finding safe, practical, and cost-effective alternatives, in lieu of ballast water exchange, to achieve the objectives of NISA. One comment recommended moving research from identification of the problem to management of the problem. One comment indicated that developing such alternatives is an extremely important aspect of any long-term ballast water management program for the U.S. and for other countries. The respondent noted that discussion of this topic was not adequately addressed in the interim rule. One comment noted that with the advances in the development of new technologies for ballast water management, commercial investment in new systems is likely if there is a way to implement the new systems and create markets for them. One comment stated that nearly any system of treatment that avoids the additional pumping cycles involved in ballast water exchange at sea will be welcomed by ship owners because of the savings in both manpower and fuel. The respondent indicated that an added benefit will come from the reduction in carbon dioxide emissions.

We concur with these comments and are actively supporting and encouraging different technologies.

We received seven comments about the Environmental Assessment (EA) portion of this rulemaking. The Coast Guard will respond to these seven comments regarding the Environmental Assessment in the EA section of this final rule.

We received two comments from one respondent about the question-and-answer format of the interim rule. The first comment requested that the Coast Guard republish the entire requirement for ballast water management in a traditional format. The second comment stated that the question-and-answer format is not satisfactory because many of the existing regulations have been supplemented and are now simply referenced. The respondent offered as an example that although the requirements in § 151.2045 are a mixture of information about recordkeeping and reporting, the stated topic question refers only to recordkeeping.

In response to the first comment, the Coast Guard changed the traditional format of the rule for better organization and clarity. We used many of the plain language techniques to write the rule. These writing techniques are intended to make regulations less technical and easier to follow and understand, and are consistent with the requirements of the Presidential Memorandum, "Plain Language in Government Writing" (63 FR 31885, June 1, 1998). In response to the second comment, the actual requirement for reporting is in § 151.2040. We feel that if we were to add reporting to the heading of § 151.2045, it may cause confusion.

We received two comments about the timing of the effective date of the interim rule compared to the ending date of the comment period. One respondent indicated that it would have been preferable for the Coast Guard to first review the public comments about the interim rule before the rule became effective. Another respondent urged the Coast Guard to keep the rule in an interim status to gather at least 6 months of data and experience for evaluation before the final rule is established.

In response to the first comment, the interim rule was developed based on the proposed rule and the numerous comments on the proposed rule. We do not believe that delaying the implementation of the interim rule was warranted. More importantly, to delay implementation of that rule would not have been in the best interests of the general public. In response to the second comment, we understand the respondents' concerns. We did wait to obtain 6 months of data and experience before we moved this regulation to final

rule status. We wanted to ensure that any portions of the regulation that had been confusing to the public, or that had been open to different interpretations than we intended, were clarified for this final rule. This preliminary data showed an extremely low compliance with the reporting requirement. One of the reasons for this may be that the national program requires reports to be submitted prior to departure from the first port of call in U.S. waters. This is inconsistent with other CG required information, which must be submitted prior to a vessel's arrival at a port of call in U.S. waters. To increase compliance with these regulations, develop consistency with other CG programs, and better monitor compliance we have amended § 151.2040(c)(4) to require that the ballast water information be submitted prior to a vessel's arrival at their first port of call in U.S. waters.

#### *Comments on Specific Sections of the Rule*

##### *What Vessels Does This Subpart Apply To (§ 151.2005)?*

Eight comments discussed applicability to vessels. Three of these comments indicated that the applicability section of the interim rule is not clear.

One comment noted that the wording in § 151.2005(a) should be changed and made consistent with § 151.2005(b). One comment indicated that the term, "waters of the United States," in § 151.2005(a) is confusing and conflicts with how it is defined in 33 CFR 2.05-30 and in § 151.2020(a). The comment stated that while 33 CFR 2.05-30 refers to the territorial sea as extended to 12-nautical miles from the baseline, § 151.2020(a) appears to refer to the 200-mile EEZ. The comment suggested that we remove the reference to the "waters of the United States" and replace it with "the EEZ." The Coast Guard disagrees; in 33 CFR 2.05-30, navigable waters of the U.S. extend to 3-nautical miles from the baseline. For this rule navigable waters of the U.S. extend to 12-nautical miles from the baseline. The phrase/term "waters of the United States" does not appear in § 151.2020.

For clarification, we modified § 151.2005(b) to include all vessels equipped with ballast tanks and to emphasize that these are additional provisions for vessels that have operated outside the EEZ. However, the reference in § 151.2020 of the interim rule referred to the ballast water that is of concern and not "Waters of the United States" or the "EEZ." Please refer to the information under § 151.2020 of this preamble for a complete discussion of

this issue. We deleted § 151.2020 and revised § 151.2035(b) to better convey what we intended.

Three comments discussed why vessels that are not able to conduct open ocean exchanges, because of the nature of their voyages, should be exempt from the mandatory provisions. One comment stated that most vessels operating in the Wider Caribbean Area and Gulf of Mexico will find it nearly impossible to take on clean ballast in areas that are both 200 miles from land and have a depth of water of 2000 meters. One comment notes that the distance and depth covered in the rule only applies to a small percent of sea area for the Gulf of Mexico. One comment said that most itineraries of cruise ships operating in this geographic area do not include the areas that are both 200 miles from shorelines and 2,000 meters in depth. The comment also noted that this would mean that most vessels would have to travel 200 miles out into the Atlantic Ocean and back to conduct ballast water exchange or to take on clean ballast water.

The Coast Guard understands the concerns expressed in these comments. But, we believe that reporting such information is essential to future, sound decision-making. If vessels entering the EEZ from the outside must be diverted or delayed, thereby, imposing economic costs and increased fuel consumption and air emissions, such information is highly relevant and is important to any future action. Therefore, it should be reported on the Ballast Water Reporting Form.

Three comments discussed the applicability of the regulations to vessels declaring "No Ballast on Board (NOBOB)." One of these comments questions whether a vessel that is not carrying ballast onboard, which enters the U.S. EEZ, is expected to comply with the reporting requirements. Other comments suggest that vessels with ballast tanks that only contain unpumpable or residual ballast should be exempt from the rule since these vessels do not pose an environmental threat to U.S. waters.

The answer to the first comment question is yes. Vessels which have residual and unpumpable ballast onboard must still meet the reporting requirement. Since this area has caused confusion, the Coast Guard amended the relevant sections of the rule (§§ 151.2005, 2040, and 2045 subpart D) to state "equipped with ballast tanks" in lieu of "carrying ballast water." In response to the other comments, we do not agree. NISA directs the Coast Guard to take into account, when developing the guidelines, "ballasting practices of

vessels that enter the waters of the United States with no ballast onboard." There is concern within the United States that vessels that declare NOBOB may still pose a potential risk for introducing nonindigenous species by adding ballast into tanks containing residual ballast, including sediments, then subsequently discharging this mixture into the receiving waters. One of the first steps in determining if there is a threat from these vessels is identifying how many of them are declaring NOBOB and finding out the particulars about them (e.g., type, port of call, and point of origin).

#### Which Vessels Are Exempt From Mandatory Requirements (§ 151.2010)?

We received 16 comments about exemptions for certain vessels from the mandatory reporting requirements. Many of these comments duplicate those discussed in the applicability section of this preamble.

Five of the 16 comments questioned the rationale for exempting crude oil tankers from mandatory reporting but not exempting similar vessels engaged in coastwise trade (e.g., chemical and product tankers). One comment requested an explanation of the difference between a crude oil tanker engaged in coastwise trade and other vessels engaged in coastwise trade for the purpose of this regulation. Several respondents mentioned whether the Coast Guard has the authority to exempt additional classes of vessels.

A number of the 16 exemption comments requested an exemption for vessels that may travel outside the EEZ for brief periods or that make repetitive voyages (e.g., vessels engaged in liner trade, non-crude-oil vessels engaged in coastwise trade, passenger vessels trading between the Bahamas and Florida, and container vessels in the Caribbean and Gulf of Mexico trade). Many of these comments also requested flexibility in meeting the reporting requirements. Suggestions offered for modified reporting by such vessels include the following: allowing the vessel to submit an initial report, then report by exception when things change significantly; allowing the vessel to submit a quarterly or annual report; allowing the vessel to submit one standard voyage profile versus voyage-by-voyage reports; and allowing a vessel that doesn't discharge any ballast to simply state this on the report.

The Coast Guard acknowledges the concerns and suggestions expressed in these comments. We took the applicability and exemptions in this rule directly from the Act. The intent of the mandatory reporting and

recordkeeping requirements is to determine the ballasting patterns of the U.S., including those of vessels that declare NOBOB but are carrying residual ballast and sediments in their tanks. It is essential for all currently non-exempt vessels to comply with the reporting requirements so that this information will be available for future decision-making. If we do not have sufficient reports to evaluate the success of the voluntary program, NISA calls for the Coast Guard to make BWE a mandatory program (16 U.S.C. 4711(f)). As it stands now, we do not have scientific and technological support to include exemptions for additional vessels or circumstances not specifically covered in the Act. Therefore, we do not currently plan on exempting any additional classes of vessels. We have however added section § 151.2041 to allow for equivalent reporting procedures for vessels that conduct repetitive voyages. The Coast Guard believes that exemption of vessels that operate outside the EEZ would be contrary to the intent of NISA. There is a growing concern in the United States over the discharge of even domestic ballast water, so the information from the vessels referred to here may be essential in determining any future actions.

One exemption comment suggested that tugs and unmanned barges be exempt from the rule.

As indicated previously, the Coast Guard took the applicability and exemptions in this rule directly from the Act. To expand the exemptions currently granted under NISA, either the law would need to be amended to specifically grant additional exemptions, or the proposed exemption must fit within a fair interpretation of the existing Act. The Coast Guard does not believe that any of the exemptions proposed by the commenters meet this criterion. Therefore, it is important for all currently non-exempt vessels to comply with the reporting requirement, as this will provide essential information to aid future decision-making. For example, in many situations, it may be inherently unsafe to conduct an exchange of ballast by an unmanned barge. If this situation occurs, it should be reported on the "Ballast Water Reporting Form" because it is important information that would be helpful in future decision-making. Alternatively, if technology is developed that would be applicable to barges and tugs, it is expected that these vessels might be able to treat their ballast water, thereby eliminating the need for ballast exchange.

One of the 16 exemption comments mentioned that the term “same location” referenced in § 151.2010(d) is vague and could be better defined.

The intent of § 151.2010(d) is to exempt vessels that leave a berth in a specific port, conduct a voyage that takes them outside the EEZ (where they take on ballast to compensate for things such as the fuel burned and heavy-weather compensation), then return to roughly the same berth in the same port, without taking on any ballast other than a type that would be acceptable as an open ocean exchange.

One exemption comment requested that § 151.2010(a) be revised to read “the master, operator, or person-in-charge of the vessel must operate, or ensure the operation of, the treatment system as designed.”

Our intent is that the treatment system must be operated as designed during discharges of ballast water into the United States. We have amended § 151.2010(b) to clarify this point.

#### To What Ballast Water Does This Subpart Apply (§ 151.2020)?

We received seven comments about ballast water applicability. These comments indicated that this section is unclear.

We agree with these comments. The reference in § 151.2020 as it appeared in the interim rule referred to the ballast water that is taken on a vessel that would pose a greater risk to the receiving environment. This is ballast water most likely to carry species that can survive in the waters of the United States. This includes any water taken on from a continental shelf or island plateau. The reference in § 151.2035(b)(1) as it appeared in the interim rule referred to what waters are acceptable to conduct an exchange. To clarify these differences, we deleted § 151.2020 and inserted into § 151.2035(b), the statement “that was taken on in areas less than 200 miles from any shore or in waters less than 2000 meters deep.” We have also revised § 151.2035(b)(1) for clarity and consistency.

#### What Definitions Apply to This Subpart (§ 151.2025)?

We received two comments about definitions. One comment asked us to define and clarify the term “high seas” as it relates to the EEZ.

“High seas” means the “parts of the sea that are not included in the EEZ, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.” We have amended § 151.2010(d) to clarify that what was intended by the referral

to high seas in that section was areas that would be acceptable for open ocean exchange.

One comment asked us to define what a crude oil tanker is for the purpose of this rule.

In 46 U.S.C., “crude oil tanker” is defined as a tanker engaged in the trade of carrying crude oil.

#### Who Is Responsible for Determining When To Use the Safety Exemption (§ 151.2030)?

We received eight comments about safety. The majority of these comments said that the safety of the vessel and crew must be the number one consideration in any ballast management effort. One comment thanked us for recognizing the importance of safety and the importance of the master’s role in ensuring safety. One comment stated that the two methods of ballast water exchange defined in the rule are not safe for container ships, and it requested that we consider regulations that would continue to give the master discretion to consider the safety of the vessel before performing deep-sea ballasting operations. One comment explained that a flow-through exchange creates safety concerns for operating personnel on deck, who may be, because of large quantities of water flowing on deck, subject to personal injury by slips and falls. Five comments noted that safety should be the first consideration and vessel owners or operators should not be charged with noncompliance if the reason for noncompliance is safety of the vessel and its crew. Two of the five comments stated that if a vessel does not comply with the voluntary guidelines for safety reasons, it should not be placed in the noncompliance category. One comment said that if such vessels were listed in the noncompliance category, it would skew data toward mandatory requirements in the future.

The Coast Guard supports these statements. We believe that safety of the vessel, its crew, the cargo, and the environment are of paramount importance, and we will continue to focus on this area in the regulations. The Coast Guard also recognizes that ballast water exchange is not the ultimate solution to reducing the influx of organisms carried in ballast water. We understand that simply due to the nature of their voyage, many ships cannot conduct ballast exchange. We will continue to encourage advances in methods of treating ballast water. We will consider applicable laws, regulations, and the consequences of a treatment before we approve any

method. The Coast Guard encourages companies to continue to research and develop other ballast control methods. In addition, the Coast Guard supports the position that vessels that do not comply with the voluntary guidelines for safety reasons should not be placed in the noncompliance category. Therefore, we have taken the same position in this regard as the Aquatic Nuisance Species Task Force (ANSTF) Effectiveness Criteria Committee.

#### What Are the Voluntary Ballast Water Management Guidelines (§ 151.2035)?

We received twelve comments concerning voluntary ballast-water management guidelines. Three of these comments related to exemptions for vessels whose routes do not take them into waters that are both 200 miles from land and have a depth of 2000 meters. You may refer to the discussion under § 151.2005 for the Coast Guard’s response.

One of the comments about the voluntary guidelines requested that the Coast Guard reduce the depth requirement for an acceptable open ocean exchange for the Gulf of Mexico because the 2000-meter requirement is not warranted.

The Coast Guard does not plan to change the depth requirement until international agreement, based on sound scientific evidence, is reached. We request that affected vessels note on their “Ballast Water Reporting Form” estimates of the delay and distance they experience if they have to divert to accomplish an open ocean exchange. This information is essential to future decision-making.

One of the comments about the voluntary guidelines stated that § 151.2035 should specify a minimum period of time a U.S. coastwise vessel must operate beyond the EEZ before the reporting requirements and ballast exchange provisions apply.

In response to this comment, please see the discussion under § 151.2005.

One comment posed three questions about vessels engaged in domestic trade: (1) Isn’t the intent of the Act to stop the introduction and spread of ANS? (2) What other ballast water methods are enforceable on domestic trade? (3) Will these other methods be enforced?

The Coast Guard recognizes the importance of these questions. In § 151.2035(a), we have included guidelines (precautionary practices) for all vessels equipped with ballast tanks that operate in waters of the United States. However, the Act doesn’t give the Coast Guard the authority to require owners and operators of vessels engaged in domestic trade to perform ballast

water management methods such as ballast water exchange. Currently we are encouraging technological solutions for the treatment of ballast water. We will pursue implementation and enforcement of regulations regarding the transport of aquatic nuisance species by ballast water to the extent of the authority granted to us by Congress.

One comment concerns precautions for the quality of the water used as ballast water as referenced in § 151.2035(a) and suggests that the Coast Guard or other agency publish the ports and other locations that have water containing the noted harmful agents.

The Coast Guard recognizes that some waters may pose higher risks of containing potential invasive species than other waters. However, it has not been proven that any given water body is completely free from risk. Historical patterns show that zebra mussels may have been shipped for more than 50 years before they established a sustainable population in the Great Lakes and before they became a nuisance species. Therefore, we have determined that we must proceed using the premise that any port may be a threat.

Two comments discussed reception facilities. One of these comments noted that the definition of "adequate facility" is unclear. The other comment stated that the Coast Guard should publish the details of where and when the reception facilities mentioned in § 151.2035(b)(4) are available and what the costs are for using these facilities.

An approved or "adequate facility" would be one that the Coast Guard has accepted to be at least as effective as ballast water exchange in treating ballast water to reduce the risk of invasive species. The suggestion to publish the information about any ballast water reception facility that may be approved for the treatment of aquatic nuisance species in the future is a good one. This type of information would most likely be published through a "Local Notice To Mariners," which would be included in the "Coast Pilot," as appropriate. However, the publication of costs would appropriately be the responsibility of the facility itself.

One comment regarding publicly-owned treatment plants stated that the responsibility to comply with 33 CFR 151, including sediment disposal, should stay with the vessel operators, not public ports, and the Coast Guard should avoid requiring port authorities to employ publicly-owned treatment plants.

This requirement is to ensure that vessel representatives are aware that disposal of sediments within the United

States must be done per existing regulations or laws, such as those of the Animal and Plant Health Inspection Service. The Coast Guard did not add any regulation of sediment disposal within this regulation. We reaffirmed the existing requirements for the disposal of soil brought into the United States that exist under 7 CFR part 330.

One comment stated that the final rule should require mandatory ballast water exchange in the same vein as it requires mandatory recordkeeping.

The Coast Guard has determined that the regulations adopted in this rule accurately reflect the requirements of the Act. Those regulations direct the Coast Guard to develop "Voluntary Guidelines," unless it is demonstrated after a minimum trial period of 2 years that this level of guidelines does not offer an acceptable level of protection for the waters of the United States. The Coast Guard is preparing a report on the effectiveness of the voluntary guidelines to Congress, which must also precede any mandatory program. The Coast Guard considers this regulation to represent the most practical and effective ballast water management method available at this time. However, we cannot rule out the possibility of mandatory BWE in the future. Additionally, we will continue to support and encourage the development of more efficient and effective methods of protecting waters of the United States from non-indigenous aquatic nuisance species.

One comment recommended deleting the suggestion in § 151.2035(b)(2) to retain ballast water onboard because it is not a workable solution.

We do not agree with this comment. Many vessels do retain ballast onboard. They shift ballast as needed to control the stress and stability of the ship. This method of ballast management is a legitimate practice that reduces the discharge of untreated ballast, and we will continue to recognize it as such.

What Are the Mandatory Requirements for Vessels Carrying Ballast Water Into the Waters of the United States After Operating Beyond the EEZ (§ 151.2040)?

We received 13 comments about the mandatory reporting requirements. Many of these comments were requesting clarification of applicability or requesting exemptions from the mandatory reporting and recordkeeping of ballast water practices. They are appropriately discussed in § 151.2005 and § 151.2010.

The Coast Guard believes it is important for compliance to be made as efficient as possible for all concerned. Therefore, we have added to § 151.2041

a vehicle for parties to request alternative methods of reporting. As previously discussed, the information from all vessels, including those not discharging ballast, will be essential to make practical, enforceable regulations that accomplish the intended purpose and to make sound recommendations to Congress for future legislative action.

One comment requested that the Coast Guard clarify § 151.2045 to state that the reporting requirement doesn't apply to operators on voyages in areas less than 200 miles from the baseline of the U.S.

This comment appeared to misinterpret that the reporting requirement is triggered by the fact that a vessel has operated beyond the EEZ. We apologize for any confusion that may have been caused by our discussion on page 26676 in the preamble of the interim rule. We used the phrase "generally 200 miles seaward of the baseline," however, we did not emphasize it throughout the example. While the seaward boundary of the EEZ is 200 miles from the baseline in much of the United States, there are areas where it differs. Such areas include portions of Florida, New England, Southern California, Texas, Alaska and Washington State, where the EEZ limit is less than 200 miles from the baseline. The Act tasks the Coast Guard with specific responsibilities for "a vessel that is carrying ballast water into the waters of the United States after operating beyond the Exclusive Economic Zone." To effectively fulfill these responsibilities and make sound decisions for further action, we must gather the information for all vessels entering the waters of the U.S. after operating beyond the EEZ, including those vessels declaring NOBOB, which contain residual and unpumpable ballast.

Two comments indicate that the requirements for remitting the report appear burdensome for the master of the vessel. One respondent says that it would be easier for the vessel's captain to send information to the nearest Coast Guard office 24 hours before the vessel arrives in a particular port. Then the Coast Guard office could send the information to the National Ballast Water Information Clearinghouse (NBIC) or appropriate Captain of the Port. We agree that it may be easier for the vessel master to submit the required information prior to entry in U.S. waters as this would be consistent with other Coast Guard programs and activities. Therefore, we are amending paragraph 151.2040(c)(4) to require vessels entering a U.S. port to submit the required ballast water management

practices information before the vessel arrives at the first port of call in the waters of the United States. However, we disagree that it would be easier to submit the report to the local Coast Guard office. We believe a centralized location that all reports are sent to creates less burden to all parties than creating "middle men" to obtain and forward the reports. For the majority of the United States, the report can be mailed, faxed, or transmitted electronically to the NBIC. It may be sent by the master, owner, operator, agent, or person-in-charge of a vessel. The only areas in which there is no need to submit the ballast water information to the centralized location (NBIC) are those areas that had existing programs prior to the development of a national program. Vessels in those areas, the Great Lakes and Hudson River north of the George Washington Bridge, where ballast management practices are mandatory, report directly to the appropriate Captain of the Port 24 hours prior to entry by the means detailed in § 151.2040(c)(1), (c)(2), and (c)(3).

**What Are the Mandatory Recordkeeping Requirements (§ 151.2045)?**

The comments on § 151.2045 duplicate the comments already discussed in this preamble.

**What Methods Are Used To Monitor Compliance With This Subpart (§ 151.2050)?**

We received three comments about this section of the rule.

One comment indicated that the final rule should adequately describe the sampling procedures that the Coast Guard will use to monitor compliance as required by the Act.

Current sampling procedures are appropriately described in the Coast Guard "Navigation and Inspection Circular" 08-99 (NVIC 08-99). You may view this NVIC at <http://www.uscg.mil/hq/g-m/nvic/8-99/n8-99.pdf>.

One comment stated that the Coast Guard cannot make a sound and supportable recommendation to Congress at the end of the "voluntary" period based only on results from a verification test that all parties agree is inadequate. Another comment urged the Coast Guard to increase its focus on substantial testing so that an adequate verification test can be released as soon as possible.

The Coast Guard is using multiple means to verify compliance with the voluntary ballast water management. These means include a statistically significant number of Coast Guard boardings to determine the validity of reports that were submitted to the NBIC,

a comparison of reports received with the number of vessel arrivals as determined by the Maritime Administration, and spot-checks of the salinity of ballast water carried on vessels that are boarded. While we are actively pursuing more definitive physical, biological, and chemical parameters to definitively verify that open ocean exchange has been conducted, salinity will likely remain as an effective screening parameter to show when one was not conducted.

**What Must Each Application for Approval of an Alternative Compliance Technology Contain (§ 151.2060)?**

The Coast Guard received two comments about this section of the rule. One comment noted that there is a need for a clearly defined approval process for new compliance technology that should follow internationally agreed-upon standards. A second respondent urged the ANS Task Force to give sufficient attention to the development of this approval process.

The Coast Guard is currently working with Agencies of the ANSTF to develop publishable standards and protocols for acceptance. In the interim, approval will be on a case-by-case basis through Commandant (G-MSO-4).

**What Is the Standard of Adequate Compliance Determined by the ANSTF for This Subpart (§ 151.2065)?**

One comment urged the ANS Task Force to give sufficient attention to the development of the criteria to measure alternative compliance methods. Another comment said that by not having effectiveness criteria available at the onset of the evaluation, it is unknown if compliance with the voluntary guidelines will be sufficient to prevent the need for mandatory provisions. This, therefore, places vessel owners and operators at a significant disadvantage in making informed decisions regarding research, investment, and alternative compliance measures.

We respect this opinion. However, we feel that delay of the rulemaking while awaiting the Aquatic Nuisance Species Task Force's report of adequate compliance would not be in the best interests of the general public. We have informed the ANSTF of our concerns and the paramount importance of providing these criteria.

#### **Appendix to Subpart D of Part 151—Ballast Water Reporting Form**

The Coast Guard received eight comments about the "Ballast Water Reporting Form." Most of the comments expressed concern that the form is too

detailed in scope, and the information requested is not needed or is duplicative of what is already carried onboard the vessel. Several comments recommended that an abridged report along with existing information carried onboard the vessel be accepted as an alternative. One comment requested that the Coast Guard simplify the form in future revisions.

The Coast Guard will not currently make any changes to the form published in the interim rule. At this stage of the program, all the information that is required is considered essential to make sound decisions. We have, however, added provisions within this rule to allow for equivalent means of reporting (§ 151.2041).

#### **Regulatory Evaluation**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget (OMB) under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

#### **Summary of Costs**

The rule will cost industry the time and resources it will take to submit the paperwork required by this rule. A vessel's officer is likely to be the person tasked with completing the report, so we based our (revised) estimate on the current annual salary for a third mate on a U.S. merchant vessel. We accounted for overtime/the possibility of higher-salaried officers completing some reports, and included administrative costs (\$9 per report for photocopying, etc.). We calculated that it will cost approximately \$60 to submit each report. The following equation illustrates the calculation:

$$\$151,464 \div 2,080 \text{ hours} \times .67 \text{ hours} + \$9 = \$60$$

We used the U.S. Coast Guard Marine Safety Management System (MSMS) to determine that this rule will apply to 30,877 vessel transits (this includes transits on the Great Lakes). We multiplied the cost of each report (\$60) by the number of vessel arrivals from outside the EEZ (30,877) to get a total annual cost of \$1,852,620. The following equation illustrates the calculation:



$\$60 \times 30,877 = \$1,852,620$

The rule will cost the Federal government the time it will take Coast Guard personnel to review ballast water management record information. The Coast Guard will add 30 E-5 billets to verify compliance and collect the information this rule will require. Commandant Instruction 7310.1E states that the hourly cost for an E-1 to E-5 range billet is \$15 per hour. This translates to a yearly cost of \$31,200 per billet ( $2080 \times \$15 = \$31,200$ ). Therefore, the cost of 30 billets will equal \$936,000 ( $\$31,200 \times 30 = \$936,000$ ). We estimate that the total cost to the Coast Guard to collect and send the appropriate paperwork to the National Ballast Water Information Clearinghouse (NBIC) is \$75,000. The total annual cost was calculated as illustrated in the following equation:

$$30 [\text{billets}] \times \$2,500 [\text{administrative costs}] = \$75,000$$

The Coast Guard will also allocate \$450,000 per year to the NBIC. The NBIC will provide analysis, synthesis, and interpretation of data collected under the Act. Therefore, the total government cost of this rule is \$1,311,000 annually. The total government cost was calculated as illustrated in the following equation:

$$\$936,000 + \$450,000 + \$75,000 = \$1,461,000$$

#### Summary of Benefits

This rule is the next step in an ongoing effort to reduce the numbers of non-indigenous species invading the waters of the United States.

According to the U.S. Congress' Office of Technology Assessment, "Harmful Non-Indigenous Species in the United States," the economic impact on the United States from introductions of non-indigenous species has exceeded several billion dollars through—

- Efforts to prevent and reduce further infestations;
- Repairs of damage to various infrastructures; and
- Lost revenues.

For example, the Great Lakes Fishery Commission estimates the European Ruffe, a fish that entered the Great Lakes via expelled ballast water in the early 1980's, could cause annual losses of \$90 million if it is not controlled.

As international maritime trade continues to expand, the economic impact of non-indigenous species invasions will continue to increase. This increase may necessitate more extensive long-term control efforts, including improving ballast-water management practices. The reporting requirements in this rule will allow the Coast Guard to

receive the information we need to make decisions on what measures may be required in the future to help solve the aquatic nuisance species problem.

#### Impact on Small Entities

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities," include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The rule applies to any vessel with ballast tanks entering the waters of the United States after operating beyond the EEZ. Vessels engaged in coastwise trade (within the EEZ) and passenger vessels equipped with treatment systems designed to eliminate aquatic species in their ballast tanks will be exempt from the mandatory provisions of the rule. The rule requires vessel operators to report their ballast water management efforts. We estimate that each report will cost the vessel operator \$60. This sum is very low on an absolute dollar basis. We believe that it will account for a very low percentage of the operating costs of even the smallest commercial vessel operations. For this reason, the Coast Guard certifies under 5 U.S.C. 605(b) that the rule will not have a significant economic impact on a substantial number of small entities.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Mary Pat McKeown, Project Manager, Office of Operating and Environmental Standards (G–MSO) at 202–267–0500.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

#### Collection of Information

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) require the Office of Management and Budget (OMB) to review each rule that contains a collection-of-information. The Office of Management and Budget must determine if the practical value of the information is worth the burden of collecting the information. Collection-of-information requirements include reporting, recordkeeping, notification, monitoring, posting, labeling, and other, similar requirements.

This rulemaking will require the owner or operator of a vessel with ballast tanks, entering the waters of the United States from outside the EEZ, to submit paperwork to the Coast Guard. The paperwork will document the owner's or operator's ballast water management practices. The provisions of the Act require the Coast Guard, in consultation and cooperation with the Aquatic Nuisance Species Task Force and the Smithsonian Institution Environmental Research Center, to develop and maintain the NBIC. The purpose of the NBIC is to determine the patterns of ballast water delivery and management in the waters of the United States. The information obtained from the mandatory reports that owners and operators must submit will be entered into a database at the NBIC. This rule requires submission of the following information:

- Vessel type, owner or operator, gross tonnage, call sign, and Port of Registry (Flag).
- Port of arrival, vessel agent, last port and country of call, and next port and country of call.
- Total ballast water capacity, total volume of ballast water onboard, total number ballast water tanks, and total number of ballast water tanks in ballast.
- Total number of ballast tanks/holds that are to be discharged into the waters of the United States or at a reception facility, the number of tanks that were exchanged or treated using an alternative method of compliance, type of alternative compliance method, if used for treatment, whether the vessel has a ballast water management plan and IMO guidelines onboard, and whether the ballast water management plan was used.
- Origin of ballast water—this includes date(s), location(s), volume(s), and temperature(s) (if a tank has been exchanged, this is the ballast water that was taken on in port and then replaced during the exchange).
- For any ballast water exchanged or treated, date(s), location(s), volume(s),



method, thoroughness (percentage exchanged if exchange conducted), sea height at time of exchange if exchange conducted.

- Expected date, location, volume, and salinity of any ballast water to be discharged into the waters of the United States or at a reception facility.

- Location of the facility used for disposal of sediment carried into the waters of the United States, if sediment is to be discharged within the jurisdiction of the United States.

If we did not require owners or operators to provide this information, it would be impossible to produce the studies and congressional reports on ballast water management patterns that the provisions of the Act require.

The Coast Guard will use the information to—

- Ensure that an owner or operator has complied with the ballast water management regulations; and
- Assess the rate of compliance with the voluntary guidelines listed in the rule.

As stated under the Regulatory Evaluation section of this document, the vessel's officer is likely to be the person tasked with completing the report, so we based our revised cost estimate on the current annual salary for a third mate on a U.S. merchant vessel. Overtime, the possibility of more senior officers completing the report, and administrative costs were taken into account. We calculated that it will cost \$60 to submit each report. We used the U.S. Coast Guard Marine Safety Management System to determine that this rule will apply to 30,877 vessel transits (this includes transits on the Great Lakes). We multiplied the cost of each report (\$60) by the number of vessel arrivals from outside the EEZ (30,877) to get a total annual cost of \$1,852,620. In the interim rule the annual burden hours on industry of 20,585 and the cumulative burden for 3 years of 61,755 hours were not correct. The correct annual burden on industry will be 20,688 hours per year, and the cumulative burden for 3 years is 62,064 hours.

The title and description of the information collection, a description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

**Title:** Implementation of the National Invasive Species Act of 1996 (NISA)  
**Summary of Collection of Information:** This rule contains collection-of-information requirements

in the following sections: §§ 151.2040 and 151.2045.

**Need for Information:** This rule will require owners or operators of each vessel with ballast water tanks, who enter the United States after operating outside the EEZ, to provide to the U.S. Coast Guard information regarding ballast water management practices.

**Proposed Use of Information:** The information is needed to ensure that the mandatory ballast water management regulations are complied with prior to allowing the vessel to enter U.S. ports, and to assess the effectiveness of the voluntary guidelines. The information will be used by the Coast Guard Headquarters staff and researchers from both private and other governmental agencies to assess the effectiveness of voluntary ballast-water management guidelines for vessels with ballast tanks that enter U.S. waters after operating outside the EEZ. The information will be provided to Congress on a regular basis as required by the Act.

**Description of the Respondents:** Any vessel (owner or operator) with ballast tanks entering U.S. waters after operating outside the EEZ.

**Number of Respondents:** 30,877 vessel entries.

**Frequency of Response:** Whenever a vessel with ballast tanks enters the United States after operating outside the EEZ.

**Burden of Response:** 40 minutes per respondent.

**Estimated Total Annual Burden:** 20,688 hours.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this rule to OMB for its review of the collection of information. OMB has approved the collection. The approval for the Ballast Water Reporting Form, and the corresponding OMB Control Number 2115-0598, expires on August 31, 2002.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

### Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104-4, 109 Stat. 48] requires Federal agencies to assess the effects of certain

regulatory actions on State, local, and tribal governments, and the private sector. The Unfunded Mandates Reform Act requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, \$100 million or more in any one year, the UMRA analysis is required. This rule will not impose Federal mandates on any State, local, or tribal governments, or the private sector.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of

Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Environment

The Coast Guard considered the environmental impact of this rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES**.

The Coast Guard is establishing voluntary guidelines for all vessels equipped with ballast tanks that operate in waters of the United States. The Coast Guard is also establishing additional voluntary ballast water management guidelines and mandatory reporting requirements for all vessels carrying ballast water into the waters of the United States after operating beyond the EEZ. These reporting requirements are intended to monitor the level of participation by vessels in the voluntary national guidelines program. If participation levels in this program are inadequate, the Act requires the Secretary of Transportation to mandate the ballast water management guidelines. Once reported, the information will be used to develop and maintain a ballast water information clearinghouse, which will monitor the effectiveness of the program and identify future needs for better protecting domestic waters from the introduction of invasive species.

The Coast Guard has considered the implications of the Coastal Zone Management Act (16 U.S.C. 1451, *et seq.*) with regard to this rulemaking. Under this Act, the Coast Guard must determine whether the activities proposed by it are consistent with activities covered by a federally approved coastal zone management plan for each State, which may be affected by this federal action. A listing of the 29 States and Territories with federally approved coastal zone management plans can be found in Appendix B of the Environmental Assessment for this rulemaking.

The Coast Guard has determined that voluntary ballast water management guidelines and mandatory reporting requirement, will have no effect on the coastal zones of the listed States and Territories. In addition, the Coast Guard found the regulations in the interim rule were consistent, to the maximum extent practicable, with the enforceable policies of the federally approved coastal zone management plan and submitted a consistency determination

to that effect. The State Administrator's for each listed State and Territory with coastal zone management plans responded, concurring with the Coast Guard consistency determination that implementing voluntary guidelines for ballast water management and mandatory reporting requirement would be consistent with their respective coastal zone management plans.

Seven comments on the interim rule specifically addressed items in the Environmental Assessment. Several comments mentioned that the assessment should have considered and discussed mandatory ballast water exchange as an alternative means of controlling the spread of ANS.

The Coast Guard agrees with this comment and has added mandatory ballast water exchange to the list of alternatives evaluated in the Environmental Assessment.

One comment recommended that if we do not address mandatory ballast water exchange, we should consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under section 7 of the Endangered Species Act (16 U.S.C. 1531, *et seq.*). Then, we should publish the results of these consultations in the final rule.

The Coast Guard provided the U.S. Fish and Wildlife Service and the National Marine Fisheries Service with a copy of the rule and its environmental assessment of the rule. This information initiated an informal Section 7 consultation per the Endangered Species Act (16 U.S.C. 1531, *et seq.*), which resulted in both agencies concurring with the Coast Guard's assessment that this rule will not significantly impact listed species or their critical habitats.

Another comment indicated that all treatment approaches should be assessed by the same performance standards and the assessment should be written to reflect consistency.

The Coast Guard assessed the alternative ballast water management methods that are being considered for approval to determine if they met the need and purpose of the proposed action as defined in the environmental assessment.

One comment indicated that the evaluation of alternative solutions to ballast water exchange must be based on scientific, objective evaluations, and they must be compared to defensible standards of effectiveness for controlling the invasion and spread of ANS.

The Environmental Assessment for this rulemaking addressed the environmental considerations required under the National Environmental Policy Act (NEPA) and the Coast

Guard's NEPA procedures and policies—as specified in, “National Environmental Policy Act: Implementing Procedures and Policy for Considering Environmental Impacts” COMDTINST M16475.1C. The Environmental Assessment discussed the effects of implementing voluntary ballast water management guidelines and mandatory reporting versus taking a no-action alternative and not implementing voluntary guidelines and mandatory reporting. Therefore, the regulations to implement provisions of the Act concerning ballast water control, when using voluntary guidelines for ballast water management and mandatory reporting requirements, will not have a significant impact on the environment.

#### List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 151 subparts C and D as follows:

#### **PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER**

\* \* \* \* \*

#### **Subpart C—Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River**

1. The authority citation for part 151 subpart C continues to read as follows:

**Authority:** 16 U.S.C. 4711; 49 CFR 1.46.

2. Amend § 151.1510 by revising paragraph (a)(1) to read as follows:

#### **§ 151.1510 Ballast water management.**

(a) The master of each vessel subject to this subpart shall employ one of the following ballast water management practices:

(1) Carry out an exchange of ballast water on the waters beyond the EEZ, from an area more than 200 nautical miles from any shore, and in waters more than 2,000 meters (6,560 feet, 1,093 fathoms) deep, prior to entry into the Snell Lock, at Massena, New York, or prior to navigating on the Hudson River, north of the George Washington Bridge, such that, at the conclusion of the exchange, any tank from which ballast water will be discharged contains water with a minimum salinity level of 30 parts per thousand.

\* \* \* \* \*

3. Amend § 151.1516 by revising paragraph (a) introductory text to read as follows:

**§ 151.1516 Compliance monitoring.**

(a) The master of each vessel subject to this subpart shall provide, as detailed in § 151.2040, the following information, in written form, to the COTP:

\* \* \* \* \*

**Subpart D—Ballast Water Management for Control of Nonindigenous Species in Waters of the United States**

4. The authority citation for part 151 subpart D continues to read as follows:

**Authority:** 16 U.S.C. 4711; 49 CFR 1.46.

5. Amend § 151.2005 by revising paragraph (b) to read as follows:

**§ 151.2005 To which vessels does this subpart apply?**

\* \* \* \* \*

(b) In addition, §§ 151.2035(b) through 151.2065 apply to all vessels, U.S. and foreign, equipped with ballast tanks, that enter the waters of the United States after operating beyond the Exclusive Economic Zone, except those vessels exempted in § 151.2010 and § 151.2015.

6. Amend § 151.2010 by revising paragraphs (b) and (d) to read as follows:

**§ 151.2010 Which vessels are exempt from the mandatory requirements?**

\* \* \* \* \*

(b) A passenger vessel equipped with a functioning treatment system designed to kill aquatic organisms in the ballast water. The treatment system must be utilized for ballast water discharged into the waters of the United States and it must operate as designed.

\* \* \* \* \*

(d) A vessel that will discharge ballast water or sediments only at the same location where the ballast water or sediments originated. The ballast water or sediments must not mix with ballast water or sediments other than those taken on in areas more than 200 nautical miles from any shore and in waters more than 2,000 meters (6,560 feet, 1,093 fathoms) deep.

**§ 151.2020 [Removed]**

7. Remove § 151.2020.

8. Amend § 151.2035 by revising paragraph (b) (1) to read as follows:

**§ 151.2035 What are the voluntary ballast water management guidelines?**

\* \* \* \* \*

(b) In addition to the provisions of § 151.2035(a), you (the master, operator, or person-in-charge of a vessel) are requested to employ at least one of the following ballast water management practices, if you carry ballast water, that was taken on in areas less than 200 nautical miles from any shore or in waters less than 2000 meters deep, into the waters of the United States after operating beyond the EEZ:

(1) Exchange ballast water on the waters beyond the EEZ, from an area more than 200 nautical miles from any shore, and in waters more than 2,000 meters (6,560 feet, 1,093 fathoms) deep, before entering waters of the United States.

\* \* \* \* \*

9. Amend § 151.2040 by revising the section heading and paragraphs (c)(1), (c)(2), and (c)(4)(ii); and by adding § 151.2040(c)(4)(iv) to read as follows:

**§ 151.2040 What are the mandatory requirements for vessels equipped with ballast tanks that enter the waters of the United States after operating beyond the Exclusive Economic Zone (EEZ)?**

\* \* \* \* \*

(c) The master, owner, operator, agent, or person-in-charge of a vessel entering the waters of the United States after operating beyond the EEZ, unless specifically exempted by §§ 151.2010 or 151.2015, must provide the information required by § 151.2045 in electronic or written form to the Commandant, U.S. Coast Guard or the appropriate COTP as follows:

(1) For a United States or Canadian Flag vessel bound for the Great Lakes. You must fax the required information to the COTP Buffalo, Massena Detachment (315-764-3283), at least 24 hours before the vessel arrives in Montreal, Quebec.

(2) For a foreign flagged vessel bound for the Great Lakes. You must—

(i) Fax the required information to the COTP Buffalo, Massena Detachment (315-764-3283), at least 24 hours before the vessel arrives in Montreal, Quebec; or

(ii) Complete the ballast water information section of the St. Lawrence Seaway required "Pre-entry Information from Foreign Flagged Vessels Form" and submit it in accordance with the applicable Seaway Notice.

(3) \* \* \*

(4) For a vessel not addressed in paragraphs (c)(1), (c)(2), and (c)(3) of this section. Before the vessel arrives at the first port of call in the waters of the United States, you must—

(i) \* \* \*

(ii) Transmit the information electronically to the NBIC at <http://invasions.si.edu/ballast.htm> or e-mail it to [ballast@serc.si.edu](mailto:ballast@serc.si.edu); or

(iii) \* \* \*

(iv) A single report that includes the ballast discharge information for all U.S. ports that will be entered during this voyage will be accepted unless the vessel exits the EEZ during transits.

10. Add § 151.2041 to subpart D to read as follows:

**§ 151.2041 Equivalent Reporting Methods for vessels other than those entering the Great Lakes or Hudson River**

(a) For ships required to report under § 151.2040(c)(4) the Chief, Environmental Standards Division (G-MSO-4), acting for the Assistant Commandant for Marine Safety and Environmental Protection (G-M) may, upon receipt of a written request, consider and approve alternative methods of reporting if:

(1) Such methods are at least as effective as that required by § 151.2040(c)(4); and

(2) Compliance with the requirement is economically or physically impractical.

(i) The Chief, Environmental Standards Division (G-MSO-4) will take approval or disapproval action on the request submitted in accordance with paragraph (a) of this section within 30 days of receipt of the request.

(ii) [Reserved].

11. Amend § 151.2045 by revising the section heading and paragraph (a) introductory text to read as follows:

**§ 151.2045 What are the mandatory recordkeeping requirements for vessels equipped with ballast tanks that enter the waters of the United States after operating beyond the Exclusive Economic Zone (EEZ)?**

(a) The master, owner, operator, or person in charge of a vessel entering the waters of the United States after operating beyond the EEZ, unless specifically exempted by §§ 151.2010 or 151.2015 must keep written, records that include the following information (Note: Ballast tank is any tank or hold that carries ballast water regardless of design):

\* \* \* \* \*

12. Amend Appendix to Subpart D of Part 151 BALLAST WATER REPORTING FORM AND INSTRUCTIONS FOR BALLAST WATER REPORTING FORM by revising the second page of the form to read as follows:

BILLING CODE 4910-15-U

**Where to send this form.**

**Vessels bound for Great Lakes:**

**United States or Canadian Flag vessel bound for the Great Lakes**

Fax the form to the COTP Buffalo, Massena Detachment **315-764-3283** at least 24 hours before the vessel arrives in Montreal, Quebec.

**Any other Flag vessel bound for the Great Lakes**

Fax the form to the COTP Buffalo, Massena Detachment **315-764-3283** at least 24 hours before the vessel arrives in Montreal, Quebec, or;

Complete the ballast water information section of the St. Lawrence Seaway required "Pre-entry Information from Foreign Flagged Vessels Form" and submit it in accordance with the applicable Seaway Notice.

**Vessels bound for the Hudson River North Of George Washington Bridge**

**Vessel bound for the Hudson River north of the George Washington Bridge**

Fax the form to the COTP New York at **718-354-4249** before the vessel enters the waters of the United States (12 miles from the baseline).

**Vessels bound for all other United States Ports**

**Vessel bound for all ports within the waters of the United States other than the Great Lakes or Hudson River north of the George Washington Bridge**

Before the vessel arrives at the first port of call in the waters of the United States send the form by one of the three following methods:

- Mail the form to the **U.S. Coast Guard, c/o Smithsonian Environmental Research Center (SERC), P.O. Box 28, Edgewater, MD 21037-0028;**
- Transmit the form electronically to the National Ballast Information Clearinghouse (NBIC) at <http://invasions.si.edu/ballast.htm> or e-mail it to [ballast@serc.si.edu](mailto:ballast@serc.si.edu); or
- Fax the form to the Commandant, U.S. Coast Guard, c/o the NBIC at **301-261-4319.**

**If any information changes, send an amended form before the vessel departs the waters of the United States.**

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The Coast Guard estimates that the average burden for this report is 35 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant (G-MSO), U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593-0001, or Office of Management and Budget, Paperwork Reduction Project (2115-0598), Washington, DC 20503.

Dated: August 21, 2001.

**Paul J. Pluta,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 01-28162 Filed 11-20-01; 8:45 am]

BILLING CODE 4910-15-C

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[FRL-7106-1]

### National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule; amendment.

**SUMMARY:** We are taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient (PAI) Production. Rather than requiring the precompliance plans 6 months in advance of the compliance date, the amended rule will require the plans 3 months in advance. Under the promulgated rule, precompliance plans for existing sources would be due December 23, 2001. With this action, these plans will be due by March 23, 2002.

**DATES:** This direct final rule will be effective on December 21, 2001, without further notice, unless the EPA receives adverse comments by December 6, 2001. If we receive any adverse comments on the amendment, we will publish a timely withdrawal of this direct final rule in the **Federal Register** indicating that the amendment in this rule will not take effect.

**ADDRESSES:** *Comments.* Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-95-20, Room M-1500, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. A separate copy

of each public comment must also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.** Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

*Docket.* Docket No. A-95-20 contains supporting information used in developing the PAI Production NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M-1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504-04), U.S. EPA, Research Triangle Park, North Carolina 27711 (express packages to 4930 Old Page Road, Research Triangle Park, NC 27709), telephone number (919) 541-5402, electronic mail address mcdonald.randy@epa.gov.

#### **SUPPLEMENTARY INFORMATION:**

*Comments.* Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect version 5.1, 6.1, or Corel 8 file format. All comments and data submitted in electronic form must note the docket number A-95-20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy

McDonald, c/o OAQPS Document Control Officer (MD-C404-02), U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

*Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules <http://www.epa.gov/ttn/oarpg>. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

*Regulated Entities.* The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry .....	Typically, 325199 and 325320.	Typically, 2869 and 2879.	Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides.  Producers of any integral intermediate used in onsite production of an active ingredient used in an herbicide, insecticide, or fungicide.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the

revisions to the regulation affected by this action. To determine whether your facility, company, business,

organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR