

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. 101-646], 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. 104-332] enacted by Congress on October 26, 1996, reauthorized and amended NANPCA. NISA reemphasized the significant role of ships' ballast water in the introduction and spread of 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