

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 151**

[USCG-2002-13147]

RIN 1625-AA51 [Formerly 2115-AG50]

**Penalties for Non-Submission of Ballast Water Management Reports**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard finalizes regulations for vessels equipped with ballast water tanks bound for ports or places within the United States. These regulations establish penalty provisions for vessels that fail to submit a ballast water management (BWM) report. Penalty provisions are also established for vessels bound for the Great Lakes or portions of the Hudson River who violate the mandatory BWM requirements. These regulations also widen the reporting and recordkeeping requirements. This will increase the Coast Guard's ability to prevent the introduction of nonindigenous species as required by the Nonindigenous Aquatic Nuisance Prevention and Control Act and the National Invasive Species Act.

**DATES:** This final rule is effective August 13, 2004.

**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-2001-13147 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:** If you have questions on this rule, call Mr. Bivan Patnaik, Project Manager, Environmental Standards Division, Coast Guard, telephone 202-267-1744, email: [bpatnaik@comdt.uscg.mil](mailto:bpatnaik@comdt.uscg.mil). If you have questions on viewing the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202-366-0271.

**SUPPLEMENTARY INFORMATION:**

**Legislative and Regulatory History**

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA) [Pub. L. 101-646], enacted

by Congress on November 29, 1990, established the Coast Guard's regulatory jurisdiction over BWM. To fulfill the directives of NANPCA, the Coast Guard published a final rule on April 8, 1993, entitled "Ballast Water Management for Vessels Entering the Great Lakes" in the **Federal Register** (58 FR 18330). This rule established mandatory BWM procedures for the Great Lakes in 33 CFR part 151, subpart C.

A subsequent final rule entitled, "Ballast Water Management for Vessels Entering the Hudson River," was published on December 30, 1994, in the **Federal Register** (59 FR 67632), which amended 33 CFR part 151 to extend the BWM requirements into portions of the Hudson River.

The National Invasive Species Act (NISA) [Pub. L. 104-332] enacted by Congress on October 26, 1996, reauthorized and amended NANPCA. NISA reemphasized the significant role of ships' ballast water in the introduction and spread of nonindigenous species (NIS). NISA authorized the development of a voluntary, national BWM program and mandated the submission of BWM reports without penalty provisions. The Coast Guard implemented this voluntary program in the interim rule entitled, "Implementation of the National Invasive Species Act of 1996" on November 17, 1999, (64 FR 26672) and finalized it on November 21, 2001 (66 FR 58381).

NISA also instructed the Secretary of the Department of Transportation to submit a Report to Congress evaluating the effectiveness of the voluntary BWM program. Congress anticipated that the Secretary might determine that either compliance with the voluntary guidelines was inadequate, or the rate of reporting was too low to allow for a valid assessment of compliance. In either case, Congress stipulated the development of additional regulations to make the voluntary guidelines a mandatory BWM program. The Secretary of the Department of Transportation's report to Congress, signed June 3, 2002, concluded that compliance with the voluntary guidelines, found in 33 CFR part 151, subpart D, was insufficient to allow for an accurate assessment of the voluntary BWM regime. Accordingly, the Secretary of the Department of Transportation stated his intention to make the voluntary BWM requirements mandatory. (A copy of this Report to Congress can be found in the USCG 2002-13147 at <http://dms.dot.gov>).

On March 1, 2003, the Coast Guard became a component of the Department of Homeland Security. As a result, the

Secretary of the Department of Homeland Security assumed all duties once bestowed on the Secretary of the Department of Transportation with respect to this final rule. The Secretary of the Department of Homeland Security concurs with the Coast Guard's determination regarding the mandatory ballast water program.

On January 6, 2003, we published a notice of proposed rulemaking entitled, "Penalties for Non-submission of Ballast Water Management Reports," in the **Federal Register** (68 FR 523). We received 26 letters commenting on the proposed rule. No public hearing was requested and none was held.

**Related Projects**

The Coast Guard is currently working on three other projects related to addressing the NIS problems in U.S. waters.

The first project proposes mandatory BWM practices for all vessels bound for ports or places within the U.S. and for vessels entering waters of the U.S. This proposed rulemaking would increase the Coast Guard's ability to protect U.S. waters against the introduction of NIS via ballast water discharges. A notice of proposed rulemaking entitled, "Mandatory Ballast Water Management Program for U.S. Waters" was published on July 30, 2003 (68 FR 44691), and proposes to revise 33 CFR part 151 to implement the requirements of NISA. Specifically, subpart D of 33 CFR part 151 would be revised to require a mandatory BWM program for all vessels equipped with ballast water tanks operating within, or entering U.S. waters. The mandatory BWM requirements for vessels entering the Great Lakes and Hudson River from outside the Exclusive Economic Zone (EEZ) would remain unchanged.

The second project involves encouraging the installation and testing of ballast water treatment technologies on board vessels. A notice, entitled "Approval for Experimental Shipboard Installations of Ballast Water Treatment Systems" (66 FR 282131), published on May 22, 2001, requested comments on a possible means of providing incentives for ship owners to assist in the development and testing of ballast water treatment technologies. The Coast Guard has established a program through which vessel owners can apply for acceptance of experimental ballast water treatment systems installed and tested on board their operating vessels. This program facilitates the development of effective ballast water treatment technology, thus creating more options for vessels seeking alternatives to ballast water exchange. A

Navigation Inspection Circular detailing the Shipboard Technology Evaluation Program (STEP) is available at <http://www.stage.uscg.mil/hq/g-m/mso/step.htm>.

The third project involves establishing water quality standards for ballast water discharged into U.S. waters. A notice entitled, "Potential Approaches to Setting Ballast Water Treatment Standards" (66 FR 21807), published May 1, 2001, requested comments on approaches to setting, implementing, and enforcing ballast water standards. It was followed by an advanced notice of proposed rulemaking (ANPRM) entitled "Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters" (67 FR 9632), published on March 4, 2002. This ANPRM sought comments on the development of a ballast water treatment goal and an interim ballast water treatment standard. The comment period on the ANPRM closed on June 3, 2002, and the Coast Guard is currently analyzing comments. We have also begun the process of preparing a Programmatic Environmental Impact Statement, as stated in a Notice of Intent published in the **Federal Register** on September 26, 2003 (68 FR 55559).

### Background and Purpose

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA), as amended by the National Invasive Species Act of 1996 (NISA), directed the Coast Guard to issue regulations and guidelines to prevent the introduction and dispersal of nonindigenous species (NIS) to U.S. waters via ballast water discharges. In carrying out Congress' intent of a stepped approach, the Coast Guard, as the Secretary's delegate, is moving forward with the promulgation of regulations that establish penalty provisions and widen the range of vessels required to submit and keep, respectively, BWM reports and records. This rule finalizes regulations that will—

- Establish penalty provisions for vessels bound for ports or places within the United States who fail to submit ballast water reporting forms;
- Establish penalty provisions for vessels bound for the Great Lakes or portions of the Hudson River who violate the mandatory BWM requirements; and
- Widen the reporting and recordkeeping requirements for vessels bound for ports or places within the United States.

### Discussion of Comments

The Coast Guard received comments from 26 sources on the notice of proposed rulemaking. We received comments from vessel owners, industry associations, non-governmental associations, and Federal and State agencies. Overall, we received general comments as well as comments on specific sections of the proposed rulemaking.

### General Comments

The Coast Guard received five comments that supported the penalty provisions of non-submission of ballast water reporting forms as well as mandatory reporting, regardless of whether or not vessels operate outside, or within U.S. waters.

Four commenters supported the collection of data regarding volumes and uptake/discharge locations of vessels' ballast water, but did not support imposing penalties for the voluntary BWM program. These comments suggested imposing penalties when the program becomes mandatory.

The Coast Guard disagrees with this comment. Although the BWM guidelines are voluntary, submittal of ballast water reporting forms has been mandatory since 1999. Due to industry's low compliance rate of submitting reporting forms, the Coast Guard is authorized by NISA to enforce penalties to increase compliance.

One commenter suggested that the Department of Defense (DoD) agencies and the Coast Guard should sign a Memorandum of Agreement that will allow DoD vessels to provide summary ballast water activity information on a periodic basis.

The Coast Guard disagrees with this comment. Ballast water discharges from these vessels will be regulated under the Uniform National Discharge Standards program via the Clean Water Act as directed by NISA.

One commenter asked that this rule become applicable under the National Aquatic Invasive Species Act (NAISA) once it is enacted.

This rule is authorized under NANPCA and NISA and will stay authorized when NANPCA is reauthorized, and amended by NAISA or by some other legislation.

Five commenters said that the \$25,000 penalty for non-submission of BWM reports is excessive. They said that California assesses between \$500 and \$5,000 for those who intentionally fail to comply, and after 3 years, the State has had a 95 percent compliance rate.

Although, the penalty amount of \$25,000 was discussed in the notice of

proposed rulemaking, the Coast Guard recently published a final rule on December 23, 2003, entitled, "Civil Monetary Penalties—Adjustments for Inflation" (68 FR 74189). Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, the Coast Guard is authorized to adjust penalties for violating Federal laws set by Congress long ago whereas the deterrent value of the penalties have weakened with time due to inflation. As such, we have changed the monetary amount authorized by NISA, from \$25,000 to \$27,500. With respect to the commenters concern about the penalty amount, we believe there is some confusion regarding the penalty amount. The penalty is not \$27,500; rather, the penalty is not to exceed \$27,500. We have the discretion to issue a penalty of up to \$27,500, depending on the facts of each individual case.

Three commenters said the ballast water reporting form needs to be redesigned and updated.

The Coast Guard, in conjunction with the National Ballast Information Clearinghouse (NBIC) is currently examining the possibility of redesigning and updating the ballast water reporting form. If the Coast Guard determines that the form will be updated, this will be the subject of future rulemaking project. In this regard, we have determined that the reporting form, as currently designed, does not allow for vessels to make multiple or consecutive voyage reports on a single form in a way that is useful to either the Coast Guard or the NBIC. As a result, we have deleted that option from the regulation in section 151.2041. Our economic analysis accounted for all arrivals in U.S. ports or places, therefore, removing this option does not affect our cost analysis, and should not have a substantial effect on the public.

The Coast Guard received eight comments that stated it should coordinate its national BWM program with State programs, citing California and the West Coast Ballast Water Working Group as a good example. The commenters claimed that this would eliminate duplicative reporting requirements and allow States access to Federal ballast water reporting data.

We consider this comment to be outside the scope of this rulemaking. When this rule is finalized, each State is authorized under NISA to develop their own regulations if they feel that Federal regulations are not stringent enough. Additionally, we note that States may access Federal ballast water reporting data by utilizing NBIC, found

at <http://www.invasions.si.edu/NBIC/ballast.html>.

One commenter supported the quick and aggressive development of ballast water discharge standards.

We consider this comment to be outside the scope of this rulemaking. Ballast water discharge standards will be addressed in a separate rulemaking.

We received four comments suggesting there be a 2-year grace period to provide coastwise vessels time for crews to learn and comply with the mandatory ballast water reporting requirements. According to the commenters, this would be consistent with the 2 years it took to finalize the rule on voluntary guidelines from the interim rule (1999–2001).

The Coast Guard disagrees with this comment. There was no “2-year grace period” between the interim rule on voluntary guidelines and when the rule was finalized. An interim rule is used when it is in the public interest to promulgate an effective rule while keeping the rulemaking open for further refinement. The preamble to the interim rule clearly indicated that a rule was being issued rather than just being proposed. It took 2 years to address comments from the public and incorporate them into the final rule. Therefore, there will be no 2-year grace period for this rule.

Three commenters stated that the summary table of requirements should be consistent with the intended regulatory requirements, citing, the table heading in the Appendix of Subpart D.

The Coast Guard agrees with this comment and will change the table heading in the Appendix of Subpart D for consistency.

One commenter stated that in § 151.2045, the phrase “entering waters after operating beyond the EEZ” was replaced with the phrase, “bound for a port or place in the U.S.,” but that this change was not made to the section heading.

We agree with this comment and have changed the title of this section.

One commenter suggested changing the reporting deadline to 48 hours after a vessel’s departure from a port, citing data from California that shows greater accuracy on reporting prior to arrivals. The commenter noted that ballasting may change from port to port, and also stated that any concerns regarding preemptive control of ballast water operations be addressed by collecting minimal ballast operation information at the 96 hours Notice of Arrival (NOA), with more detailed data within 48 hours after departure.

The Coast Guard disagrees with this comment. We believe it is advantageous

for vessels to submit their ballast water reporting forms 24 hours prior to arrival, as this provides a more accurate picture of BWM practices. Cargo operations are already accurately planned, very few amendments need to be made to the reporting forms. In reviewing initial ballast water reporting data, the Coast Guard found very few amendments. Additionally, if a vessel submits a report 48 hours after departure from a port, the Coast Guard will be unable to determine whether or not that vessel was in compliance with ballast water regulations at the departure port. This creates a possibility that BWM data submitted with the NOA form would be incomplete.

The Coast Guard received one comment stating that procedures should be established to allow for submission of reporting forms in a non-paper form method.

The Coast Guard agrees with this comment and encourages all vessels to submit forms electronically. Procedures are already in place for vessel owners to email, fax, or otherwise submit forms electronically. We recognize not all vessels have the capability to email their ballast water reporting forms or submit electronic forms via the NBIC Web site. Please note that the email address to send forms has changed to [nbic@ballastreport.org](mailto:nbic@ballastreport.org).

#### Comments Regarding Submission

Nine commenters asked the Coast Guard to allow tug and barge operators that carry ballast water and serve domestic coastwise trade to submit reports every 30 days, rather than 24 hours prior to arrival at the first U.S. port. These commenters argued that monthly reporting would ease the administrative burden on the vessel operator.

The Coast Guard disagrees with this comment. To change the submission requirements of ballast water reports for tugs and barges from 24 hours to 30 days would delay the accounting of BWM practices, thus denying the Coast Guard the means of enforcing compliance of mandatory ballast water reporting requirements.

Two commenters asked that vessels be denied entry into the Great Lakes if they do not submit a ballast water reporting form.

The Coast Guard disagrees with this comment. Compliance for submission of ballast water reporting forms in the Great Lakes is quite high, and therefore, the Coast Guard does not intend to deny vessels entry into the Great Lakes, or delay their voyages.

We received three comments asking who is responsible for submitting ballast

water reporting forms when vessels are under repair. Is it the responsibility of the vessel owner, tugboat operator, or the dry-dock manager?

Section 151.2045(a) states, “The master, owner, operator, or person in charge of a vessel \* \* \* must keep written records.” Therefore, the vessel owner, tugboat operator, and the dry-dock manager should discuss and decide who will submit the ballast water reporting forms. The responsibility is on the vessel owner to ensure that the form is submitted.

#### Comments Regarding Enforcement and Verification

Two commenters wanted to know how the Coast Guard would enforce penalties if there are several different ways to submit ballast water reporting forms. They argued that allowing submission of reporting forms by several methods would add to the amount of time someone would have to spend to track down a reporting form in order to impose a penalty. The commenters suggested the use of a single database.

Currently, vessels have several choices in submitting ballast water reporting forms because not all vessels have the capability to submit forms electronically. As vessels increase their access to email and the Internet, we anticipate more forms will be sent electronically. The Coast Guard is currently working with NBIC to streamline the submittal of ballast water reporting forms and to have all BWM data in the NBIC database.

One commenter stated that verification procedures should be established so that NBIC can let vessel owners know it has received their reports.

The Coast Guard agrees and is currently working with NBIC on a wide range of issues to assist vessel owners in their submission of ballast water reporting forms, including verification procedures to let vessel owners know that NBIC has received their reports.

#### Comments Regarding Exemptions

We received six comments that asked the Coast Guard not to require reporting on BWM for vessels that have tanks or voids, but are not carrying ballast water. These commenters argued that it is capricious for the penalty provisions not to make a distinction between vessels with full or empty tanks.

The Coast Guard disagrees with this comment. The reporting data gathered on whether or not vessels operating in U.S. waters are carrying ballast water is important in understanding BWM practices. The Coast Guard is directed

by NISA to have a complete picture of BWM practices for U.S. waters.

The Coast Guard received seven comments that requested inland towing vessels and barges be exempt from ballast water reporting requirements.

The Coast Guard disagrees with this comment. As stated previously, the Coast Guard is required by NISA to assess the complete picture of BWM practices for U.S. waters. Therefore, the Coast Guard requires BWM data from inland towing vessels and barges if they are equipped with ballast tanks or even occasionally carry ballast water onboard.

One commenter stated that reporting requirements on ballast water should apply to all vessels without any exemptions.

NISA requires exemptions from BWM reporting requirements for certain types of vessels. Therefore, these exemptions will remain in place unless Congress authorizes the Coast Guard to remove them.

The Coast Guard received four comments supporting the inclusion of coastwise vessels in the ballast water reporting requirements with exemptions for: Unmanned vessels, vessels with No Ballast On Board (NOBOBs), and vessels solely within one Coast Guard district.

The Coast Guard disagrees that exemptions should be provided for unmanned vessels, NOBOBs, and vessels operating within one Coast Guard district. The reporting data gathered on these vessels is important in understanding BWM practices of vessels operating in U.S. waters. Some Coast Guard districts encompass a large area; therefore, it does not make sense to exempt them as we are attempting to stop the spread of NIS in U.S. waters.

Two commenters suggested that NOBOBs operating within the Great Lakes be required to submit ballast water reporting forms.

As there are large numbers of NOBOB vessels that traverse the Great Lakes, it is important to understand their BWM practices as directed by NISA. Therefore, the Coast Guard will require NOBOBs to submit ballast water reporting forms, and § 151.1516 has been clarified to reflect this. NOBOBs will still be exempt from conducting BWM practices.

We received one comment asking for clarification on the reporting exemption for crude oil tankers to ensure that the exemption does not apply to shipments in the Great Lakes.

Section 151.2041 states that vessels must comply with the mandatory submittal of ballast water reporting forms unless exempted in §§ 151.2010 or 151.2015. This exemption includes

crude oil tankers engaged in coastwise trade for BWM in U.S. waters. However, this exemption does not apply to crude oil tankers traversing the Great Lakes. Section 151.1502 states all vessels carrying ballast water and operating outside the EEZ, must comply with Subpart C, "Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River," regardless of other port calls in the U.S. or Canada during that voyage.

Two commenters asked the Coast Guard to give consideration to Mobile Offshore Drilling Units (MODUs) as they differ operationally from traditional merchant shipping.

The Coast Guard believes that MODUs are already given consideration because most of them operate within one Captain of the Port (COTP) zone. Those MODUs that operate within one COTP zone will be exempt from the mandatory ballast water reporting requirements. MODUs that move from one COPT zone to another will be required to submit ballast water reporting forms.

The Coast Guard received two comments stating that it is not clear if § 151.2010(c) intends to include offshore supply vessels (OSVs) operating out of a single COTP zone in terms of voyages that are to and from sites in the EEZ. The commenters also asked if COTP zones extend to the EEZ.

Section 151.2010(c) covers all vessels, including OSVs that operate within a single COTP zone. As stated in 33 CFR part 151 § 3.01(f), COTP zones, include and extend into the EEZ.

Two commenters suggested adding subparagraph (d) to § 151.2010 to read: "OSVs operating exclusively in the EEZ from U.S. ports that do not take ballast water from the sea or discharge ballast water overboard in the course of their operations".

The Coast Guard disagrees with this comment. If an OSV operates within one COTP zone, that vessel will be exempt. At this time, under the direction of NISA, the Coast Guard must evaluate the BWM operations of all vessels operating within U.S. waters. Therefore, OSVs operating in more than one COTP zone will be required to submit ballast water reporting forms. If, after a period of time we determine that we are receiving data that does not benefit our evaluation, we will then revisit the program and adjust it accordingly.

#### Comments on Definitions

Three commenters stated that in § 151.2025, the term "ports and places" needs to be clearly defined. They suggested that the term be defined to exclude ports or places that lie outside the 12 nautical miles territorial sea.

They further stated that the preamble for the final rule on NOA states that MODUs moving from one location to another on the Outer Continental Shelf (OCS) are not required to submit a NOA form. The commenters suggested MODUs should be exempt from the ballast reporting requirements.

The Coast Guard disagrees with this comment. "Ports and places" are defined in § 151.2025 and are defined in the exact way as in 33 CFR 160.204 of, "Notification of Arrivals, Departures, Hazardous Conditions, and Certain Dangerous Cargoes." The Coast Guard must evaluate the BWM operations of all vessels operating within U.S. waters. Therefore, MODUs or OSVs servicing OCS facilities, moving from one COTP zone to another, must submit ballast water reporting forms. If, after a period of time we determine that we are receiving data that does not benefit our evaluation, we will then revisit the program and adjust it accordingly.

These three commenters also stated that in § 151.2025, it is not clear why the definition of EEZ is added. They stated that the definition of EEZ in § 151.1504 is indistinguishable with the one referenced in § 151.2025.

Although the definition of the EEZ is in § 151.1504 (Subpart C, "Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River), it was added to § 151.2025 to create a more complete set of regulations within Subpart D "Ballast Water Control for Nonindigenous Species in Waters of the United States." The Coast Guard hopes in the future, to develop a single set of regulations that will apply nationwide, including the Great Lakes and the Hudson River. Duplications and redundancies would be eliminated during that rulemaking project.

#### Additional Editorial Change

We have made a minor editorial change in section 151.2045, by redesignating paragraphs (a)(8)(ii), (a)(8)(iii), and (a)(8)(iv) as (a)(9), (a)(10), and (a)(11), respectively. This was done to clarify the organization of this section.

#### Regulatory Evaluation

This rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, regulatory Planning and Review. The Office of Management and Budget has reviewed it under that order. It requires an evaluation of potential costs and benefits under section 6(a)(3) of that Order. It is "significant" under the regulatory policies and procedures of the Department of Homeland

Security. A summary of the Assessment follows:

This Regulatory Evaluation estimates the costs and benefits of the rule for civil penalties and new reporting requirements for vessels arriving from domestic ports of origin. The costs of collecting and reporting ballast water information for vessels arriving from foreign ports of origin have already been accounted for in previous Regulatory Assessments and an OMB-approved collection of information (OMB 2115–0598). Therefore, in this Regulatory Evaluation, we account only for the costs of reporting that will be incurred by vessels arriving in U.S. ports from other U.S. ports (*i.e.*, domestic voyages).

We received one comment regarding the estimated number of ballast water reports that will be submitted annually, stating that our estimate did not appear to include arrivals from OSVs. We agree and have amended our estimate accordingly.

According to data from the Coast Guard, the U.S. Customs Service, and the U.S. Maritime Administration, there are approximately 70,000 arrivals in U.S. ports annually. Of these, 50,000 have a foreign port of origin and the remaining 20,000 have a domestic port of origin. Additionally, there are about 40,000 arrivals from OSVs that do not currently report. Vessels arriving from foreign ports of origin are required to report BWM practices under existing regulations. Under this final rule, the 20,000 arrivals from domestic ports plus the 40,000 arrivals from OSVs will now be required to submit ballast water reports.

Based on the current collection, we estimate that each ballast water report takes 40 minutes (0.666 hours) to complete the form and submit it to the Coast Guard. We estimate that it costs \$35 per hour for the labor to complete and submit each form. If there are 60,000 arrivals from domestic ports annually, this means the annual cost of the final rule is \$1.4 million ( $\$35 \times 0.666 \text{ hours} \times 60,000 \text{ ballast water reports}$ ).

The benefit of the rule is an increase in the amount and quality of BWM information provided to the Coast Guard. This will allow the Coast Guard to more accurately analyze and assess the BWM practices and delivery patterns of vessels navigating in U.S. waters and take appropriate programmatic action.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a

substantial number of small entities. The term “small entities” comprises 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.

We do not expect that a substantial number of small businesses will be significantly affected by this rule. The final rule implementing NISA, published in November of 2001 (66 FR 58381), was able to certify that a significant number of small entities were not substantially affected by that rule. We do not expect that this will change by increasing the number of vessels subject to the reporting requirements, to cover all vessels equipped with ballast water tanks that are bound for ports or places within the United States, because the cost per ballast water report is only \$23 (40 minutes  $\times$  \$35/hour).

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final 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 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

#### Collection of Information

This rule modifies an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

As required by 44 U.S.C. 3507(d), we submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB approved the change to the collection on September 9, 2003. OMB Control Number 1625–0069, expiring on September 30, 2006.

You are not required to respond to a collection of information unless it

displays a currently valid OMB control number.

#### Federalism

We have analyzed this rule under Executive Order 13132. The National Aquatic Nuisance Prevention and Control Act contains a “savings provision” that saves to the States their authority to “adopt or enforce control measures for aquatic nuisance species, [and nothing in the Act will] diminish or affect the jurisdiction of any States over species of fish and wildlife.” It also requires that “all actions taken by Federal agencies in implementing the provisions of [the Act] be consistent with all applicable Federal, State and local environmental laws.” Thus, the congressional mandate is clearly for a Federal-State cooperative regime in combating the introduction of NIS into U.S. waters from ship’s ballast tanks. This makes it unlikely that preemption, which would necessitate consultation with the States under Executive Order 13132, will occur.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 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 Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might 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 will 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 likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this rule is categorically excluded under paragraph 6(b) of the Appendix to "National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" (67 FR 48244, July 23, 2002) from further environmental documentation. This rule falls under congressionally mandated regulations. Analyses of these types of regulations and their respective environmental reviews have determined these actions do not normally have significant effects either individually or cumulatively on the human environment. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES.

## 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 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. Revise the authority citation for part 151 subpart C continues to read as follows:

**Authority:** 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1.

#### § 151.1516 [Amended]

■ 2. In § 151.1516(a), remove the phrase "subject to this subpart" and add, in its place, the phrase "equipped with ballast tanks".

■ 3. Add § 151.1518 to read as follows:

#### § 151.1518 Penalties for failure to conduct ballast water management.

(a) A person who violates this subpart is liable for a civil penalty in an amount not to exceed \$27,500. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable in rem for any civil penalty assessed under this subpart for that violation.

(b) A person who knowingly violates the regulations of this subpart is guilty of a class C felony.

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

■ 4. Revise the authority citation for part 151 subpart C continues to read as follows:

**Authority:** 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1.

■ 5. Revise § 151.2005 to read as follows:

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

Unless exempted in § 151.2010 or § 151.2015, this subpart applies to all vessels, U.S. and foreign, equipped with ballast tanks, that operate in the waters of the United States and are bound for ports or places in the United States.

■ 6. Add § 151.2007 to read as follows:

#### § 151.2007 What are the penalties for violations of the mandatory provisions of this subpart?

(a) A person who violates this subpart is liable for a civil penalty not to exceed \$ 27,500. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable in rem for any civil penalty assessed under this subpart for that violation.

(b) A person who knowingly violates the regulations of this subpart is guilty of a class C felony.

■ 7. In § 151.2010:

■ a. In the introductory text, remove the word "Four" and add, in its place, the word "Three";

■ b. Remove paragraphs (b) and (d);

■ c. Redesignate paragraph (c) as paragraph (b); and

■ d. Add new paragraph (c) to read as follows:

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

\* \* \* \* \*

(c) A vessel that operates exclusively within one Captain of the Port (COTP) Zone.

#### § 151.2015 [Amended]

■ 8. In § 151.2015 remove the text "151.2040", and add in its place, the text "151.2041".

#### § 151.2025 [Amended]

■ 9. In § 151.2025(b), in the definition for "Exchange," redesignate paragraph (a) as (1); revise the definitions of "Captain of the Port (COTP)" and "Voyage"; and add, in alphabetical order, the definitions for "Exclusive Economic Zone (EEZ)", "Port or place of departure" and "Port or place of destination" to read as follows:

#### § 151.2025 What definitions apply to this subpart?

\* \* \* \* \*

(b) \* \* \*  
*Captain of the Port (COTP)* means the Coast Guard officer designated as the COTP, or a person designated by that officer, for the COTP zone covering the U.S. port of destination. These COTP zones are listed in 33 CFR part 3.

\* \* \* \* \*

*Exclusive Economic Zone (EEZ)* means the area established by Presidential Proclamation Number 5030, dated March 10, 1983 (48 FR 10605, 3 CFR, 1983 Comp., p. 22) which extends from the base line of the territorial sea of the United States seaward 200 miles, and the equivalent zone of Canada.

\* \* \* \* \*

*Port or place of departure* means any port or place in which a vessel is anchored or moored.

*Port or place of destination* means any port or place to which a vessel is bound to anchor or moor.

\* \* \* \* \*

*Voyage* means any transit by a vessel destined for any United States port or place.

\* \* \* \* \*

■ 10. Revise § 151.2040 and its section heading to read as follows:

**§ 151.2040 What are the mandatory ballast water management requirements for vessels equipped with ballast tanks that operate in the waters of the United States and are bound for ports or places in the United States?**

(a) A vessel bound for the Great Lakes or Hudson River, which has operated beyond the EEZ (which includes the equivalent zone of Canada) during any part of its voyage regardless of intermediate ports of call within the waters of the United States or Canada, must comply with §§ 151.2041 and 151.2045 of this subpart, as well as with the provisions of subpart C of this part.

(b) A vessel engaged in the foreign export of Alaskan North Slope Crude Oil must comply with §§ 151.2041 and 151.2045 of this subpart, as well as with the provisions of 15 CFR 754.2(j)(1)(iii). Section 15 CFR 754.2(j)(1)(iii) requires a mandatory program of deep water ballast exchange unless doing so would endanger the safety of the vessel or crew.

(c) A vessel not covered by paragraphs (a) or (b) of this section and is bound for ports or places in the United States must comply with §§ 151.2041 and 151.2045 of this subpart.

(d) This subpart does not authorize the discharge of oil or noxious liquid substances (NLS) in a manner prohibited by United States or international laws or regulations. Ballast water carried in any tank containing a residue of oil, NLS, or any other pollutant must be discharged in accordance with applicable regulations.

(e) This subpart does not affect or supercede any requirement or prohibition pertaining to the discharge of ballast water into the waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 to 1376).

**§ 151.2041 [Redesignated as § 151.2043]**

- 11. Redesignate § 151.2041 as § 151.2043.
- 12. Add new § 151.2041 to read as follows:

**§ 151.2041 What are the mandatory ballast water reporting requirements for all vessels equipped with ballast tanks bound for ports or places in the United States?**

(a) Ballast water reporting requirements exist for each vessel bound for ports or places in the United States regardless of whether a vessel operated outside of the EEZ (which includes the equivalent zone of Canada), unless exempted in §§ 151.2010 or 151.2015.

(b) The master, owner, operator, agent, or person-in-charge of a vessel to whom this section applies must provide the information required by § 151.2045 in electronic or written form (OMB form Control No. 1625-0069) to the Commandant, U.S. Coast Guard or the appropriate COTP as follows:

(1) For any vessel bound for the Great Lakes from outside the EEZ (which includes the equivalent zone of Canada).

(i) You must fax the required information at least 24 hours before the vessel arrives in Montreal, Quebec to either the USCG COTP Buffalo, Massena Detachment (315-769-5032), or the St. Lawrence Seaway Development Corporation (315-764-3250); or

(ii) If you are not a U.S. or Canadian Flag vessel, you may 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 in lieu of this requirement.

(2) For any vessel bound for the Hudson River north of the George Washington Bridge entering from outside the EEZ (which includes the equivalent zone of Canada). You must fax the information to the COTP New York (718-354-4249) at least 24 hours before the vessel enters New York, New York.

(3) For any vessel not addressed in paragraphs (b)(1) and (b)(2) of this section, which is equipped with ballast water tanks and bound for ports or places in the United States. If your voyage is less than 24 hours, you must report before departing your port or place of departure. If your voyage exceeds 24 hours, you must report at least 24 hours before arrival at your port or place of destination. All required

information is to be sent to the National Ballast Information Clearinghouse (NBIC) using only one of the following means:

(i) Internet at: <http://invasions.si.edu/NBIC/bwform.html>;

(ii) E-mail to [NBIC@BALLASTREPORT.ORG](mailto:NBIC@BALLASTREPORT.ORG);

(iii) Fax to 301-261-4319; or

(iv) Mail to U.S. Coast Guard, c/o SERC (Smithsonian Environmental Research Center), P.O. Box 28, Edgewater, MD 21037-0028.

(c) If the information submitted in accordance with this section changes, you must submit an amended form before the vessel departs the waters of the United States.

**§ 151.2043 [Amended]**

- 13. In newly designated § 151.2043:
  - a. In the section heading, after the words "Hudson River," add the words "after operating outside the EEZ or Canadian equivalent"; and
  - b. In paragraphs (a) and (a)(1), remove the text "\$ 151.2040(c)(4)" and add, in its place, the text, "\$ 151.2041".
- 14. In § 151.2045:
  - a. Revise the section heading as set out below;
  - b. In paragraph (a), remove the words "entering the waters of the United States after operating beyond the EEZ" and add, in their place, the words "bound for a port or place in the United States"; and
  - c. Remove the designation for paragraph (a)(8)(i) and redesignate paragraphs (a)(8)(ii), (a)(8)(iii), and (a)(8)(iv) to (a)(9), (a)(10), and (a)(11), respectively.

**§ 151.2045 What are the mandatory recordkeeping requirements for vessels equipped with ballast tanks that are bound for a port or place in the United States?**

- 15. In Subpart D, in Section 6 of the Appendix, revise the text beginning with the heading "Where to send this form" to read as follows:

**Appendix to Subpart D of Part 151—  
Ballast Water Reporting Form and  
Instructions for Ballast Water  
Reporting Form**

\* \* \* \* \*  
Where to send this form.

Vessels equipped with ballast water tanks bound for all ports or places within the waters of the United States after operating outside the EEZ (which includes the equivalent zone of Canada).

Bound for	You must submit your report as detailed below.
The Great Lakes .....	Fax the information at least 24 hours before the vessel arrives in Montreal, Quebec, to the USCG COTP Buffalo, Massena Detachment (315-769-5032) or to the Saint Lawrence Seaway Development Corporation (315-764-3250). In lieu of faxing, vessels that are not U.S. or Canadian flagged may complete the ballast water information section of the St. Lawrence Seaway "Pre-entry Information from Foreign Flagged Vessel Form".

Vessels equipped with ballast water tanks bound for all ports or places within the waters of the United States after operating outside the EEZ (which includes the equivalent zone of Canada).

Bound for	You must submit your report as detailed below.
Hudson River north of the George Washington Bridge.	Fax the information to the COTP New York at (718-354-4249) at least 24 hours before the vessel arrives at New York, New York. *NOTE: Vessels entering COTP New York Zone which are not bound up the Hudson River north of George Washington Bridge should submit the form in accordance with the instructions in the following block.
All other U.S. Ports .....	Report before departing the port or place of departure if voyage is less than 24 hours, or at least 24 hours before arrival at the port or place of destination if the voyage exceeds 24 hours; and submit the required information to the National Ballast Information Clearinghouse (NBIC) by one of the following means: Via the Internet at <a href="http://invasions.si.edu/NBIC/bwform.html">http://invasions.si.edu/NBIC/bwform.html</a> ; E-mail to <a href="mailto:NBIC@BALLASTREPORT.ORG">NBIC@BALLASTREPORT.ORG</a> ; Fax to 301-261-4319; or Mail the information to U.S. Coast Guard, c/o SERC, P.O. Box 28, Edgewater, MD 21037-0028.

Vessels that have not operated outside the EEZ, which are equipped with ballast water tanks and are bound for all ports or places within the waters of the United States.

Bound for	You must submit your report as detailed below:
All U.S. ports including the Great Lakes and Hudson River North of George Washington Bridge.	Report before departing the port or place of departure if voyage is less than 24 hours, or at least 24 hours before arrival at the port or place of destination if the voyage exceeds 24 hours; and submit the required information to the National Ballast Information Clearinghouse (NBIC) by one of the following means: Via the Internet at <a href="http://invasions.si.edu/NBIC/bwform.html">http://invasions.si.edu/NBIC/bwform.html</a> ; E-mail to <a href="mailto:NBIC@BALLASTREPORT.ORG">NBIC@BALLASTREPORT.ORG</a> ; Fax to 301-261-4319; or Mail to U.S. Coast Guard, c/o SERC, P.O. Box 28, Edgewater, MD 21037-0028.

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: June 4, 2004.

**Thomas H. Collins,**

*Admiral, U.S. Coast Guard, Commandant.*

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## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

RIN 1024-AD23

#### Canyonlands National Park—Salt Creek Canyon

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The National Park Service (NPS) is amending its regulations for Canyonlands National Park by

prohibiting motor vehicles in Salt Creek Canyon above Peekaboo campsite, in the Needles district. This action implements the selected alternative of the Middle Salt Creek Canyon Access Plan Environmental Assessment (EA).

**DATES:** Effective July 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Canyonlands National Park, 2282 SW Resource Boulevard, Moab, Utah 84532; Telephone: (435) 719-2101.

**SUPPLEMENTARY INFORMATION:**

Congress created Canyonlands National Park in 1964 in order to preserve its “superlative scenic, scientific, and archeologic features for the inspiration, benefit, and use of the public.” 16 U.S.C. 271. The Park is to be administered subject to the NPS Organic Act, as amended, which states in part that the “authorization of activities shall be construed and the protection, management, and administration of these areas [parks] shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various [park] areas have been established, except as may have been or shall be directly and specifically provided by Congress.” 16 U.S.C. 1a-1.

Salt Creek is the most extensive perennial water source and riparian ecosystem in Canyonlands National Park, other than the Green and Colorado

Rivers. The Salt Creek “road” is an unpaved and ungraded jeep trail that runs in and out of Salt Creek and, at various locations, the trail’s path is in the creek bed. It requires a four-wheel-drive vehicle to drive, and previous vehicle use of the trail periodically resulted in vehicles breaking down or becoming stuck and requiring NPS assistance for removal. Salt Creek is also the heart of the Salt Creek Archeological District, the area with the highest recorded density of archeological sites in the Park. A tributary canyon to Salt Creek contains the spectacular Angel Arch. Until 1998, street-legal motor vehicles were permitted to travel in Middle Salt Creek Canyon along and in the Salt Creek streambed for approximately 7.2 miles above the Peekaboo campsite, and an additional one mile up the Angel Arch tributary canyon. The Salt Creek trail does not provide a route for motorized transit through the Park or to any inholdings within the Park.

The previous management plan affecting Salt Creek, the Canyonlands National Park Backcountry Management Plan, was completed in January 1995. This plan, among other things, established a permit system and a daily limit on the number of motorized vehicles authorized to use the Salt Creek trail above Peekaboo Springs. The Southern Utah Wilderness Alliance (SUWA) challenged the Backcountry Management Plan in Federal district court. Among other things, SUWA