

### Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

### IV. Procedural Determinations

#### Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the Federal regulations.

#### Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

#### Executive Order 12988—Civil Justice Reform

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 and determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

#### Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws

regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA.

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

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

#### National Environmental Policy Act

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

#### Paperwork Reduction Act

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

#### Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based on Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect on a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the Federal regulations.

#### Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in

costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based on Federal regulations for which an analysis was prepared and a determination made that the Federal regulations were not considered a major rule.

#### Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based on Federal regulations for which an analysis was prepared and a determination made that the Federal regulations did not impose an unfunded mandate.

#### List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 31, 2002.

#### Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 03–158 Filed 1–3–03; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 151

[USCG–2002–13147]

RIN 2115–AG50

#### Penalties for Non-submission of Ballast Water Management Reports

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes penalty provisions for non-submission of Ballast Water Management Reports. The Coast Guard also proposes widening the applicability of the reporting and recordkeeping requirements to all vessels bound for ports or places within the United States, with minor exceptions. The proposed actions would increase the Coast Guard’s ability to protect against introductions of new aquatic invasive

species via ballast water discharges, as required by the Nonindigenous Aquatic Nuisance Prevention and Control and the National Invasive Species Acts.

**DATES:** Comments and related material must reach the Docket Management Facility on or before April 7, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before April 7, 2003.

**ADDRESSES:** To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-2002-13147), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 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>.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477-78) or you may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed

rule, call Mr. Bivan Patnaik, G-MSO-4, Coast Guard, telephone 202-267-1744. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG-2002-13147), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### **Public Meeting**

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

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

Congress, in 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 for ballast water management (BWM). The goal of BWM is to prevent the introduction and dispersal of nonindigenous species (NIS) to U.S. waters via ballast water discharges. This proposed rule would amend U.S. regulations by promulgating penalty provisions for those who fail to submit reports of their BWM activities in conjunction with their voyages to U.S. ports.

Responding to NANPCA's directive, the Coast Guard published a Final Rule

(58 FR 18330, April 8, 1993) mandating BWM for the Great Lakes (33 CFR part 151, subpart C), and later extended the provisions to include the Hudson River north of the George Washington Bridge (59 FR 67632, Dec. 30, 1994). In 1999, responding to NISA's directive, we published an interim rule (64 FR 26672, May 17, 1999) that set voluntary BWM guidelines for most vessels entering all other U.S. waters, and mandated BWM reporting and recordkeeping requirements, without penalty provisions. Our Final Rule implementing these NISA-required regulations was published on November 21, 2001 (66 FR 58381).

In NISA, Congress also instructed the Secretary of Transportation (Secretary) to submit a Report to Congress evaluating the effectiveness of the voluntary program. Congress anticipated that, in this Report, 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 the compliance. In either case, Congress stipulated the development of additional regulations to make the voluntary guidelines a mandatory BWM program, and providing penalties for violations of these regulations. The Secretary's report, signed June 3, 2002, concluded that compliance with the reporting requirement of 33 CFR part 151, subpart D was insufficient to allow for an accurate assessment of the voluntary BWM regime. Accordingly, the Secretary stated his intention to make the voluntary BWM requirements mandatory and include sanctions as an enforcement tool. A copy of the Report to Congress has been placed in the docket for this rulemaking (USCG-2002-13147) and is available at <http://dms.dot.gov>.

In carrying out Congress' intent of a stepped approach, the Coast Guard, as the Secretary's delegate, is moving forward with the promulgation of penalty provisions for those who fail to submit reports of their BWM activities in conjunction with their voyages to U.S. ports. This step will also include broadening the class of vessels required to submit and keep, respectively, ballast water management reports and records.

This proposed rule will not broaden the class of vessels required to conduct ballast water exchange. The Coast Guard will address this subject in a separate rulemaking that is under development.

##### **Related Projects**

The Coast Guard is currently working on a number of other projects related to addressing the aquatic invasive species problem in U.S. waters. As mentioned

above, the Coast Guard is developing regulations to convert the voluntary guidelines in 33 CFR part 151, subpart D to a mandatory BWM program.

NANPCA and NISA authorize the Coast Guard to approve alternate ballast water treatment (BWT) methods that are found to be at least as effective as ballast water exchange (BWE) in preventing and controlling infestations of aquatic nuisance species (ANS). Therefore, in order to evaluate the effectiveness of alternative BWT methods, the Coast Guard must first define for programmatic purposes what "as effective as [BWE]" means. On March 4, 2002, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) titled "Standards for Living Organisms in Ship's Ballast Water Discharged in U.S. Waters" (67 FR 9632). Along with proposing BWT goals and standards, one of the purposes of the ANPRM was to present our approach to clarifying this term. The comment period on the ANPRM closed on June 3, 2002, and the Coast Guard is now analyzing the comments.

The Coast Guard is also planning on promulgating rules to allow for approval of ship-board installation of experimental BWT technologies.

**Discussion of Proposed Rule**

The proposed amendments to 33 CFR part 151 would achieve two objectives. First, penalty provisions would be clearly spelled out in both subparts C and D, in accordance with NANPCA and NISA. Violators of either the mandatory exchange provisions (for vessels bound for the Great Lakes or portions of the Hudson River) or the

mandatory reporting and recordkeeping provisions (for all vessels bound for ports or places within the United States) would be liable for a civil penalty of up to \$25,000 for each violation, with each day of a continuing violation equaling a separate violation. Knowing violations of either provision would be class C felonies. These changes can be found in proposed sections 151.1518 and 151.2007.

The second change would increase the number of vessels subject to the reporting and recordkeeping provisions of subpart D. This expansion of the reporting population is being proposed in order to generate the data that will allow for a more thorough understanding of ballast water delivery and management practices and how these relate to invasions of ANS from ships' ballast water on both a national and regional basis. This information should provide a clearer picture of the realities of BWM and ANS invasions over time and lead to a more effective and efficient program.

Currently, only those vessels entering United States waters after operating outside of the EEZ (which for the purposes of NANPCA as amended by NISA includes the equivalent zone of Canada) must submit ballast water management reports and keep accurate ballast water management records. Under the proposed changes, all vessels operating in United States waters bound for ports or places in the United States would have to submit these reports and keep records, regardless of whether they operated outside of the EEZ. The proposed reporting requirements are detailed in Tables 1 and 2, below. Only

crude oil tankers engaged in coastwise trade, Department of Defense and Coast Guard vessels, and those vessels operating solely within one Captain of the Port (COTP) zone would be exempt from the reporting and recordkeeping requirements.

The proposed changes to the regulatory text in subpart D (with the exception of section 151.2007) would achieve this second objective, while improving the readability of the subpart. One proposed change that should be highlighted is in sections 151.2010(b) and (d), where we are proposing the deletion of the exemptions for "a passenger vessel equipped with a functioning treatment system designed to kill aquatic organisms in the ballast water" and "a vessel that will discharge ballast water or sediments only at the same location where the ballast water or sediments originated". These exemptions were intended to apply to a requirement to conduct a ballast water exchange (BWE). As there are no requirements for BWE outside of the Great Lakes and Hudson River North of George Washington Bridge, there is nothing in 33 CFR 151 Subpart D to be exempted from and the continued inclusion of this wording only leads to confusion. Requiring these previously exempted vessels to submit BWM reports will allow the U.S. Coast Guard to gain a more thorough understanding of ballast water delivery and management practices. In the future, when ballast water exchange becomes mandatory (as we expect it will), we will ensure that these exemptions are re-inserted into the regulations as appropriate.

**TABLE 1.—WHERE AND WHEN MUST A VESSEL SUBMIT A REPORT IF THEY ARE ENTERING THE WATERS OF THE UNITED STATES AFTER OPERATING OUTSIDE THE EEZ?**

Bound for:	You must submit your report as detailed below:
The Great Lakes .....	Fax the information to the U.S. Coast Guard COTP Buffalo, Massena Detachment (315-764-3283) or to the St. Lawrence Seaway Development Corporation (315-764-3250) at least 24 hours before the vessel arrives in Montreal, Quebec. In lieu of faxing, vessels that are not U.S. or Canadian flagged vessels may complete the ballast water information section of the St. Lawrence Seaway "Pre-entry Information from Foreign Flagged Vessel Form".
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. <b>*Note:</b> Vessels entering COTP New York Zone which are not proceeding up the Hudson River north of George Washington Bridge should submit their reports in accordance with the instructions in the following block.
All U.S. ports other than the Great Lakes or the Hudson River North of the 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: Internet at <a href="http://invasions.si.edu/ballast.htm">http://invasions.si.edu/ballast.htm</a> ; E-mail to <a href="mailto:ballast@serc.si.edu">ballast@serc.si.edu</a> ; Fax to 301-261-4319; or Mail to U.S. Coast Guard, c/o SERC, P.O. Box 28, Edgewater, MD 21037-0028.

TABLE 2.—WHERE AND WHEN MUST A VESSEL SUBMIT A REPORT IF THE VESSEL DID NOT OPERATE OUTSIDE THE EEZ?

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: Internet at <a href="http://invasions.si.edu/ballast.htm">http://invasions.si.edu/ballast.htm</a> ; E-mail to <a href="mailto:ballast@serc.si.edu">ballast@serc.si.edu</a> ; Fax to 301-261-4319; or Mail to U.S. Coast Guard, c/o SERC, P.O. Box 28, Edgewater, MD 21037-0028.

We would appreciate any comments on whether these proposed changes have unintentionally changed the voluntary guidelines in a manner not discussed above.

### Regulatory Evaluation

This proposed 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 is “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 10(e) of the regulatory policies and procedures of DOT follows:

This Regulatory Evaluation estimates the costs and benefits of the proposed 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 Evaluations 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).

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. Those vessels arriving from foreign ports of origin have already been reporting ballast water management practices under existing regulations. Under the proposed rule, the 20,000 arrivals from domestic ports will now 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 20,000 arrivals from domestic ports annually, this means the annual cost of the proposed rule is \$466,667 ( $\$35 \times 0.666 \text{ hours} \times 20,000 \text{ ballast water reports}$ ).

The benefit of the proposed 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 proposed 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 rulemaking. 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, since the cost per ballast water report is only \$23 (40 minutes  $\times$  \$35/hours).

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think

that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Commander Mary Pat McKeown at 202-267-0500.

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

*Title:* Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters

*Summary of the Collection of Information:* The proposed rule will require 46,833 hours of labor burden annually for mandatory reporting and recordkeeping requirements.

*Need for Information:* The information collection requirement described in this section is necessary to carry out the reporting requirement of title 16 U.S.C. 4711, which concerns the

management of ballast water to prevent the introduction of aquatic nuisance species into U.S. waters.

*Proposed Use of Information:* The purpose of the information collection is to more fully understand and respond to the threat posed by ballast water. The Coast Guard and researchers, from both private and other governmental agencies, will use the information to assess the effectiveness of the voluntary ballast water management guidelines.

The collection of information for the proposed rule modifies an existing OMB-approved collection (OMB 2115-0598).

*Description of the Respondents:* Under the current collection, respondents are vessel owners and operators that make ports of call in the United States after departing a foreign port. Under the proposed rule, respondents will also include vessel owners and operators that make ports of call in the United States after departing another U.S. port.

*Number of Respondents:* The existing OMB-approved collection number of respondents is 50,000 (respondents are owners/operators of the vessels calling on U.S. ports annually). This proposed rule will increase the number of respondents by 20,000, since now owners and operators of vessels arriving from domestic ports will submit ballast water reports.

*Frequency of Response:* Owners/operators of vessels making calls in U.S. ports will submit ballast water reports as necessary. The existing OMB-approved collection number of responses is 50,000 (responses are arrivals at U.S. ports). This proposed rule will increase the number of responses by 20,000 (reports for vessels arriving from domestic ports of origin) for a net total of 70,000 responses.

*Burden of Response:* The existing OMB-approved collection burden of response is approximately 40 minutes (0.666 hours) (burden of response is the time required to complete the paperwork requirements of the rule for a single response). This proposed rule will not increase the burden of response.

*Estimate of Total Annual Burden:* The existing OMB-approved collection total annual burden is 33,500 hours (total annual burden is the time required to complete the paperwork requirements of the rule for all responses). This proposed rule will increase the total annual burden by 13,333 hours for a net total of 46,833 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of

Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

#### **Federalism**

We have analyzed this rule under Executive Order 13132. The 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." 16 U.S.C. 4725. 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 aquatic nuisance species 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. If, at some later point in the rulemaking process we determine that preemption may become an issue, we will develop a plan for consultation with affected states/localities.

#### **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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### **Taking of Private Property**

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### **Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### **Environment**

We have considered the environmental impact of this proposed rule and concluded that, 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 48243), this rule is categorically excluded 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 "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 proposes to amend 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. The authority citation for part 151 subpart C continues to read as follows:

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

2. Add § 151.1518 to read as follows:

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

(a) A person who violates this subpart is liable for a civil penalty in an amount not to exceed \$25,000. 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

3. The authority citation for 33 CFR part 151 subpart D continues to read as follows:

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

4. 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.

5. 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 \$25,000. 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.

#### § 151.2010 [Amended]

6. In § 151.2010:

(a) remove from the introductory text, the word "Four" and add, in its place, the word "Three";

(b) remove paragraphs (b) and (d);

(c) redesignate paragraph (c) as (b);

(d) and 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]

7. In § 151.2015 remove the number "151.2040" and add in its place the number "151.2041".

#### § 151.2025 [Revised]

8. Amend § 151.2025(b) by adding, in alphabetical order, the definitions for "Exclusive Economic Zone (EEZ)", "port or place of departure" and "port or place of destination", and revise the definitions of "Captain of the Port (COTP)" and "Voyage". The new and revised definitions read as follows:

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

(a) \* \* \*

(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.

\* \* \* \* \*

9. 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). That 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 included in paragraphs (a) or (b) of this section that operates in the waters of the United States 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]**

10. Redesignate the old § 151.2041 as the new § 151.2043.

11. 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) Reporting requirements exist for each vessel bound for ports or places in the United States regardless of whether 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 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 (315-764-3283), 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 a 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/ballast.htm>; or

(ii) E-mail to [ballast@serc.si.edu](mailto:ballast@serc.si.edu); or

(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) A single report that includes the ballast discharge information for

consecutive voyages between U.S. ports, or between U.S. and Canadian ports on the Great Lakes, will be accepted.

(d) 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]**

12. 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 151.2043(a) and 151.2043(a)(1) remove the number "§ 151.2040(c)(4)" and add in its place the number, "§ 151.2041".

**§ 151.2045 [Amended]**

13. In § 151.2045(a) remove the phrase "entering the waters of the United States after operating beyond the EEZ" and add in its place, the phrase "bound for a port or place in the United States".

14. Amend Appendix to Subpart D of Part 151—BALLAST WATER REPORTING FORM AND INSTRUCTIONS FOR BALLAST WATER REPORTING FORM by revising the "Where to send this form" instructions to read as follows:

\* \* \* \* \*

**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 (315-764-3283) 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".
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. <b>*Note:</b> 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/ballast.htm">http://invasions.si.edu/ballast.htm</a> ; E-mail to <a href="mailto:ballast@serc.si.edu">ballast@serc.si.edu</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/ballast.htm">http://invasions.si.edu/ballast.htm</a> ; E-mail to <a href="mailto:ballast@serc.si.edu">ballast@serc.si.edu</a> ; Fax to 301-261-4319; or Mail to U.S. Coast Guard, c/o SERC, PO 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: December 23, 2002.

**Thomas H. Collins,**

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

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## POSTAL SERVICE

### 39 CFR Part 111

#### Standards Governing the Design of Apartment House Mailboxes

**AGENCY:** Postal Service.

**ACTION:** Notice of intent to establish a Consensus Committee and notice of first meeting.

**SUMMARY:** The Postal Service intends to establish a Consensus Committee to develop recommendations for revision of USPS STD 4B, which governs the design of apartment house mailboxes. The committee will develop and adopt its recommendations through a consensus process. The committee will consist of persons who represent the interests affected by the proposed rule, including apartment house type mailbox manufacturers, mailbox distributors, mailbox installers and servicers, postal customers, and apartment house builders, owners and managers. The purpose of this Notice is to apprise the

public of the intent to establish the committee; provide the public with information regarding the committee; solicit public comment on the proposal to establish the committee and the proposed membership of the committee; explain how persons may apply or nominate others for membership on the committee; and announce the approximate date of the first committee meeting.

**DATES:** The Postal Service must receive written comments, requests for representation or membership on the committee, and nominations for membership on the committee no later than February 5, 2003. The first committee meeting is tentatively scheduled for some time during the first two weeks of February 2003.

**ADDRESSES:** The first committee meeting is tentatively scheduled to be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC 20260. Mail comments and all other communications regarding the committee to Jeffery W. Lewis, Room 7142, at the same address. Comments transmitted by fax or email will not be accepted. Committee documents will be available for public inspection and copying between 9 a.m. and 4 p.m. weekdays on the 11th floor at the address above.

**FOR FURTHER INFORMATION CONTACT:** Jeffery W. Lewis (202) 268-4757.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

U.S. Postal Service Standard 4B (USPS STD 4B), *Receptacles, Apartment House, Mail*, governs the design of apartment house mailboxes. The current standard, adopted in 1975, prescribes design limitations in terms that are no longer consistent with the operational requirements of the Postal Service. Primary issues to be addressed by the committee will include increasing design flexibility within the Postal Service's operational requirements; improving safety and mail security; and replacing existing mailboxes that do not

satisfy the requirements of the new standard. The committee may also consider other issues at its discretion and within the scope set forth in paragraph II.

#### II. Scope of the Rule

The contents of the new standard will consist of regulations on apartment house and office building mailbox design characteristics and the replacement of existing mailboxes that do not satisfy the requirements of the new standard.

#### III. New and Pending Applications

Beginning on February 5, 2003, the Postal Service will take no further action on new or pending applications for approval of apartment house type mailbox designs, or on applications for modifications to approved apartment house type mailbox designs, until the revision of the standard is complete. This action is consistent with past practice, and is necessary to avoid approving designs under the current standard that may not be permissible under the new standard, or disapproving applications under the current standard that would be approved under the new standard.

#### IV. Consensus Process

In a consensus process, representatives of interests that would be substantially affected by the new rule meet as an advisory committee to negotiate among themselves and with the agency to reach a consensus on a proposed rule. As part of the consensus process, the agency agrees to use the committee's recommendation as the basis of the proposed rule, and each private interest agrees to support the committee's recommendation and the proposed rule to the extent that it reflects the recommendation.

A feasibility study, performed by a neutral convenor, and using the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.* as a guide, recommended that the Postal Service initiate a consensus process. In reaching this