

the regulation, the arrangements are brought into compliance with the final regulations.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

The Treasury Department and the IRS specifically request comments on: (1) Whether revocation of § 1.817-5(f)(2)(ii) necessitates other changes to the look-through rules of § 1.817-5(f), in particular whether the list of holders permitted by § 1.817-5(f)(3) should be amended or expanded, and whether a non-pro-rata distribution of the investment returns of a segregated asset account should be permitted to take account of certain bonus payments to investment managers commonly referred to as incentive payments, (2) whether § 1.817-5 should be updated to take account of changes to variable contracts since the final regulations were published in 1986, and (3) whether regulations are needed to address when a holder of a variable contract will be treated as the owner of assets held in a segregated asset account and, therefore,

required to include earnings on those assets in income.<sup>3</sup>

### Drafting Information

The principal author of these proposed regulations is James Polfer, Office of the Associate Chief Counsel (Financial Institutions and Products), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Treasury Department and the IRS participated in their development.

### List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

### Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAX

1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows: Section 1.817-5 also issued under 26 U.S.C. 817(h). \* \* \*

Authority: 26 U.S.C. 7805 \* \* \*

#### § 1.817-5 [Amended]

2. Section 1.817-5 is amended as follows:

1. Paragraphs (f)(2)(ii) and (g) *Example 3* are removed.

2. Paragraph (f)(2)(iii) is redesignated as paragraph (f)(2)(ii).

3. Paragraph (g) *Example 4* is redesignated as paragraph (g) *Example 3*.

#### Robert E. Wenzel,

Deputy Commissioner (Services and Enforcement).

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<sup>3</sup> The Treasury Department and the IRS have issued a number of revenue rulings that provide guidance for determining whether the holder of a variable contract will be treated as the owner of assets held by a segregated asset account by virtue of the control the contract holder has over those assets. See Rev. Rul. 2003-92, 2003-33 I.R.B. (August 18, 2003); Rev. Rul. 2003-91, 2003-33 I.R.B. (August 18, 2003); Rev. Rul. 82-54, 1982-1 C.B. 11; Rev. Rul. 81-225, 1981-2 C.B. 12; Rev. Rul. 80-274, 1980-2 C.B. 27; Rev. Rul. 77-85, 1977-1 C.B. 12. See also *Christoffersen v. U.S.*, 749 F.2d 513 (8th Cir. 1984), *rev'g* 578 F. Supp. 398 (N.D. Iowa 1984). These rulings apply general concepts of ownership that have developed in case law to conclude that a contract holder was the owner of assets held in the account that supported the contract holder's annuity contract, and was therefore subject to current taxation on the earnings on those assets.

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 151

[USCG-2003-14273]

RIN 1625-AA52 [Formerly RIN 2115-AG52]

### Mandatory Ballast Water Management Program for U.S. Waters

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The unintentional introduction of nonindigenous species (NIS) into U.S. waters via the discharge of vessels' ballast water has had significant impacts on the nation's marine and freshwater resources, biological diversity, and coastal infrastructures. To address this continued threat, and to comply with the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, and the National Invasive Species Act of 1996, the Coast Guard proposes mandatory ballast water management practices for all vessels equipped with ballast tanks bound for ports or places within the U.S. and/or entering U.S. waters. The Great Lakes ballast water management program would remain unchanged. This proposed rulemaking would increase the Coast Guard's ability to protect U.S. waters against the introduction of NIS via ballast water discharges.

**DATES:** Comments and related material must reach the Docket Management Facility on or before October 28, 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-2003-14273), 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, United States Coast Guard.

The Docket Management Facility maintains the public docket for this proposed 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 Department of Transportation'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 rulemaking, call Mr. Bivan Patnaik, Environmental Standards Division, Coast Guard, telephone 202-267-1744, e-mail: [bpatnaik@comdt.uscg.mil](mailto:bpatnaik@comdt.uscg.mil). 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 proposed rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this proposed rulemaking (USCG-2003-14273), 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 rulemaking 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 proposed rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### Legislative and Regulatory History

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA) [Pub. L. 101-6461], enacted by Congress on November 29, 1990, established the Coast Guard's regulatory jurisdiction over ballast water management. To fulfill the directives of NANPCA, the Coast Guard published a final rule on April 8, 1993, entitled "Ballast Water Management for Vessels Entering the Great Lakes" in the **Federal Register** (58 FR 18330). This rulemaking established mandatory ballast water management procedures for vessels entering the Great Lakes in 33 CFR part 151, subpart C.

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

The National Invasive Species Act (NISA) [Pub. L. 104-3321] enacted by Congress on October 26, 1996, reauthorized and amended NANPCA. NISA reemphasized the significant role of ships' ballast water in the introduction and spread of NIS. NISA authorized the development of a voluntary national ballast water management program, and mandated the submission of ballast water management (BWM) reports without penalty provisions. The Coast Guard published an interim rule in the **Federal Register** on May 17, 1999, on this voluntary program entitled, "Implementation of the National Invasive Species Act of 1996 (NISA)" (64 FR 26672), and finalized the rule in the **Federal Register** (66 FR 5838) on November 21, 2001.

NISA also instructed the Secretary of Transportation (Secretary) to submit a Report to Congress evaluating the effectiveness of the voluntary BWM program. Congress anticipated that the

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

##### Related Projects

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

The first project addresses the Coast Guard's ability to impose penalty provisions under NISA for non-submission of Ballast Water Management Reports, the Coast Guard published a notice of proposed rulemaking on January 6, 2003, entitled "Penalties for Non-Submission of Ballast Water Management Reports" in the **Federal Register** (68 FR 523), which would implement penalties for failure to comply with the mandatory requirements found in 33 CFR part 151 and widen the applicability of the reporting and recordkeeping requirements to all vessels bound for ports or places within the U.S., with minor exceptions. Although the current mandatory portions of 33 CFR part 151 are reporting and recordkeeping, the penalty provisions will extend to mandatory ballast water management practices once this rulemaking becomes final.

The second project involves setting a standard to evaluate the discharge from ballast water treatment systems. A notice entitled, "Potential Approaches to Setting Ballast Water Treatment Standards" (66 FR 21807), published May 1, 2001, requested comments on approaches to setting, implementing, and enforcing ballast water standards. It was followed by an advance notice of proposed rulemaking (ANPRM) entitled "Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters" (67 FR 9632), published on March 4, 2002. This ANPRM sought comments on the development of a ballast water treatment goal. The comment period on the ANPRM closed

on June 3, 2002, and the Coast Guard is analyzing the comments and continuing to evaluate options for a standard.

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

#### Discussion of Proposed Rulemaking

As directed by NISA and as a result of the Secretary of Transportation's Report to Congress in June 2002, the Coast Guard has determined that the voluntary BWM program is inadequate. Therefore, the Coast Guard is proposing to convert the voluntary BWM program into a mandatory BWM program. This proposed rulemaking would increase the Coast Guard's ability to protect against introductions of new NIS via ballast water discharges.

On March 1, 2003, the Coast Guard became a component of the Department of Homeland Security. As a result, the Secretary of the Department of Homeland Security assumed all duties once bestowed on the Secretary of the Department of Transportation with respect to this proposed rulemaking. The Secretary of Homeland Security concurs with the Coast Guard's proposed rule regarding the mandatory ballast water program.

This proposed rulemaking would revise 33 CFR part 151 to implement the requirements of NISA. Specifically, subpart D of 33 CFR part 151 would be revised to require a mandatory ballast water management program for all vessels equipped with ballast water tanks entering U.S. waters. The mandatory ballast water management requirements for vessels entering into the Great Lakes and Hudson River from outside the U.S. Exclusive Economic Zone (EEZ) would remain unchanged.

This mandatory program would require all vessels equipped with ballast water tanks entering U.S. waters after operating beyond the EEZ to employ at

least one of the following ballast water management practices:

(a) Prior to discharging ballast water in U.S. waters, perform complete ballast water exchange in an area no less than 200 nautical miles from any shore.

(b) Retain ballast water onboard the vessel.

(c) Prior to the vessel entering U.S. waters, use an alternative environmentally sound method of ballast water management that has been approved by the Coast Guard.

(d) Discharge ballast water to an approved reception facility.

Although, the national mandatory BWM program provides vessels with the option of using one of four BWM practices, ballast water exchange is likely to be the most used practice. This is due to—

- Some vessels engaged in trade are unlikely to hold their ballast after arriving here from outside the EEZ, as this would mean they would not be able to load their cargo;

- Alternative environmentally sound methods of ballast water management are still being developed, and would likely be of limited availability in the near future; and

- The number of on-shore reception facilities is limited, and none are approved for the removal of NIS. This is likely to remain so.

Therefore, under this proposed rulemaking, the BWM practice of conducting mid-ocean ballast water exchange prior to discharging ballast in U.S. waters would be the practice most used by the majority of vessels.

A vessel would not be required to deviate from its voyage, or delay the voyage, in order to conduct a ballast water exchange. A vessel that cannot practicably meet the requirements of paragraphs (a)–(d) due to a voyage that does not take it into waters 200 nautical miles or greater from any shore for a sufficient length of time, and/or due to safety concerns, would not be prohibited from discharging its ballast water in areas other than the Great Lakes and the Hudson River. However, the vessel must discharge only the amount of ballast water operationally necessary. An entry must be made in the ballast water records supporting the reasons that the vessel could not comply with the regulatory requirements. Ballast water records must be made available to the local Captain of the Port upon request.

For example, we would not expect a passenger vessel traveling from the Bahamas to Fort Lauderdale, FL (approximately 200 miles) to travel an additional 200 miles and delay their voyage by 24 hours to conduct a ballast

water exchange. This passenger vessel would discharge their ballast water at port, and make an entry in the ballast water report form stating the reasons for not complying with paragraphs (a)–(d).

The proposed rule also revises the criteria for a mid-ocean exchange by removing the constraint of exchanging ballast water in waters more than 2000 meters deep. Currently, there is not consensus on a water-depth criterion for exchange. For example, Australian legislation has a depth requirement of 200 meters, and Israel's ballast water exchange requirement has no depth restriction, while the current draft of the IMO Convention for the Control and Management of Ship's Ballast Water and Sediments has a criterion of 200 meters. At this time we believe defining mid-ocean ballast water exchange as taking place not less than 200 miles from shore allows more vessels to conduct exchange and simplifies enforceability. We welcome public comment on this proposed change in the Coast Guard program.

Failure to maintain a BWM plan onboard the vessel or to make the required ballast water reports available will result in penalties. Also, failure to employ at least one of the BWM practices outlined above would result in a penalty, unless the vessel is exempt due to safety or voyage constraints, or specifically exempted by regulation.

A BWM plan should be specific to each vessel, and should fulfill 2 purposes: (1) Show that there is a BWM strategy for the vessel; and (2) allow any master, or other ship's officer as appropriate, serving on that vessel to understand and follow the BWM strategy for that vessel. The International Maritime Organization (IMO) has issued guidelines on the content of BWM plans in IMO Resolution A.868(20) Annex 1, Chapter 7. Any plan meeting these IMO guidelines would meet the regulatory requirement laid out in § 151.2035(a)(7). This Resolution is available on the IMO's Global Ballast Water Management Programme Web site [<http://globallast.imo.org>]. For your reference, we have also placed a copy of the IMO guidelines in the docket for this proposed rulemaking at the location listed above under **ADDRESSES**.

The Coast Guard recognizes that there are two currently feasible methods of conducting an exchange:

- *An empty/refill exchange.* The tank or a pair of tanks are pumped down to the point where the pumps lose suction, and then the tank is pumped back up to the original levels.

- *A flow-through exchange.* Mid-ocean water is pumped into a full tank

while the existing coastal or fresh water is pumped or pushed out through another opening. As defined by the Coast Guard, a volume of water equal to three times the ballast tank capacity must be pumped for a flow-through exchange.

### Regulatory Evaluation

This proposed rule is a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does require an assessment of potential costs and benefits under section 6(a)(3) of that Order. 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 Homeland Security (DHS). A full Regulatory Evaluation is available in the public docket for this rulemaking.

This Regulatory Evaluation identified the vessel population affected by the proposed rule and provides cost and benefit models for the current principle option of ballast water management (BWM) provided for under the rule—ballast water exchange. BWM is applicable for any vessel equipped with ballast tanks entering U.S. waters from outside the EEZ. The vessel population was categorized by vessel type under the assumption that vessels in different cargo services and of different sizes likely manage ballast water in different ways. We estimated that approximately 7,420 vessels will be affected and approximately 11,500 ballast water exchanges will be performed annually. Annual costs totaled approximately \$15.8 million. The 10-year present value cost for this rule is \$116.7 million.

The benefit assessment expanded on the analysis conducted for costs by focusing on the probability of viable organisms being introduced into U.S. waters through ballast discharge, both before the proposed rule and following the implementation of mandatory BWM. A probability of a reduction in the number of invasions of NIS was calculated using data on voyages, vessel types, ballast water volumes, and exchange effectiveness, as well as order-of-magnitude assumptions about the probabilities of inoculations, introductions, and invasions resulting from ballast water discharges. The calculations indicated the proposed rule may result in avoiding approximately 10 inoculations that result in invasions for each year the rule is in effect. While there is considerable uncertainty in these calculations and the order-of-magnitude assumptions (referred to as the “rule of 10s” in the Regulatory Evaluation) are admittedly an

oversimplification of a complex problem, we believe their simplicity and transparency are compelling. To date, there is no national estimate of the rate of aquatic NIS, and we cannot compare our baseline invasion estimate to other, more limited estimates regarding invasions. Our findings are broadly consistent, however, with other estimates of the rate of NIS invasions. One study finds that in the San Francisco Bay and Delta, invasions have increased from one new species every 55 weeks (1851–1960) to one new species every 14 weeks (1961–1995) (Cohen and Carlton, 1998). Another study posits that invasion rates may have increased in the San Francisco Bay and the Great Lakes over the past several decades (Mills, *et al.*, 1993). Finally, some researchers believe that the increase of initial invasions is best described by an exponential function (Ruiz, *et al.*, 2000). Using our simple methodology, we found that an invasion occurs somewhere in the United States about twice every 3 weeks.

There is considerable difficulty in estimating monetized damages resulting from NIS invasions. Some species impose significant, long-term damages on marine industries and infrastructure. Other species may create subtle disturbances in ecosystems that are difficult to quantify. Still others may be relatively benign. There have been attempts to estimate monetized damages for a few species, most notably the zebra mussel. One study estimated costs to Great Lakes water users, mostly due to fouling of intake structures, of \$120 million over the time period 1989 to 1994 (Hushak, 1996). Another estimated cumulative zebra mussel impacts of \$750 million to \$1 billion over the time period 1989 to 2000 (Carlton, 2001). Other species for which monetized damage estimates have been developed include the Asian clam (\$1 billion per year, OTA, 1993) and European green crab (\$44 million per year, CRS, 1999). Eight Federal agencies that sit on the Invasive Species Council collectively spent \$514 million in 1999 and \$631 million in 2000 for the control and management of NIS (GAO, 2000).

We have not reviewed the methodologies used to produce these estimates in detail, though all of them (except expenditures by Federal agencies) involve considerable uncertainty. They are indicative, however, of the magnitude of damages that may result from particularly destructive invasions. It is likely, however, that most invasions would result in considerably lower damages than the numbers reported in these studies. Because of the lack of data on

damages potentially associated with any but the most destructive invasions, we have not tried to monetize the benefits of the proposed rule. If the proposed rule resulted in avoiding even one invasion of this magnitude over the course of several decades, however, the benefits of the rule would most likely justify the costs. The Coast Guard requests comment on its benefits estimation methodology and on possible approaches for monetizing benefits associated with avoiding future invasions.

### Small Entities

Of the affected population of all vessels arriving at U.S. ports, we estimate that 21 vessels of the 171 U.S. flag vessels, are owned by 10 small businesses. Approximately 35 large companies own the remaining 150 U.S. flagged vessels. We estimate all vessels will choose the alternative of conducting a mid-ocean ballast water exchange. The cost of complying with the proposed rule is the cost of exchanges performed by the vessel added to the cost of additional maintenance required for the ballast water pumping system. The cost per exchange is a function of vessel type. Each vessel’s costs will be a function of the cost of exchange for that vessel type multiplied by the number of trips into U.S. waters from outside the U.S. EEZ. Thus the annual impact on the revenue for a small business will vary with the number of entries the vessel makes from outside the U.S. EEZ. In order to estimate the upper bound of that impact, we calculated the cost of exchange for the maximum number of exchanges possible for the years 1999 and 2000. We then assumed that weather conditions and transit tracks allowed exchanges for all of these entries. For the annual cost of the rule, the number of vessels owned by each small business is multiplied by the number of exchanges performed, and the resulting product is then multiplied by the cost of exchange for the particular vessel type, and added to the maintenance cost of 10 percent of the capital cost of the ballast pump. Of the 10 small businesses that own vessels affected by the rule, we found revenue for 9. For the remaining company where no revenue information was available, we assumed revenue of \$1 million for the purposes of the analysis. Table 1 gives the effect of the rule on the average annual revenues for the small business affected. For more detailed information, refer to the Regulatory Evaluation in the docket.

TABLE 1.—EFFECT OF BWM ON AVERAGE ANNUAL REVENUE FOR SMALL BUSINESS ENTITIES OWNING U.S.-FLAGGED VESSELS

Percent of annual revenue that is BWM rule cost	Total small entities per impact category
0–3 .....	8
3–5 .....	2
> 5 .....	0
Total .....	10

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 Mr. Bivan Patnaik, G–MSO–4, Coast Guard, telephone 202–267–1744, email: [Bpatnaik@comdt.uscg.mil](mailto:Bpatnaik@comdt.uscg.mil).

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

#### Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This proposed rule affects an existing OMB approved Collection of Information (Ballast Water Management for Vessels with Ballast Tanks Entering

U.S. Waters). The revised Collection of Information is as follows:

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

*OMB Control Number:* 1625–0069 [Formerly 2115–0598.]

*Summary of the Collection of Information:* This rule contains collection of information requirements for 33 CFR 151 subpart D.

*Need for Information:* For the Coast Guard to protect U.S. waters against the introduction of nonindigenous species.

*Proposed Use of Information:* For the Coast Guard to verify increased ability to protect against introductions of new nonindigenous species.

*Description of the Respondents:* All vessels equipped with ballast water tanks entering U.S. waters.

*Number of Respondents:* The existing OMB-approved collection number of responses is 50,000 arrivals made by 7,420 vessels (respondents). This rule will increase the information to include a ballast water management plan for each vessel, but does not increase the number of respondents. Thus, the total number of respondents is 7,420.

*Frequency of Response:* The existing OMB-approved collection annual number of responses is 50,000 (responses are arrivals at U.S. ports). The ongoing Penalties for Non-Submission of Ballast Water Management Reports rulemaking [USCG–2002–13147] would increase the number by 20,000 responses. This rule will increase the number by 7,420 responses in the first year of the rule to account for every vessel developing a ballast water management plan. In subsequent years, this rule will not change the number of responses. Thus, in the first year of this rule there will be a total of 77,420 (50,000 + 20,000 + 7,420) responses, and in subsequent years the total will be 70,000 (50,000 + 20,000) responses.

*Burden of Response:* The existing OMB-approved collection burden of response is 40 minutes (0.666 hours) for each arrival. For each vessel, this rule will have a first-year (one-time) burden of response of 8 hours to write the BWM plan.

*Estimate of Total Annual Burden:* The existing OMB-approved burden is 33,500 hours. The ongoing Penalties for Non-Submission of Ballast Water Management Reports rulemaking will increase the annual burden by 13,333 hours. This rule will increase the total first year burden by 8 hours per vessel, or 59,360 hours, to a total of 106,193 hours. This rule does not affect the annual burden for subsequent years, and

the total annual burden will be 46,833 hours.

#### Federalism

We have analyzed this proposed rulemaking 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 would] 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 ships' ballast tanks. This makes it unlikely that preemption, which would necessitate consultation with the States under Executive Order 13132, would 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 rulemaking 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 rulemaking 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 rulemaking under Executive Order

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

**Indian Tribal Governments**

This proposed rulemaking 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 rulemaking 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. Although it is a "significant regulatory action" under Executive Order 12866, 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**

The Coast Guard considered the environmental impact of this proposed rulemaking and concluded that preparation of a Programmatic Environmental Assessment (PEA) is necessary. A draft PEA has been completed. For more detailed information, refer to the draft PEA in the docket.

This PEA is considered necessary because the proposed rulemaking would require vessels with ballast tanks entering U.S. ports around the country, subject to conditions discussed above, to have completed one of the mandatory BWM practices. Although the national mandatory BWM program provides vessels with ballast tanks the option of using one of four BWM practices, ballast water exchange is likely to be the most used practice for reasons discussed earlier. However, this PEA is necessary to ensure the potential environmental effects of the four BWM practices are considered.

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

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

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

1. The authority citation for subpart D is revised to read as follows:

**Authority:** 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.

**§ 151.2010 [Revised]**

2. Revise § 151.2010(d) by removing the phrase "and in waters more than 2,000 meters (6,560 feet, 1,093 fathoms) deep".

3. Revise § 151.2035, the section heading and the introductory text in paragraph (a), and paragraphs (a)(7), and (b) to read as follows:

**§ 151.2035 What are the required ballast water management practices for my vessel?**

(a) Masters, owners, operators, or persons-in-charge of all vessels equipped with ballast water tanks that operate in the waters of the United States must:

\* \* \* \* \*

(7) Maintain a ballast water management plan that has been developed specifically for the vessel that will allow any ship's officer to understand and follow the vessels ballast water management strategy.

\* \* \* \* \*

(b) In addition to the provisions of paragraph (a) of this section, if the vessel carries ballast water that was taken on in areas less than 200 nautical miles from any shore into the waters of the United States after operating beyond the Exclusive Economic Zone, you (the master, operator, or person-in-charge of a vessel) must employ at least one of the following ballast water management practices:

(1) Perform complete ballast water exchange in an area no less than 200 nautical miles from any shore prior to discharging ballast water in United States waters;

(2) Retain ballast water onboard the vessel;

(3) Prior to the vessel entering United States waters, use an alternative environmentally sound method of ballast water management that has been approved by the Coast Guard; or

(4) Discharge ballast water to an approved reception facility.

4. Add § 151.2036 to read as follows:

**§ 151.2036 If my voyage does not take me into waters 200 nautical miles or greater from any shore must I divert to conduct a ballast water exchange?**

A vessel will not be required to deviate from its voyage, or delay the voyage, in order to conduct a ballast water exchange.

5. Add § 151.2037 to read as follows:

**§ 151.2037 If my vessel cannot conduct ballast water management because of its voyage and/or safety concerns, will I be prohibited from discharging ballast water?**

A vessel who cannot practicably meet the requirements of paragraphs (b)(1)–(b)(4) of section § 151.2035 because its voyage does not take it into waters 200 nautical miles or greater from any shore for a sufficient length of time, and/or because of the safety concerns contained in § 151.2030, will not be prohibited from the discharge of ballast water in areas other than the Great Lakes and the Hudson River. However, the vessel must discharge only that amount operationally necessary and make ballast water records available to the local Captain of the Port upon request.

Dated: July 25, 2003.

**Thomas H. Collins,**  
*Admiral, U.S. Coast Guard, Commandant.*  
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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD08–03–029]

RIN 1625–AA11

**Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers Eighth Coast Guard District**

**AGENCY:** Coast Guard, DHS.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes an interim rule to establish a regulated navigation area (RNA) within all inland rivers of the Eighth Coast Guard District. This RNA will apply to towing vessel operators and fleeting area managers who are responsible for the movement