

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