

not otherwise qualify as significant regulatory action under Executive Order 12866 or any successor order.

#### List of Subjects in 25 CFR Part 89

Indians—tribal government.

Under 25 U.S.C. 81 and as discussed in the preamble, amend Title 25, chapter I, of the Code of Federal Regulations as follows:

#### PART 89—ATTORNEY CONTRACTS WITH INDIAN TRIBES

1. The authority citation for part 89 is revised to read as follows:

**Authority:** 5 U.S.C. 301; secs. 89.30 to 89.35 also issued under 25 U.S.C. 2, 9, and 82a; secs. 89.40 to 89.43 also issued under 25 U.S.C. 13, 450 *et seq.*

2. Sections 89.1 through 89.26 of part 89 are removed and reserved.

Dated: July 9, 2001.

Neal A. McCaleb,

*Assistant Secretary—Indian Affairs.*

[FR Doc. 01-18476 Filed 7-25-01; 8:45 am]

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#### DEPARTMENT OF TRANSPORTATION

##### Coast Guard

##### 33 CFR Part 159

[CGD17-01-003]

RIN 2115-AG12

#### Discharge of Effluents in Certain Alaskan Waters by Cruise Vessel Operations

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is implementing regulations regarding sewage and graywater discharges from certain cruise vessels transiting applicable waters of Alaska. Operators of cruise vessels carrying 500 or more passengers and transiting applicable waters of Alaska are restricted in where they may discharge effluents and will be required to perform testing of sewage and graywater discharges and maintain records of such discharges. The Coast Guard will inspect, monitor, and oversee this process to ensure compliance with applicable water quality laws and regulations.

**DATES:** This rule shall be effective on July 26, 2001.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD17-01-003 and are available

for inspection or copying at room 751 of the Federal Building in Juneau, AK between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LCDR Spencer Wood, Seventeenth District (moc), 907-463-2809.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On April 25, 2001, we published a notice of proposed rulemaking (NPRM) entitled Discharge of Effluents in Certain Alaskan Waters by Cruise Vessel Operations in the **Federal Register** (66 FR 20770). We received 7 letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The regulations enacted by this final rule are the product of "Title XIV—Certain Alaskan Cruise Ship Operations" of the Miscellaneous Appropriations Bill (H.R. 5666) passed by Congress on December 21, 2000 in the Consolidated Appropriations Act of 2001 (Pub. L. 106-554) ("Title XIV"). Discussed at greater length below, Title XIV gives the Coast Guard new enforcement tools essential to curb current sewage and graywater effluent discharges from large cruise vessels in Alaskan waters. There is good cause to make this final rule effective upon publishing because the Coast Guard needs the regulations to enforce the standards set in Title XIV during the summer 2001 cruise season. The lack of a final rule has inhibited enforcement of the new legislation during this season. The Coast Guard has initiated law enforcement action against two vessels that arrived during the first week of the season for violating the Title XIV standards. These and other potential violators of the legislation and these regulations, in particular the self-reporting and record keeping requirements, are currently escaping complete enforcement action. The inability to wholly enforce Congress' mandate in Title XIV will continue until the rule is made effective. Further, the majority (6 of 7) of the public comments received stated that the Coast Guard should immediately begin enforcement of these proposed regulations.

##### Background and Purpose

Congress passed Title XIV in response to public concern with environmental impacts of cruise vessels on Alaska waters. This legislation was drafted in the wake of past incidents of illegal

wastewater discharges, the discovery of high levels of fecal coliform in legal discharges of treated sewage and graywater, the projected growth of the industry, and the trend within the industry towards larger vessels that carry over 5000 people.

In December of 1999, a task force comprised of representatives from the federal government, State government, the cruise industry, and environmental groups was established to develop voluntary procedures for sampling and analyzing wastes generated by cruise vessels while operating in Alaska's waters during the 2000 cruise vessel season.

During the summer 2000 cruise season, the relevant segment of the cruise industry voluntarily agreed not to discharge treated sewage or graywater while in port, not to discharge garbage or untreated sewage in Southeast Alaska's "Donut Holes" (bodies of water greater than three miles from any shoreline yet within Alaska's inside passage), and not to discharge treated sewage or graywater, unless more than 10 miles from port and proceeding at a speed of not less than 6 knots.

Additionally, a voluntary sampling and testing protocol and Quality Assurance/Quality Control Plan (QA/QPC) for treated sewage and graywater were developed. The protocol and QA/QPC were applied to 21 cruise vessels calling on Alaska ports during the 2000 season.

The test results revealed that the majority of the vessels' discharges, both treated sewage and graywater, exceeded marine sanitation device (MSD) design standards for water quality of 200 fecal coliform per 100 milliliters and 150 milligrams per liter total suspended solids (TSS). The high levels of fecal coliform and TSS found in treated sewage indicate that the MSDs used by cruise vessels may not be operating properly or functioning as designed. The Coast Guard boarded 15 vessels as a result of high fecal coliform and TSS levels. Five vessels were found to have evidence of improperly functioning MSDs. The source of the high fecal coliform and TSS found in graywater has yet to be positively determined.

Concurrent with this voluntary sampling process, Congress was drafting legislation that addressed sewage and graywater discharges in Alaska's waters and sought to close the "Donut Holes" located in Southeast Alaska's Inside Passage to untreated sewage discharge. This legislation was enacted into law on December 21, 2000, as part of the Consolidated Appropriations Act of 2001 in the form of Title XIV.

The summer 2001 cruise season began on May 1st. As in the past two seasons, the cruise industry has consented to voluntarily participate in a sampling protocol. The regulatory requirements set forth in the NPRM are being observed voluntarily. Despite notice of the new standards and voluntary industry participation in a sampling program based on those standards, the Coast Guard has initiated law enforcement action against two vessels that arrived during the first week of the season for violating the Title XIV standards. However, this law enforcement action has been limited in the absence of the regulations stated in this final rule.

These regulations are in response to Title XIV statutory mandate to draft implementing regulations. Section 1406 of Title XIV directs the Secretary to incorporate into the commercial vessel examination program an inspection regime sufficient to verify that operators of cruise vessels carrying 500 or more passengers and visiting ports in the State of Alaska or operating in the applicable waters of Alaska are in full compliance with the environmental record keeping and equipment requirements of Title XIV, the Federal Water Pollution Control Act, as amended, and any regulations issued there under, other applicable Federal laws and regulations, and all applicable international treaty requirements. The applicable waters of Alaska are defined as the waters of the Alexander Archipelago, the navigable waters of the United States within the State of Alaska, and the Kachemak Bay National Estuarine Research Reserve.

#### Discussion of Comments and Changes

As noted above, the Coast Guard received 7 comments on the NPRM. These comments were received from private individuals and representatives of private environmental organizations. No comments were received from the cruise ship industry. The comments raised both general issues about Title XIV and the proposed regulations and specific issues about the language of the proposed regulations.

The general issues indicated three things. First, commenters uniformly supported the new legislation and recommended immediate enforcement of the statute and the proposed regulations. Second, the majority of the letters urged the Coast Guard to seek increased funding to ensure rigorous implementation and enforcement of the regulations. Third, the letters recommended the Coast Guard use as many unannounced inspections of cruise vessels as necessary to ensure

pollution control equipment is functioning properly.

In raising these general issues, commenters did not recommend specific changes to the proposed regulations, therefore none have been made. The first general comment recommending immediate enforcement of the proposed regulation does, however, support the Coast Guard's determination that good cause exists for the final rule to be made effective upon publishing.

One of the 7 comments stated that Title XIV and the proposed regulations would only create a large environmental problem and that all cruise ship effluent discharges should be directed to shoreside processing plants. This comment sought action that is beyond the scope of Title XIV and this rulemaking. As such, no changes were made in response to this comment.

Four commenters recommended immediate designation of "no-discharge zones" under § 159.309(a)(2). This section, along with section 1404 of Title XIV from which § 159.309(a)(2) is derived, does not provide for establishment of no-discharge zones. Instead, they provide for establishment of areas less than a mile from shore, by the Coast Guard in consultation with the State of Alaska, for discharge by cruise ships. The language in § 159.309(a)(2) is directly quoted from the law. Establishment of no-discharge zones is provided for in Title XIV section 1410, however, it gives authority to State of Alaska to petition the Administrator of the Environmental Protection Agency to establish no-discharge zones, not the Coast Guard. Therefore, establishment of no-discharge zones is not addressed in this rulemaking.

Four commenters criticized §§ 159.309(b)(5) and (6) for being too general and recommendations were made that a more specific sampling regime be used. The Coast Guard disagrees with these comments and has made no changes to these sections. The language in §§ 159.309(b)(5) and (6) allows for current and future advances in effluent discharge technology and gives the Captain of the Port (COTP) discretion to tailor testing for individual vessels. Similarly, there were four recommendations that the Coast Guard develop a more specific Quality Assurance /Quality Control Plan (QA/QCP) than that prescribed in § 159.317(b). This section also has not been changed to ensure COTP flexibility in the face of varying vessel effluent discharge systems. The Coast Guard believes these concerns are more appropriately addressed during review of the QA/QCP and VSSP.

Four commenters recommended that the language of § 159.313(b) be expanded to include inspection of Marine Sanitation Devices, holding tanks, and other equipment. This equipment is already being examined by the Coast Guard and the existing language "general examination of the vessel" includes this specific equipment obviating the need for more specific direction to Coast Guard inspectors.

Four commenters recommended expansion of the Graywater Discharge Record Book minimum requirements to specify whether the effluent was treated or untreated, and, if treated, in what manner or with what specific technology or equipment. The Coast Guard agrees with this suggestion and has modified § 159.315 to reflect this change.

One commenter recommended that the requirement under § 159.317(a)(1) be modified to ensure QA/QCPs be uniformly applicable to all cruise ships. The Coast Guard agrees and the language of this section has been modified. In addition, the requirement for submission of a Vessel Specific Sampling Plan has been moved from this section to § 159.317(a)(3). The Coast Guard believes this change is necessary after observation of the startup of the 2001 cruise season. This change is intended to allow a third party contractor, hired to conduct the sampling, to develop a VSSP adequate for operations in the applicable waters of Alaska. Therefore, submission of the VSSP should occur within 30 days of each vessel's initial entry into the applicable waters of Alaska.

Four commenters recommended the self certification requirement under § 159.317(a)(2) be based on current samples from treated sewage and graywater effluents. The Coast Guard agrees and the language of this section has been modified to ensure that samples are coincident with the cruise vessel's window of time for annual self certification.

One commenter recommended a requirement be included in § 159.315 that copies of the Sewage and Graywater Discharge Record Book be submitted to the Coast Guard and Alaska Department of Environmental Conservation at regular intervals. The Coast Guard disagrees. The current language provides for maintenance of the Sewage and Graywater Discharge Record Book on board the vessel and that it be readily available for inspection. In addition, language under § 159.313(b) provides that a copy of any entry in the Sewage and Graywater Discharge Record Book may be made and the Master of the vessel may be required to certify that the

copy is a true copy of the original entry. The Sewage and Graywater Discharge Record Book is an enforcement tool to ensure compliance with environmental laws and regulations. The Coast Guard has determined that maintenance of this record on board the vessel, with full access by the Coast Guard, is adequate to ensure compliance as mandated by Title XIV.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it 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). A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

A Quality Assurance/Quality Control Plan (QA/QCP) with Vessel Specific Sampling Plan (VSSP) is required by these regulations to establish procedures for collecting and analyzing treated sewage and graywater samples from cruise vessels. During the summer 2000 voluntary cruise vessel sampling program a single QA/QCP, acceptable to the Coast Guard, was used by all 21 cruise vessels. A VSSP was then developed for each vessel. It is anticipated the same, or similar depending on the laboratory used, QA/QCP and VSSP will be used for subsequent summer cruise vessel seasons negating the need to develop new ones. The Coast Guard is not able to estimate the burden that may be associated with individual cruise vessel revisions to the QA/QCP and VSSP, if any.

The annual burden of creating and maintaining a Sewage and Graywater Discharge Record Book on 23 cruise vessels is expected to be \$460. This estimate is for the cost of purchasing a record book and maintaining it onboard each vessel. Entries into the record book should be made during the normal routine of the engineering watch so no additional labor costs are expected.

During the summer 2000 cruise vessel voluntary sampling program, the cruise industry operating in Alaska spent an estimated \$65,000 on sampling of cruise vessels while underway. An additional estimated \$150,000 was spent in having the samples analyzed for conventional pollutants and the complete suite of priority pollutants listed in 40 CFR 401.15. The summer 2000 sampling

program included two separate sampling events on 21 cruise vessels from all overboard treated sewage and graywater effluents and marine sanitation devices. In addition to the conventional pollutant suites, one of the two sampling events included samples drawn for a complete suite of priority pollutants analysis.

These regulations provide for a similar sampling and analysis regime with cost savings in some areas and offsetting cost increases in others. While the number of more costly priority pollutants analysis will decrease, the number of overall sampling events for conventional pollutants will likely increase. Also, the number of respondents is expected to increase from 21 to 23. Therefore, the annual burden for sampling and analysis under these regulations is estimated to be \$215,000. When divided by the number of participants, the annual cost to each individual vessel is estimated to be \$9,348. The estimated cost to each cruise vessel line is as follows:

Cruise line	Vessels	Cost
Princess Cruises .....	6	\$56,088
Holland American .....	6	56,088
Celebrity .....	2	18,696
Norwegian .....	2	18,696
Royal Caribbean .....	2	18,696
Carnival .....	1	9,348
Japan .....	1	9,348
World Explorer .....	1	9,348
Crystal Cruises .....	1	9,348
Radisson Seven Seas .....	1	9,348

The cost is based on two sampling events on each cruise vessel. One sample event would be required within 30 days of entering Alaska waters. The second sample event, although discretionary by the Coast Guard, will be taken from vessels that visit Alaskan waters at least four times a year. Additional samples and analysis may be required, along with the associated cost increase, should the initial sample results indicate noncompliance.

The Coast Guard is not able to estimate the costs that might be incurred if a cruise vessel cannot certify that their discharges meet the applicable standards, and does not have the capacity to hold all of its discharges while transiting the applicable waters of Alaska. In that scenario, it is believed that the cruise vessel would need to alter its cruise itinerary in order to leave the applicable Alaskan waters and enter the high seas, thus enabling the vessel to discharge. We asked for comments to help us estimate this cost, but none were received.

### 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.

Because the population of affected cruise vessels are owned by entities that do not qualify as small entities, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

This rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As defined in 5 CFR 1320.3(c), "collection of information" includes reporting, record keeping, monitoring, posting, labeling, and other, similar actions. The title and description of the collections, 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:* Sewage and Graywater Discharge Records for Certain Cruise Vessels Operating in Alaskan Waters.

*Summary of the Collection of Information:* The following information will be required to be collected by these regulations:

Quality Assurance/Quality Control Plan (QA/QCP) with Vessel Specific Sampling Plan (VSSP).  
Sewage and Graywater Discharge Record Book.  
Sewage and graywater sampling test results.

*Need for Information:* Compliance and enforcement of "Certain Alaskan Cruise Ship Operations" (Pub. L. 106–554).

*Proposed use of Information:* Regulatory oversight and compliance assurance.

*Description of the Respondents:* Master or other person having charge of each cruise vessel authorized to carry 500 or more passengers while operating in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska and within the Kachemak Bay National Estuarine Research Reserve.

*Number of Respondents:* 23.

*Frequency of Response:* Periodically while operating in the waters described above.

*Burden of Response:* There are three separate record keeping requirements involved in this regulation. Each is addressed separately, and the estimated total burden follows:

1. Quality Assurance/Quality Control Plan (QA/QCP) with Vessel Specific Sampling Plan (VSSP) development costs.

A QA/QCP with VSSP is required by these regulations to establish procedures for collecting and analyzing treated sewage and graywater samples from cruise vessels. During the summer 2000 voluntary cruise vessel sampling program, a single QA/QCP acceptable to the Coast Guard, was used by all 21 cruise vessels. A VSSP was then developed for each vessel and sampling was conducted in compliance with these documents. It is anticipated the same, or similar, QA/QCP and VSSP will be used for subsequent summer cruise vessel seasons negating the need to develop a new QA/QCP or VSSP. The Coast Guard is not able to estimate the burden that may be associated with individual cruise vessel revisions to the QA/QCP or VSSP, if any.

2. Sewage and Graywater Discharge Record Book costs. The annual burden of creating and maintaining a Sewage and Graywater Discharge Record Book on 23 cruise vessels is expected to be \$460. This estimate is for the cost of purchasing a record book and maintaining it onboard each vessel. Entries into the record book should be made during the normal routine of the engineering watch so no additional labor costs are expected.

3. Sample collection and analysis costs.

a. During the summer 2000 cruise vessel voluntary sampling program, the cruise industry operating in Alaska spent an estimated \$65,000 on sampling of cruise vessels while underway. An additional estimated \$150,000 was spent in having the samples analyzed for conventional pollutants and the complete suite of priority pollutants listed in 40 CFR 401.15. The summer 2000 sampling program included two separate sampling events on 21 cruise vessels from all overboard treated sewage and graywater effluents and marine sanitation devices. In addition to the conventional pollutant suites, one of the two sampling events included samples drawn for a complete suite of priority pollutants analysis.

These regulations provide for a similar sampling and analysis regime with cost savings in some areas and

offsetting cost increases in others. While the number of more costly priority pollutants analysis will decrease, the number of overall sampling events for conventional pollutants will likely increase. Also, the number of respondents is expected to increase from 21 to 23. Therefore, the annual cost for sampling and analysis under these regulations is estimated to be \$215,000. When divided by the number of participants, the annual cost to each individual vessel is estimated to be \$9,348.

*Estimated Total Annual Burden:* The estimated total annual burden is \$215,460.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard submitted a copy of this rule to OMB for its review of the collection of information.

The Coast Guard solicited public comment on the collection of information to: (1) Evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information will have practical utility; (2) evaluate the accuracy of the Coast Guard's estimate of the burden of the collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, as by allowing the submittal of responses by electronic means or the use of other forms of information technology.

OMB has approved our collection of information and assigned to it OMB control number 2115-0647. This approval expires on December 31, 2001. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### **Federalism**

Under Executive Order 13132, section 3(b), the Coast Guard finds that a program monitoring effluent discharge from cruise ships transiting certain Alaskan waters is in the national interest, as evidenced by Congress in enacting "Title XIV—Certain Alaskan Cruise Ship Operations" as part of the Consolidated Appropriations Act of 2001 (Pub. L. 106-554). In that legislation, Congress empowered the Coast Guard to monitor wastewater discharges from cruise ships transiting certain Alaskan waters.

The sampling, testing and log-keeping program outlined in this regulation was taken from a similar program that was run on a voluntary basis during the

summer of 2000. That program was one of the results of the Alaska Cruise Ship Initiative, which grew out of a working group composed of representatives from the cruise industry, the public, environmental groups, and state and federal government. The Coast Guard was one of the federal government representatives on that group. The working group was begun by the Commissioner of the Alaska Department of Environmental Conservation (ADEC) in December of 1999.

At the conclusion of the 2000 Alaskan cruise ship season, data from the voluntary wastewater sampling and testing program showed that none of the tested vessels were in full compliance with all federal performance standards for the discharge of treated sewage. This data, as well as data showing high levels of pollutants in graywater, spurred the legislation cited above. It also spurred a meeting between the Alaska governor, ADEC, the Coast Guard, and members of the cruise ship industry in November of 2000. At this meeting, the governor expressed his approval of the then-proposed Title XIV, and the greater authority it granted to the Coast Guard to protect Alaskan waters from pollutants.

This established cooperation between the Coast Guard and the State of Alaska, and the State's support of the legislation and voluntary testing program on which the regulation is based shows how the Coast Guard has consulted with State officials in accordance with Executive Order 13132, Section 3(b). The Coast Guard will continue to consult the State by sharing the results of sample tests with the State, as well as requiring that discharge logbooks be kept in a format readable by the Alaskan Department of Environmental Conservation.

Section 6(c)(2) of Executive Order 13132, requires, that if the agency promulgating the regulations intends that they have preemptive effect, it state that intention and the rationale on which it is based. Accordingly, the following statement is provided:

Section 1411 (b) Pub. L. 106-554 specifies that, "[n]othing in this Title shall in any way affect or restrict, or be construed to affect or restrict, the authority of the State of Alaska or any political subdivision thereof—(1) to impose additional liability or additional requirements; \* \* \*." This language, was drafted so as to be identical to the savings clause in Section 1018 of the Oil Pollution Act of 1990, which was recently interpreted by the Supreme Court in the case of *U.S. v. Locke*, 120 S.Ct. 1135 (Mar. 6, 2000). The Court held that a state could regulate regarding actual discharges, but could

not regulate in the areas of design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, or manning of vessels. In the Department of Transportation's letter transmitting Title XIV of Pub. L. 106-554 to Congress, we explained that conference report language on Title XIV should explain that preemption for this bill would work in the same manner as in OPA 90. We also discussed this position with the Alaska Attorney General's Office.

Accordingly, these rules are construed in the same manner as OPA 90, as described in the Department of Transportation's views letter referred to above. Thus, any of these regulations that have the effect of regulating a cruise vessel's design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, manning and casualty reporting have preemptive effect under existing U.S. laws and treaties to which the United States is a party. However, state legislation regulation actual discharges only is not preempted by these regulations.

#### 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not effect 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 does not create 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.

#### Environment

We have considered the environmental impact of this rule and concluded that, under figure 2-1, paragraph (34)(d), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This proposed regulation would require operators of cruise vessels carrying 500 or more passengers in Alaskan waters to document treated sewage and graywater discharges to ensure that they comply with effluent discharge standards. The content of effluent discharges reflects compliant equipment operations. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

#### 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.

#### List of Subjects in 33 CFR Part 159

Reporting and recordkeeping requirements, sewage disposal, vessels.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 159 as follows:

#### PART 159—MARINE SANITATION DEVICES

1. The authority citation for part 159 is revised to read as follows:

**Authority:** 33 U.S.C. 1322(b)(1); 49 CFR 1.45(b) and 1.46(l) and (m). Subpart E also issued under authority of sec. 1(a)(4), Pub. L. 106-554, 114 Stat. 2763; 49 CFR 1.46(ttt).

2. Subpart E is added to part 159 to read as follows:

#### Subpart E—Discharge of Effluents in Certain Alaskan Waters by Cruise Vessel Operations

Sec.	
159.301	Purpose.
159.303	Applicability.
159.305	Definitions.
159.307	Untreated sewage.
159.309	Limitations on discharge of treated sewage or graywater.
159.311	Safety exception.
159.313	Inspection for compliance and enforcement.
159.315	Sewage and graywater discharge record book.
159.317	Sampling and reporting.
159.319	Fecal coliform and total suspended solids standards.
159.321	Enforcement.

#### Subpart E—Discharge of Effluents in Certain Alaskan Waters by Cruise Vessel Operations

##### § 159.301 Purpose.

The purpose of this subpart is to implement "Title XIV—Certain Alaskan Cruise Ship Operations" contained in section 1(a)(4) of Pub. L. 106-554, enacted on December 21, 2000, by prescribing regulations governing the discharges of sewage and graywater from cruise vessels, require sampling and testing of sewage and graywater discharges, and establish reporting and record keeping requirements.

##### § 159.303 Applicability.

This subpart applies to each cruise vessel authorized to carry 500 or more passengers operating in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska and within the Kachemak Bay National Estuarine Research Reserve.

##### § 159.305 Definitions.

In this subpart:

*Administrator*—means the Administrator of the United States Environmental Protection Agency.

*Applicable Waters of Alaska*—means the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska and within the Kachemak Bay National Estuarine Research Reserve.

*Captain of the Port*—means the Captain of the Port as defined in Subpart 3.85 of this chapter.

*Conventional Pollutants*—means the list of pollutants listed in 40 CFR 401.16.

*Cruise Vessel*—means a passenger vessel as defined in section 2101(22) of Title 46, United States Code. The term does not include a vessel of the United States operated by the federal

government or a vessel owned and operated by the government of a State.

*Discharge*—means a release, however caused, from a cruise vessel, and includes, any escape, disposal, spilling, leaking, pumping, emitting or emptying.

*Environmental Compliance Records*—includes the Sewage and Graywater Discharge Record Book, all discharge reports, all discharge sampling test results, as well as any other records that must be kept under this subpart.

*Graywater*—means only galley, dishwasher, bath, and laundry waste water. The term does not include other wastes or waste streams.

*Navigable Waters*—has the same meaning as in section 502 of the Federal Water Pollution Control Act, as amended.

*Person*—means an individual, corporation, partnership, limited liability company, association, state, municipality, commission or political subdivision of a state, or any federally recognized Indian tribal government.

*Priority Pollutant*—means the list of toxic pollutants listed in 40 CFR 401.15.

*Sewage*—means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body waste.

*Treated Sewage*—means sewage meeting all applicable effluent limitation standards and processing requirements of the Federal Water Pollution Control Act, as amended and of Title XIV of Public Law 106-554 "Certain Alaskan Cruise Ship Operations", and regulations promulgated under either.

*Untreated Sewage*—means sewage that is not treated sewage.

*Waters Of The Alexander Archipelago*—means all waters under the sovereignty of the United States within or near Southeast Alaska as follows:

(1) Beginning at a point 58° 11-44 N, 136° 39-25 W [near Cape Spencer Light], thence southeasterly along a line three nautical miles seaward of the baseline from which the breadth of the territorial sea is measured in the Pacific Ocean and the Dixon Entrance, except where this line intersects geodesics connecting the following five pairs of points:

58° 05-17 N, 136° 33-49 W and 58° 11-41 N, 136° 39-25 W [Cross Sound]  
56° 09-40 N, 134° 40-00 W and 55° 49-15 N, 134° 17-40 W [Chatham Strait]  
55° 49-15 N, 134° 17-40 W and 55° 50-30 N, 133° 54-15 W [Sumner Strait]  
54° 41-30 N, 132° 01-00 W and 54° 51-30 N, 131° 20-45 W [Clarence Strait]  
54° 51-30 N, 131° 20-45 W and 54° 46-15 N, 130° 52-00 W [Revillagigedo Channel]

(2) The portion of each such geodesic in paragraph (1) of this definition

situated beyond 3 nautical miles from the baseline from which the breadth of the territorial seas is measured from the outer limit of the waters of the Alexander Archipelago in those five locations.

#### § 159.307 Untreated sewage.

No person shall discharge any untreated sewage from a cruise vessel into the applicable waters of Alaska.

#### § 159.309 Limitations on discharge of treated sewage or graywater.

(a) No person shall discharge treated sewage or graywater from a cruise vessel into the applicable waters of Alaska unless:

(1) The cruise vessel is underway and proceeding at a speed of not less than six knots;

(2) The cruise vessel is not less than one nautical mile from the nearest shore, except in areas designated by the Coast Guard in consultation with the State of Alaska;

(3) The discharge complies with all applicable cruise vessel effluent standards established pursuant to Pub. L. 106-554 and any other applicable law, and

(4) The cruise vessel is not in an area where the discharge of treated sewage or graywater is prohibited.

(b) Until such time as the Administrator promulgates regulations addressing effluent quality standards for cruise vessels operating in the applicable waters of Alaska, treated sewage and graywater may be discharged from vessels in circumstances otherwise prohibited under paragraph(a)(1) and (2) of this section provided that:

(1) Notification to the Captain of the Port (COTP) is made not less than 30 days prior to the planned discharge, and such notice includes results of tests showing compliance with this section;

(2) The discharge satisfies the minimum level of effluent quality specified in 40 CFR 133.102;

(3) The geometric mean of the samples from the discharge during any 30-day period does not exceed 20 fecal coliform/100 milliliters (ml) and not more than 10 percent of the samples exceed 40 fecal coliform/100 ml;

(4) Concentrations of total residual chlorine do not exceed 10.0 milligrams per liter (mg/l);

(5) Prior to any such discharge occurring, the owner, operator or master, or other person in charge of a cruise vessel, can demonstrate to the COTP that test results from at least five samples taken from the vessel representative of the effluent to be discharged, on different days over a 30-

day period, conducted in accordance with the guidelines promulgated by the Administrator in 40 CFR part 136, which confirm that the water quality of the effluents proposed for discharge is in compliance with paragraphs (b)(2), (3) and (4) of this section; and

(6) To the extent not otherwise being done by the owner, operator, master or other person in charge of a cruise vessel, pursuant to § 159.317 of this subpart, the owner, operator, master or other person in charge of a cruise vessel shall demonstrate continued compliance through sampling and testing for conventional pollutants and residual chlorine of all treated sewage and graywater effluents periodically as determined by the COTP.

#### § 159.311 Safety exception.

The regulations in this subpart shall not apply to discharges made for the purpose of securing the safety of the cruise vessel or saving life at sea, provided that all reasonable precautions have been taken for the purpose of preventing or minimizing the discharge.

#### § 159.313 Inspection for compliance and enforcement.

(a) Cruise vessels operating within the applicable waters of Alaska are subject to inspection by the Coast Guard to ensure compliance with this subpart.

(b) An inspection under this section shall include an examination of the Sewage and Graywater Discharge Record Book required under § 159.315 of this subpart, environmental compliance records, and a general examination of the vessel. A copy of any entry in the Sewage and Graywater Discharge Record Book may be made and the Master of the vessel may be required to certify that the copy is a true copy of the original entry.

(c) A vessel not in compliance with this subpart may be subject to the penalties set out in § 159.321, denied entry into the applicable waters of Alaska, detained, or restricted in its operations by order of the COTP.

#### § 159.315 Sewage and graywater discharge record book.

(a) While operating in the applicable waters of Alaska each cruise vessel shall maintain, in English, a legible Sewage and Graywater Discharge Record Book with the vessel's name and official number listed on the front cover and at the top of each page.

(b) Entries shall be made in the Sewage and Graywater Discharge Record Book whenever any of the following is released into the applicable waters of Alaska:

(1) Treated or untreated sewage;

(2) Graywater; or  
 (3) Sewage and graywater mixture.  
 (c) Each entry in the Sewage and Graywater Discharge Record Book shall, at a minimum, contain the following information:

- (1) Name and location of each discharge port within the ship;
  - (2) Date the start of discharge occurred;
  - (3) Whether the effluent is treated or untreated sewage, graywater, or a sewage and graywater mixture and type of treatment used;
  - (4) Time discharge port is opened;
  - (5) Vessel's latitude and longitude at the time the discharge port is opened;
  - (6) Volume discharged in cubic meters;
  - (7) Flow rate of discharge in liters per minute;
  - (8) Time discharge port is secured;
  - (9) Vessel's latitude and longitude at the time the discharge port is secured; and
  - (10) Vessel's minimum speed during discharge.
- (d) In the event of an emergency, accidental or other exceptional discharge of sewage or graywater, a statement shall be made in the Sewage and Graywater Discharge Record Book of the circumstances and reasons for the discharge and an immediate notification of the discharge shall be made to the COTP.

(e) Each entry of a discharge shall be recorded without delay and signed and dated by the person or persons in charge of the discharge concerned and each completed page shall be signed and dated by the master or other person having charge of the ship.

(f) The Sewage and Graywater Discharge Record Book shall be kept in such a place as to be readily available for inspection at all reasonable times and shall be kept on board the ship.

(g) The master or other person having charge of a ship required to keep a Sewage and Graywater Discharge Record Book shall be responsible for the maintenance of such record.

(h) The Sewage and Graywater Discharge Record Book shall be maintained on board for not less than three years.

#### § 159.317 Sampling and reporting.

(a) The owner, operator, master or other person in charge of a cruise vessel that discharges treated sewage and/or graywater in the applicable waters of Alaska shall:

- (1) Not less than 90 days prior to each vessel's initial entry into the applicable waters of Alaska during any calendar year, provide to the COTP certification of participation under a Quality

Assurance/Quality Control Plan (QA/QCP) accepted by the COTP for sampling and analysis of treated sewage and/or graywater for the current operating season;

(2) Not less than 30 days nor more than 120 days prior to each vessel's initial entry into the applicable waters of Alaska during any calendar year, provide a certification to the COTP that the vessel's treated sewage and graywater effluents meet the minimum standards established by the Administrator, or in the absence of such standards, meet the minimum established in § 159.319 of this subpart;

(3) Within 30 days of each vessel's initial entry into the applicable waters of Alaska during any calendar year, provide to the COTP a Vessel Specific Sampling Plan (VSSP) for review and acceptance, and undergo sampling and testing for conventional pollutants of all treated sewage and graywater effluents as directed by the COTP;

(4) While operating in the applicable waters of Alaska be subject to unannounced sampling of treated sewage and graywater discharge effluents, or combined treated sewage/graywater discharge effluents for the purpose of testing for a limited suite, as determined by the Coast Guard, of priority pollutants;

(5) While operating in the applicable waters of Alaska be subject to additional random sampling events, in addition to all other required sampling, of some or all treated sewage and graywater discharge effluents for conventional and/or priority pollutant testing as directed by the COTP;

(6) Ensure all samples, as required by this section, are collected and tested by a laboratory accepted by the Coast Guard for the testing of conventional and priority pollutants, as defined by this subpart, and in accordance with the cruise vessel's Coast Guard accepted QA/QCP and VSSP;

(7) Pay all costs associated with development of an acceptable QA/QCP and VSSP, sampling and testing of effluents, reporting of results, and any additional environmental record keeping as required by this subpart, not to include cost of federal regulatory oversight.

(b) A QA/QCP must, at a minimum include:

(1) Sampling techniques and equipment, sampling preservation methods and holding times, and transportation protocols, including chain of custody;

(2) Laboratory analytical information including methods used, calibration, detection limits, and the laboratory's internal QA/QC procedures;

(3) Quality assurance audits used to determine the effectiveness of the QA program; and

(4) Procedures and deliverables for data validation used to assess data precision and accuracy, the representative nature of the samples drawn, comparability, and completeness of measure parameters.

(c) A VSSP is a working document used during the sampling events required under this section and must, at a minimum, include:

- (1) Vessel name;
- (2) Passenger and crew capacity of the vessel;
- (3) Daily water use of the vessel;
- (4) Holding tank capacities for treated sewage and graywater;
- (5) Vessel schematic of discharge ports and corresponding sampling ports;
- (6) Description of discharges; and
- (7) A table documenting the type of discharge, type of sample drawn (grab or composite), parameters to test for (conventional or priority pollutants), vessel location when sample drawn, date and time of the sampling event.

(d) Test results for conventional pollutants shall be submitted within 15 calendar days of the date the sample was collected, and for priority pollutants within 30 calendar days of the date the sample was collected, to the COTP directly by the laboratory conducting the testing and in accordance with the Coast Guard accepted QA/QCP.

(e) Samples collected for analysis under this subpart shall be held by the laboratory contracted to do the analysis for not less than six months, or as directed by the COTP.

(f) Reports required under this section may be written or electronic. If electronic, the reports must be in a format readable by Coast Guard and Alaska Department of Environmental Conservation data systems.

#### § 159.319 Fecal coliform and total suspended solids standards.

(a) *Treated sewage effluent discharges.* Until such time as the Administrator promulgates effluent discharge standards for treated sewage, treated sewage effluent discharges in the applicable waters of Alaska shall not have a fecal coliform bacterial count of greater than 200 per 100 ml nor total suspended solids greater than 150 mg/l.

(b) *Graywater effluent discharges.* [Reserved].

#### § 159.321 Enforcement.

(a) *Administrative Penalties.*

(1) *Violations.* Any person who violates this subpart may be assessed a

class I or class II civil penalty by the Secretary or his delegatee.

(2) *Classes of penalties.*

(i) *Class I.* The amount of a class I civil penalty under this section may not exceed \$10,000 per violation, except that the maximum amount of any class I civil penalty under this section shall not exceed \$25,000. Before assessing a civil penalty under this subparagraph, the Secretary or his delegatee shall give to the person to be assessed such penalty written notice of the Secretary's proposal to assess the penalty and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed penalty. Such hearing shall not be subject to 5 U.S.C. 554 or 556, but shall provide a reasonable opportunity to be heard and to present evidence.

(ii) *Class II.* The amount of a class II civil penalty under this section may not exceed \$10,000 per day for each day during which the violation continues, except that the maximum amount of any class II civil penalty under this section shall not exceed \$125,000. Except as otherwise provided in paragraph (a) of this section, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions as in the case of civil penalties assessed and collected after notice and an opportunity for hearing on the record in accordance with 5 U.S.C. 554. Proceedings to assess a class II administrative civil penalty under this section will be governed by 33 CFR Part 20.

(3) *Rights of interested persons.*

(i) *Public notice.* Before issuing an order assessing a class II civil penalty under this paragraph, the Secretary shall provide public notice of and reasonable opportunity to comment on the proposed issuance of each order.

(ii) *Presentation of evidence.* Any person who comments on a proposed assessment of a class II civil penalty under this section shall be given notice of any hearing held under paragraph (a) of this section, and of the order assessing such penalty. In any hearing held under paragraph (a)(3) of this section, such person shall have a reasonable opportunity to be heard and present evidence.

(iii) *Rights of interested persons to a hearing.* If no hearing is held under paragraph (a)(2) of this section before issuance of an order assessing a class II civil penalty under this section, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such an order, the Secretary or his delegatee to set aside such order and provide a hearing on the penalty. If the

evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Secretary, or his delegatee, shall immediately set aside such order and provide a hearing in accordance with paragraph (a)(2)(ii) of this section. If the Secretary or his delegatee denies a hearing under this clause, the Secretary or his delegatee shall provide to the petitioner and publish in the **Federal Register** notice of and the reasons for such denial.

(b) *Civil judicial penalties.*

(1) *Generally.* Any person who violates this subpart shall be subject to a civil penalty not to exceed \$25,000 per day for each violation. Each day a violation continues constitutes a separate violation.

(2) *Limitation.* A person is not liable for a civil judicial penalty under this paragraph for a violation if the person has been assessed a civil administrative penalty under paragraph (a) of this section for the violation.

(c) *Determination of amount.* In determining the amount of a civil penalty under paragraphs (a) or (b) of this section, the court or the Secretary or his delegatee shall consider the seriousness of the violation, any history of such violations, any good-faith efforts to comply with applicable requirements, the economic impact of the penalty on the violator, and other such matters as justice may require.

(d) *Criminal penalties.*

(1) *Negligent violations.* Any person who negligently violates this subpart commits a Class A misdemeanor.

(2) *Knowing violations.* Any person who knowingly violates this subpart commits a Class D felony.

(3) *False statements.* Any person who knowingly makes any false statement, representation, or certification in any record, report or other document filed or required to be maintained under this subpart, or who falsifies, tampers with, or knowingly renders inaccurate any testing or monitoring device or method required to be maintained under this subpart commits a Class D felony.

(e) *Awards.*

(1) The Secretary or his delegatee or the court, when assessing any fines or civil penalties, as the case may be, may pay from any fines or civil penalties collected under this section an amount not to exceed one-half of the penalty or fine collected to any individual who furnished information which leads to the payment of the penalty or fine. If several individuals provide such information, the amount shall be divided equitably among such individuals. No officer or employee of the United States, the State of Alaska or

any Federally recognized Tribe who furnishes information or renders service in the performance of his or her official duties shall be eligible for payment under this paragraph.

(2) The Secretary, his delegatee, or a court, when assessing any fines or civil penalties, as the case may be, may pay, from any fines or civil penalties collected under this section, to the State of Alaska or any Federally recognized Tribe providing information or investigative assistance which leads to payment of the penalty or fine, an amount which reflects the level of information or investigative assistance provided. Should the State of Alaska or a Federally recognized Tribe and an individual under paragraph (e)(1) of this section be eligible for an award, the Secretary, his delegatee, or the court, as the case may be, shall divide the amount equitably.

(f) *Liability in rem.* A cruise vessel operated in violation of this subpart is liable in rem for any fine imposed under paragraph (c) of this section or for any civil penalty imposed under paragraphs (a) or (b) of this section, and may be proceeded against in the United States district court of any district in which the cruise vessel may be found.

Dated: July 5, 2001.

**T.J. Barrett,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast.*

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

[COTP Honolulu 01-051]

**RIN 2115-AA97**

**Safety Zone; Japanese Fisheries High School Training Vessel EHIME MARU Relocation and Crew Member Recovery, Pacific Ocean, South Shores of the Island of Oahu, HI**

**AGENCY:** U.S. Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard has established a temporary safety zone around position 21°-04.8' N, 157°-49.5' W, south of Oahu, Hawaii. This zone will extend from the surface of the ocean to the bottom. This zone is needed to protect mariners from the hazards associated with preparation of the Japanese Fisheries High School Training Vessel EHIME MARU for relocation. This vessel sank after being