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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[Docket No. USCG-2018-0245]

RIN 1625-AC45

Ballast Water Management – Annual Reporting Requirement

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is eliminating the requirement for certain vessels that operate on voyages exclusively within a single Captain of the Port Zone to submit an Annual Ballast Water Summary Report for calendar year 2018. We view this current reporting requirement as unnecessary for us to analyze and understand ballast water management practices. This final rule will reduce the administrative burden on this regulated population of U.S. non-recreational vessels equipped with ballast tanks.

DATES: This final rule is effective October 1, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0245 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

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I. Abbreviations

ANS	Aquatic nuisance species
BLS	Bureau of Labor Statistics
BWM	Ballast water management
CFR	Code of Federal Regulations
COI	Collection of Information
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
ICR	Information Collection Request
NANPCA	Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990
NBIC	National Ballast Information Clearinghouse
NISA	National Invasive Species Act of 1996
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
Pub. L.	Public Law
RA	Regulatory analysis
REC	Record of Environmental Consideration
§	Section

II. Basis and Purpose, and Regulatory History

In this section we identify our statutory authority for this rule, the regulatory history of this rulemaking and the regulations we are amending, this rule's effective date, and the problem we intend this rule to address.

A. Legal Authority

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA, Pub. L. 101-646), as amended by the National Invasive Species Act of 1996 (NISA, Pub. L. 104-332), requires the Secretary of the Department of Homeland Security (DHS) to ensure, to the maximum extent practicable, that aquatic nuisance species (ANS) are not discharged into waters of the United States from vessels (16 U.S.C. 4701 et seq.). These statutes also direct the Secretary to issue regulations and collect records regarding vessel ballasting practices as a means for determining vessel compliance with the ballast water management (BWM) program (16 U.S.C. 4711(c) and (f)) and they authorize the Secretary to revise such regulations, as necessary, on the basis of best scientific information, and in accordance with criteria developed by the Aquatic Nuisance Species Task Force (ANS Task Force) (16 U.S.C. 4711(e)). The Secretary has delegated the regulatory functions and authorities in 16 U.S.C. 4711 to the Commandant of the Coast Guard (Department of Homeland Security Delegation No. 0170.1 (II)(57)).

B. Regulatory History

On May 9, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) (83 FR 21214) in the **Federal Register**. In the NPRM, we proposed to amend our regulations on ballast water management by eliminating the requirement for vessels

operating on voyages exclusively within a single Captain of the Port (COTP) Zone to submit an Annual Ballast Water Summary Report for calendar year 2018. Ten individuals or organizations submitted comments relevant to the NPRM during the comment period that ended June 9, 2018.

Coast Guard regulations regarding BWM are located in 33 CFR part 151, subparts C (§§ 151.1500 through 151.1518) and D (§§ 151.2000 through 151.2080). The existing regulations we are amending, §§ 151.2015 and 151.2060, were issued in 2015 and concern BWM reporting and recordkeeping requirements. *See* “Ballast Water Management Reporting and Recordkeeping” final rule (80 FR 73105, Nov. 24, 2015). We noted in the NPRM that we received recommendations to issue a rule like the one we proposed in the NPRM. These three recommendations were in response to our June 8, 2017 (82 FR 26632), request to the public to identify rules that should be repealed, replaced, or modified to alleviate unnecessary regulatory burdens.¹

Pursuant to 5 U.S.C. 553(d)(1) and (d)(3), the Coast Guard is making this rule effective less than 30 days after publication in the **Federal Register**. Under 5 U.S.C. 553(d)(1), agencies may make a rule effective less than 30 days after publication if the rule is “a substantive rule which grants or recognizes an exemption or relieves a restriction.” This rule relieves a restriction by allowing vessels operating on voyages exclusively within a single COTP Zone to do so without having to file an Annual Ballast Water Summary Report for 2018. Therefore, 5 U.S.C. 553(d)(1) allows us to make this rule effective less than 30 days after the rule is published. Moreover, under 5 U.S.C. 553(d)(3), agencies may make a rule effective less than 30 days after publication if the

¹ See items -0102, -0143, and -0147 in docket USCG-2017-0480, Evaluation of Existing Coast Guard Regulations and Collections of Information.

agency finds good cause for dispensing with the delayed effective date requirement. In this instance, it would be unnecessary for the Coast Guard to wait to make the rule effective 30 days after publication. The October 1, 2018 effective date makes it clear that as of that date vessels that operate on voyages exclusively within a single COTP Zone no longer need to obtain or retain information that would have been required for the Annual Ballast Water Summary Report for calendar year 2018. Also, it would be contrary to public interest to continue to impose a requirement into the month of October when the requirement to report those data in March 2019 has been removed.

C. Purpose of the Rule

The purpose of this rule is to remove an unnecessary burden. The Coast Guard determined that the annual reporting requirement in 33 CFR 151.2060(e) for vessels operating in a single Captain of the Port (COTP) Zone is unnecessary for us to analyze and understand ballast water management practices. As stated in the NPRM, the Coast Guard reviewed the 2016 annual reports and concluded that the reports do not contribute to the quality and breadth of BWM data as originally intended because the current annual reporting data fields are too simplistic to capture vessel movements and ballasting operations in the necessary level of detail. (83 FR 21214, 21216) Our amendments to 33 CFR 151.2015 and 151.2060 are in accordance with 16 U.S.C. 4711(e), which authorizes the Secretary to revise such regulations, as necessary, on the basis of best scientific information, and in accordance with criteria developed by the ANS Task Force.

The 2015 final rule established a 3-year requirement starting in 2016 for the master, owner, operator, agent, or person in charge of certain vessels with ballast tanks to submit an annual report of their BWM practices. The requirement applies to U.S. non-

recreational vessels that operate on voyages exclusively between ports or places within a single COTP Zone. The annual reports contain information, specified in § 151.2060(f), about the vessel, the number of ballast tanks on board, total ballast water capacity, and a record of ballast water loadings and discharges. The reports are submitted to the National Ballast Information Clearinghouse (NBIC).

Under current regulations, the annual report for calendar year 2018 is due on March 31, 2019. This rule will eliminate the annual reporting requirement in § 151.2060(e) before the 2018 report is due.

III. Discussion of Comments

The Coast Guard received 11 public submissions in response to the NPRM, 10 of which were germane to the proposed rule. Of those 10 submissions, 7 supported the proposed rule and 3 opposed it. The Coast Guard appreciates these commenters taking the time to submit comments.

In the following discussion, we summarize the reasons or information some commenters gave in support of their position or recommendation. After each summary, we state our response.

Most of the seven commenters who wrote in support of the rule tended not to provide detailed reasons for their support. They said that the annual report had no value or was unnecessary and burdensome, that vessels operating in a limited geographic area pose a low risk of introducing ANS, or simply indicated their support for the rule as proposed. One commenter pointed out that the annual reports do not have a field to indicate if the vessel is using ballast water from a U.S. public water system. The Coast Guard is removing the reporting requirement because the annual reports did not provide

data to help the Coast Guard determine whether vessels that operate solely in a single COTP Zone should be subject to the same or similar BWM regulations as those applicable to vessels operating in multiple COTP Zones.

One commenter who opposed the proposed rule stated that, without information, there is no way to determine any adverse or advantageous results and that the annual reports should continue so we can be certain of no ill effects. We have received and reviewed annual reports for 2016 and 2017 and have concluded that they do not contribute to the quality and breadth of BWM data as we originally intended. The objective of our annual reporting requirement was to gather sufficient data—without imposing an undue burden on vessels that were otherwise not required to report—to determine whether vessels that operate solely in a single COTP Zone should be subject to the same or similar BWM regulations as those applicable to vessels operating in multiple COTP Zones.² We have concluded that the annual reports do not effectively contribute to the quality and breadth of BWM data to the extent necessary for us to make the determination, including determining whether there are any ill effects. The information called for in the report is a simplistic summary of discharges rather than detailed information on the volume, number, and location of discharges. This level of detail is insufficient to determine whether this population of vessels presents a threat of spreading ANS and, as explained later in this document, we are unable to improve the reporting fields before the reporting requirement expires. Accordingly, we are issuing this final rule to relieve an unnecessary burden by eliminating the annual report requirement for calendar year 2018.

² From the preamble of the 2015 final rule, 80 FR 73105, 73106, November 24, 2015.

This same commenter suggested that the staff resources necessary to remove the annual reporting requirement for 2018 is sharply higher than the total savings we estimated for this final rule in the NPRM. We disagree with the premise that this deregulatory effort was not worth doing. The Coast Guard received multiple requests from the public to remove this reporting requirement. This rule will not require additional Coast Guard resources to implement and will be budget neutral. Executive Order 12866 calls for agencies not to impose unreasonable costs on society. Having concluded the annual reporting requirement is an unnecessary burden, it would be unreasonable to impose its cost on those required to comply with 33 CFR 151.2060(e).

A public interest group that focuses on Hawaii suggested that the Coast Guard revise the reporting form instead of eliminating the reporting requirement if the requirement does not provide necessary information or, alternatively, identify a different way to assess risk and mitigation measures. Although we have described weaknesses in the annual reports, the Coast Guard has not identified revisions to the reporting form that would effectively contribute to the quality and breadth of existing BWM data and could be implemented in time for the final reporting deadline. The reporting requirement itself would expire before we could identify better reporting parameters and implement them in regulation. In that situation, it is important to remove an unnecessary burden in a timely manner before the affected population has to submit its 2018 annual reports.

The Coast Guard will consider future improvements to reporting requirements and forms. The Coast Guard's investment in ballast water management research and data collection is significant. There are currently multiple existing sources of information that effectively contribute to the quality and breadth of BWM data. The Coast Guard, in

partnership with other federal agencies, has coordinated a shared approach to ballast water management and data collection.

As stated in the NPRM, the annual reporting requirement failed to meet the objective, which was to serve as a minimally burdensome method of gathering data to help the Coast Guard determine whether vessels that operate solely in a single COTP zone should be subject to the same or similar BWM regulations as those applying to vessels operating in multiple COTP zones. A discussion of the objective can be found in the preamble of the 2015 final rule (80 FR 73105, 73106). The 2016 and 2017 annual reports do not contribute to the quality and breadth of BWM data, nor do they contribute to a better understanding of patterns of ballast water management and discharge, including in Hawaii and the Honolulu COTP Zone.

This same public interest group stated that the exemption for vessels traveling within a single COTP Zone from ballast water management and annual reporting requirements may make some sense for some parts of the United States, but not for the Honolulu COTP Zone, which includes many islands, some separated by thousands of miles. This group stated that the areas of ocean between each of these islands serve as barriers that result in unique marine communities for each of the islands, yet ballast water and vessel biofouling provide species the opportunity to move thousands of miles to new areas within the COTP Zone. It also stated that it is not clear whether the unique and non-contiguous nature of the Honolulu COTP Zone was considered during the National Environmental Policy Act review or in the drafting of the proposed rule. The commenter believed that the Coast Guard should provide an analysis of the proposed rule's impact on the vast and diverse ecologies of the Honolulu COTP Zone.

The public interest group's comment begins by referencing two separate issues. One issue is the requirement to conduct ballast water management. The other issue is the requirement to submit ballast water annual reports.

In our NPRM, we did not propose to amend any ballast water management requirements, and this final rule does not relieve ship owners and operators of any existing mandatory ballast water management practices. As we plan to do with other comments not directed at the annual reporting requirement, we will take this comment into consideration for possible future action. However, we did not revise this final rule in response to it, because this rulemaking is narrowly focused on removing an annual reporting requirement that the Coast Guard has concluded does not provide useful information. The reporting requirement was intended to obtain data that would lead to a better understanding of patterns of ballast water management and discharge. The Coast Guard considers the requirement for the 2018 annual report to be unduly burdensome because the data submitted in annual reports from vessels operating exclusively in one COTP Zone have not been helpful in analyzing trends in transport, management, or discharge of ballast water.

The preliminary Record of Environmental Consideration (REC) for the NPRM did not mention Hawaii or the Honolulu COTP Zone, but the REC for this final rule does respond to these comments. Again, this rule is narrowly focused on removing the requirement to file a 2018 annual report.

Finally, this commenter states that ballast water reports should be available to the states, and that the Coast Guard should also be sampling ballast discharges to verify whether ballast water mitigation measures detailed in annual reports are effective. For

information related to ballast water reports, states and interested persons may contact the NBIC for information through its website.³

Regarding the sampling of ballast water discharges, it would be impracticable under the current annual reporting requirement for the Coast Guard to sample ballast discharges because vessel owners and operators are not required to report in advance when they discharge their ballast water. Also, the annual report does not require detailed information about mitigation measures. As a possible future action, we may consider changing the annual reporting requirement to include more on mitigation measures and to facilitate discharge sampling, but such changes would need to go through notice-and-comment rulemaking and that would take more time to complete than the limited time we have to effectively remove the 2018 annual report requirement.

A Hawaii state agency commented that the Honolulu COTP Zone (described in 33 CFR 3.70-10) stretches across a vast and ecologically diverse expanse of the Pacific Ocean and that the unique geographic circumstances of Hawaii (and other Pacific Islands within U.S. jurisdiction) make this annual reporting requirement of particular value to the state of Hawaii. Certain islands in the Honolulu COTP Zone are more than 2,500 miles from each other. The agency urges the Coast Guard to reject the proposed rule because it says information obtained from the annual report required under 33 CFR 151.2060 is the only way to track and understand the possible threat these vessels pose in terms of ballast water discharge. They stated this information will also become an integral part of the "best scientific information available" that is required as guidance in developing future Coast Guard regulations.

³Visit NBIC website at: <http://invasions.si.edu/nbic/index.html>

This Hawaii state agency points to differences between COTP Zones in other jurisdictions and the COTP Honolulu Zone. Noting that Hawaii is the only purely archipelagic state in the United States, the agency requests not only that the 2018 annual reporting requirement be kept in place, but that annual reporting be made permanent. This state agency views vessel ballast water and biofouling as the only vector for most aquatic invasive species to reach Hawaiian waters because each county in Hawaii is separated by deep channels of open ocean. It views these annual reports as an integral part of their understanding of the movement of ballast water into and between the islands in the Hawaiian Archipelago and vital to the protection of Hawaiian aquatic resources.

The Coast Guard appreciates the unique geographic circumstances of Hawaii identified in this comment. The comments we received with respect to the Honolulu COTP Zone caused us to reexamine how we describe COTP Zones for purposes of ballast water regulations intended to prevent the discharge of ANS into waters of the United States from vessels. But, the reporting requirement did not produce data to help the Coast Guard understand trends in transport, management, or discharge of ballast water. As stated earlier in this preamble, the 2016 and 2017 annual reports do not contribute to the quality and breadth of BWM data, nor do they contribute to a better understanding of patterns of ballast water management and discharge, including in Hawaii and the Honolulu COTP Zone. The aggregate volumes of ballast water taken up and discharged by each vessel over the course of a calendar year do not provide enough detail on vessel movement or ballasting operations. The Coast Guard also disagrees that this is the only source of relevant information, and notes that states may require vessels in their jurisdiction to start submitting more detailed data for their own uses.

As stated in the NPRM (83 FR 21216) and earlier in this section, the Coast Guard views the existing reporting requirement as not meeting the necessary objective for any COTP Zone, including the Honolulu COTP Zone. Therefore, in this final rule, we have eliminated the annual and final reporting requirements for calendar year 2018.

In calling for a permanent annual reporting system for these vessels, the Hawaii state agency requested that all avenues of receiving and documenting information regarding ballast water as a vector for aquatic invasive species be retained to ensure that future regulations are based on the full spectrum of facts presented. Instead of removing a reporting requirement, this commenter stated that shortcomings of the current system should be used to inform the development of future regulations. Finally, the state agency commented that if the annual reports were freely accessible to state government entities through the NBIC website, these annual reports could help guide the development of state regulations.

The Coast Guard agrees that there are lessons to be learned from the shortcomings in the annual reporting requirement. We may consider in the future whether a different, possibly permanent, reporting requirement is appropriate, but it would take time to evaluate what fields to include and then to offer proposed changes for public notice and comment. To attempt to do that in this rulemaking would prevent us from removing an unnecessary burden within the limited time frame we have to do so. We do not believe the 2018 annual report will contribute to a comprehensive understanding of the threats posed by ballast water. Accordingly, we do not believe that we should continue to impose the unnecessary burden of requiring a 2018 annual report. Therefore, this final rule eliminates the annual and final reporting requirements for calendar year 2018. All

other reporting and recordkeeping requirements remain in effect. In addition, states may contact the NBIC regarding access to information from annual reports.

One commenter recommended that the Coast Guard make ballast water reporting an annual requirement for all vessels operating on the Great Lakes and allow for an aggregate total rather than a tank-by-tank accounting. If the Coast Guard does not implement annualized submissions for vessels operating on the Great Lakes, the commenter recommended that we modify the Equivalent Reporting Program requirement of 10 or more arrivals per month. These recommendations would affect the BWM reporting requirements for vessels that travel between COTP Zones and are therefore outside the scope of this rulemaking, which focuses on eliminating an annual reporting requirement for vessels that operate exclusively in one COTP Zone.

The commenter also expressed a concern that the NBIC's web-based reporting form allows only one log-in per company. This concern is also beyond the scope of this rulemaking, but the Coast Guard will take it into consideration for future improvements.

One company that supported our proposed rule appeared to believe that the amendments to § 151.2015 created a new exemption from reporting requirements. We want to make clear that our amendment to the table in § 151.2015 is a conforming change in response to our change in § 151.2060(b). Under this final rule, as well as under existing regulations, vessels operating exclusively in a single COTP Zone are not required to comply with § 151.2060(b) reporting requirements.

In this final rule, we made no changes from the proposed rule based on our consideration of comments we received on the NPRM.

IV. Discussion of the Rule

This final rule removes the Annual Ballast Water Summary Report requirement for vessels equipped with ballast tanks that operate exclusively in a single COTP Zone so that they will not be required to file the 2018 annual report. In this section, we describe the changes we are making to 33 CFR 151.2015 and 151.2060 to accomplish the removal of this reporting requirement. The text of this final rule is the same as we proposed in the NPRM.

Section 151.2015. Currently § 151.2015(c) exempts vessels that operate exclusively on voyages between ports or places within a single COTP Zone from the ballast water management requirements in § 151.2025 and from the recordkeeping requirements in § 151.2070. We have added the reporting requirements in § 151.2060 to this list of exemptions in § 151.2015(c). This makes it clear to vessels that operate exclusively on voyages between ports or places within a single COTP Zone that they are not subject to the reporting requirements in § 151.2060.

We have amended Table 1 to § 151.2015, which lists specific exemptions for types of vessels. Specifically, we are amending the column “151.2060 (Reporting)” to reflect that vessels operating exclusively on voyages between ports or places within a single COTP Zone are exempt from the reporting requirements in § 151.2060.

We also added a footnote to the same table for non-seagoing vessels. This footnote replaced the current lengthy qualifying language in the “151.2070 (Recordkeeping)” column of the table for those non-seagoing vessels that operate exclusively on voyages between ports or places within a single COTP Zone. We extend the footnote to the table’s “151.2060 (Reporting)” column in that row based on our amendment to § 151.2015(c). Non-seagoing vessels are the only category of vessels in

the table that may need this potential exemption reminder because the other categories of vessels are either exempt or operate in multiple COTP Zones.

Section 151.2060. Section 151.2060(e) and (f) applied only to vessels operating exclusively on voyages between ports or places within a single COTP Zone. We have removed § 151.2060(e) and (f). Paragraph (e) contained the requirement to submit the Annual Ballast Water Summary Report to the NBIC, and paragraph (f) described the information to be included in that report. The only remaining reporting requirement in § 151.2060 is now based in paragraph (b). That paragraph contained language exempting vessels operating exclusively on voyages between ports or places within a single COTP Zone. We are deleting that language because it is now unnecessary. With the removal of § 151.2060(e) and (f), we can now state in § 151.2015(c) that vessels operating exclusively on voyages between ports or places within a single COTP Zone are exempt from any and all reporting requirements in § 151.2060. With our amendment to § 151.2060(b), vessels subject to the reporting requirements of paragraph (b) will not need to first read through an exemption that does not apply to them.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."

The Office of Management and Budget (OMB) has not designated this rule a "significant regulatory action," under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. DHS considers this rule to be an Executive Order 13771 deregulatory action. *See* the OMB Memorandum "Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs'" (April 5, 2017). A regulatory analysis (RA) follows.

The Coast Guard received no comments regarding the RA. However, the Coast Guard did receive revised data from the NBIC for year 2017. The updated data increase the affected population by 112 vessels, bringing the total affected population to 278 vessels. We have amended the final rule RA to reflect the new information from NBIC.

This is a deregulatory rulemaking that removes reporting requirements for vessels with ballast tanks operating exclusively within a single COTP. The removal of the reporting requirement will provide a one-time cost savings for those vessels affected by this deregulatory action. We estimate an industry cost saving of \$5,796 (non-

discounted), and individual vessel cost savings of \$20.85. We provide a detailed analysis of the cost savings associated with this deregulatory rule below. This final rule will not impose costs on industry.

The Coast Guard considers all estimates and analysis in this RA final. Table 1 presents a summary of the economic impact of the final rule.

Table 1—Summary of the Economic Impact of the Final Rule

Change	Description	Affected Population	Cost Savings	Benefits
Eliminate the requirement for vessels operating exclusively within a single COTP Zone to report ballast management practices to the NBIC.	Owners or operators of vessels with ballast tanks and operating exclusively on voyages between ports and places within one COTP Zone will not have to report their ballast management practices for the final year of a 3-year requirement to report ballasting operations.	70 owners or operators of 278 vessels operating in one COTP Zone.	No Costs. One-time industry savings of \$5,796	The final rule removes the reporting requirement for the remainder of 2018 and provides a one-time partial year savings for owners or operators.

Under this final rule, the Coast Guard will no longer require owners or operators of vessels with ballast tanks operating exclusively on voyages between ports or places within a single COTP Zone to submit an annual summary report of their ballast water management practices.

Starting with the 2016 annual report, owners or operators of vessels affected by the 2015 final rule provision in § 151.2060(e) have submitted annual summary reports, as required, to the NBIC. These summary reports were used to estimate the number of

vessels that operated and the amount of ballast water discharged within a single COTP Zone. Based on the data received and analyzed by the NBIC, the Coast Guard was able to determine the actual number of vessels affected by the 2015 final rule. The NBIC data confirms that 70 owners or operators of 278 U.S.-flagged vessels⁴ have reported ballasting operations in accordance with § 151.2060(e). Table 2 presents the vessel types and number of these vessels.

Table 2—U.S.-flagged Vessels Operating Exclusively within a Single COTP Zone affected by this Final Rule

Vessel Type	Affected Population	
	NPRM	FR
Tanker - Other	1	1
Tug only	57	126
Offshore supply vessel	38	41
Other (research, fishing, etc.)	21	24
Passenger	2	7
Bulk Carries	2	-
Tug –Barge Combo	-	1
Barge only	45	77
General Cargo	-	1

⁴ We estimated the population of affected vessels in the 2015 final rule to be 1,280. This was an estimate based on potential vessels that might operate exclusively within a single COTP Zone. Since the publication of the 2015 final rule, vessel owners or operators have been providing information to the NBIC regarding their ballasting operations and area of operation. From this information, we are able to determine the actual vessel population that operates exclusively within a single COTP Zone. This final rule, in addition to eliminating § 151.2060(e), also reduces the affected population estimated in the 2015 final rule from 1,280 to 278 vessels.

Total	166	278
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Source: NBIC Data <https://invasions.si.edu/nbic/>

We estimated in the 2015 final rule that the total annual amount of burden hours for owners or operators completing the reporting requirement at 40 minutes per vessel per year. We break down those 40 minutes as 25 minutes to account for time needed throughout the year to record ballast management operations, and 15 minutes for time needed by owners or operators to aggregate and calculate the recorded ballast water discharge information and to complete the electronic form submitted to the NBIC.

This final rule, which becomes effective October 1, 2018, allows the Coast Guard to stop enforcing of the requirements of § 151.2060(e) at the end of fiscal year 2018, which is September 30, 2018. The current regulation requires annual reports only through the calendar year 2018. Therefore, any realized savings from this final rule will account for the last 3 months of calendar year 2018. We estimate that the total time saved by this final rule will be 21.25 minutes per vessel (15 minutes for submission of report + 6.25 total minutes from the last 3 months of 2018). Converting this time to an hourly equivalent, we arrive at 0.35 hours (21.25 minutes ÷ 60 minutes).

We anticipate that the person charged with collecting and reporting the information to NBIC will be a vessel Captain, Mate, or Pilot. The mean hourly wage rate associated with these professions is reported by the Bureau of Labor Statistics (BLS) to be \$39.19 per hour.⁵ We calculated the load factor from data collected in the Employer Cost for Employee Compensation survey conducted by the BLS and applied it to the mean hourly wage rate to obtain a fully loaded wage rate, which more accurately

⁵ Information about the wage rates for Captains, Mates and Vessel Pilots (53-5021) can be found at <https://www.bls.gov/oes/2016/may/oes535021.htm>.

represents the employer’s cost per hour for an employee’s work.⁶ The load factor we used for this economic analysis is 1.52.⁷⁸ The loaded mean hourly wage rate used to assess the savings estimates for this final rule is calculated at \$59.57 ($\39.19×1.52).

We anticipate that by eliminating the reporting requirement from the last quarter of the year, this final rule will reduce industry’s economic burden by 97.3 hours (278 vessels \times 0.35 hours). We calculate the dollar value saved to be \$20.85 per vessel ($\59.57 wage \times 0.35 hours). The estimated one-time total savings for removing the reporting requirement for the 278 vessels operating exclusively between ports or places within a single COTP Zone is \$5,796 ($\20.85 per vessel savings \times 278 vessels), non-discounted. Table 3 presents the total savings to the affected population.

Table 3—Total Savings for Affected Vessels

Hourly Wage Paid to Employee	\$39.19
Load Factor to Account for Cost of Benefits	1.52
Loaded Wage	\$59.57
Hours Saved Per Vessel	0.35
Savings per Vessel (Hours \times Loaded Wage Rate)	\$20.85
Affected Population	278
Total Savings* (Savings per Vessel \times Affected Population)	\$5,796

* Represents undiscounted savings totals. Totals may not sum due to rounding.

This final rule will not have annual recurring savings. It does not require additional Coast Guard resources to implement it, and it is budget neutral. In addition, a one-time savings of \$5,796 in 2018 is equivalent to approximately \$331 in 2016 dollars

⁶ A loaded wage rate is what a company pays per hour to employ a person, not the hourly wage the employee receives. The loaded wage rate includes the cost of benefits (health insurance, vacation, etc.).

⁷ From the BLS, Employer Cost for Employee Compensation survey. Total compensation divided by wage and salary compensation.

⁸ The load factor for wages is calculated by dividing total compensation by wages and salaries. For this report, we used the Transportation and Materials Moving Occupations, Private Industry report (Series IDs, CMU2010000520000D and CMU2020000520000D) for all workers using the multi-screen data search. Using 2016 Q2 data, we divide $\$27.55/\18.08 to get the load factor of 1.52. See <https://data.bls.gov/cgi-bin/srgate>.

using perpetual time horizon discounting at 7 percent.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, we have considered whether this final rule will 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.

As described in the “Regulatory Planning and Review” section of this RA, we expect that the savings per vessel will be \$20.85 for the remainder of 2018. The Coast Guard is eliminating the reporting requirement under § 151.2060(e), which applies to owners or operators of vessels operating exclusively between ports or places within a single COTP Zone. Based on our economic assessment of the rule, we conclude that this final rule will add no cost burden to industry.

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

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person in the FOR FURTHER INFORMATION CONTACT section of this final rule. The Coast Guard will not retaliate against small entities that question or

complain about this rule or any policy or action of the Coast Guard.

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).

D. Collection of Information

This rule calls for a change to an existing collection of information (COI) 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.

Title: Ballast Water Management Reporting and Recordkeeping

OMB Control Number: 1625-0069

Summary of the Collection of Information: This rule modifies the existing BWM reporting and recordkeeping requirement in § 151.2060(e). In the current regulation, the Coast Guard requires vessels with ballast tanks that operate exclusively on voyages between ports or places within a single COTP Zone to submit an annual summary report on their ballast water practices. The final rule published in 2015 requires vessels to

report to the NBIC for a 3-year period, after which a sunset clause in the rule has this provision expiring at the end of the 2018 calendar year. This final rule will remove the last year of reporting requirements for the population affected by the 2015 final rule and prior to the provision's sunset, thereby returning the overall COI burden estimates to the 2015 final rule's level.

Need for Information: The Coast Guard is removing the reporting requirement under § 151.2060(e) because the value of information provided by the affected population did not meet the expectations of the Coast Guard.

Proposed Use of Information: The collection of this BWM data was intended to fill a limited gap in information about vessels operating exclusively within a single COTP Zone. The data was to measure ballast water practices within a COTP Zone by vessels that operated exclusively within a single COTP Zone. We removed § 151.2060(e) and (f) because the data collected did not help the Coast Guard to better understand these ballasting practices.

Description of the Respondents: The respondents are the owners or operators of vessels with ballast water tanks operating exclusively on voyages between ports or place within a single COTP Zone.

Number of Respondents: The current number of respondents is 9,663. However, in the 2015 final rule, we incorrectly estimated the additional number of respondents in the COI to be 1,280. The population of 1,280 was an overestimation because information about vessels operating exclusively within a single COTP Zone had not been documented prior to the 2015 final rule. For the purpose of maintaining continuity between the number of respondents in the 2015 final rule and number of respondents in the overall

COI OMB Control Number: 1625-0069, the Coast Guard estimates changes to the overall COI using the 2015 final rule COI values to obtain a net result of zero.⁹

Therefore, in order to revert back to the 2015 baseline, we needed to subtract the 1,280 respondents we incorrectly estimated in the 2015 final rule.¹⁰ With this change, we are maintaining the 2015 baseline of 8,383 respondents because we would be subtracting the incorrect estimated population of 1,280 respondents. The incurred cost savings and burden-hour reduction we estimate in this final rule will affect only 278 respondents for the last 3 months of this calendar year. After this time, the OMB-approved number of respondents would remain at the 2015 baseline level of 8,383 respondents because of the sunset clause in the 2015 final rule. We show these calculations, for illustrative purposes, in Table 4.

Table 4—Summary of Collection of Information, Respondents

Reporting Items (A)	Current COI Respondents (B)	Final Rule Change (C)	New COI Values (B-C)
Voyage Reports	8,383	0	8,383
Annual Reports	1,280	1,280	0
Compliance Extension Request	0	0	0
Total	9,663	1,280	8,383

Frequency of Response: The reporting requirement under this COI is scheduled to occur annually. With this final rule, current respondents under § 151.2060(e) are no longer required to maintain and submit BMW information on an annual basis.

Burden of Response: The Coast Guard anticipates that the elimination of the rule will decrease burden by approximately 40 minutes per report for vessels with ballast

⁹ The goal is to revert the COI Control No.1625 – 0069 back to its original collection prior to the 2015 ballast water recordkeeping and reporting final rule.

¹⁰ Appendix A of COI OMB Control No. 1625-0069.

water tanks operating exclusively on voyages between ports or places within a single COTP Zone.

Estimate of Total Annual Burden: The annual reduction in burden is estimated as follows:

(a) Annual reduction in burden resulting from removing reporting requirement for vessels operating within a single COTP Zone.

This final rule will reduce the private sector burden hours for this COI by 97.3 hours (278 vessels \times 0.35 hours [3 months of savings]). There are three items associated with this COI: voyage reports, annual reports (which are applicable to this final rule), and compliance extension requests. The voyage reports and compliance extension requests are not included in this final rule. The burden estimates in this COI stemming from these voyage reports and compliance requests will be unaffected. Voyage reports account for 60,727 hours, annual reports account for 858 hours, and compliance extension requests account for 234 hours, for a total of 61,819 hours. Essentially, with this final rule, we are accounting for the 97.3 burden hours of reduction in annual reports in the last 3 months of this calendar year only, prior to the sunset clause becoming effective. To capture this change we must first correct for the erroneously estimated hourly burden of 858 hours. First, we subtract the 858 erroneous burden hours from the total of 61,819 hours and replace it with the correct burden estimate of 97 hours. This gives us a total burden of 61,058 hours and represents the corrected amount from which to estimate the burden reduction due to the final rule. The final rule will then remove the corrected 97 burden hours that should have been included in the 2015 COI. After December 31, 2018, the burden hours will return to the 2015 baseline level of 60,961

hours.

Moreover, due to the establishment of a sunset clause in the 2015 final rule, all recordkeeping and reporting burden associated with this regulation will be eliminated. This adjustment would only reduce current Information Collection Request (ICR) burden levels prior to the 2015 final rule. We show the burden hour calculations in Table 5.

Table 5—Summary of Collection of Information, Burden Hours

Reporting Items (A)	Current COI Burden Hours (B)	Final Rule Change (C)	New COI Values (B-C)
Voyage Reports	60,727	0	60,727
Annual Reports	858	858	0
Compliance Extension Request	234	0	234
Total	61,819	858	60,961*

* Although this final rule would subtract 97.3 hours for the last 3 months of this year, after this time, the total hour burden estimate would revert back to the 2015 baseline level or current OMB inventory amount of 60,961 due to the fact that there will no longer be a need to complete annual reports for vessels traveling exclusively between ports or places within a single COTP Zone.

(b) Reduction of annual burden due to the elimination of the current rule.

This final rule will result in a reduction of annual burden of 97.3 hours for the last 3 months of the year ending December 31, 2018. However, after correcting for the overestimated burden in the 2015 COI, the reduction in annual burden hours as reflected in the Supporting Statement for this COI is 858 hours (as explained above).

As required by 44 U.S.C. 3507(d), we will submit a copy of this final rule to OMB for its review of the collection of information. You are not required to respond to a COI unless it displays a currently valid OMB control number.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this final rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

This final rule will revise the Coast Guard's BWM reporting and recordkeeping requirements promulgated under the authority of NANPCA, as amended by NISA. Specifically, we are removing the requirement that an Annual Ballast Water Summary Report for calendar year 2018 be submitted for vessels operating on voyages exclusively between ports or places within a single COTP Zone. NANPCA, as amended by NISA, contains a "savings provision" that saves to States their authority to "adopt or enforce control measures" for ANS (16 U.S.C. 4725). Nothing in the Act would diminish or affect the jurisdiction of any State over species of fish and wildlife. This type of BWM reporting and recordkeeping is a "control measure" saved to States under the savings provision and would not be preempted unless State law makes compliance with Coast Guard requirements impossible or frustrates the purpose of Congress. Additionally, the Coast Guard has long interpreted this savings provision to be a congressional mandate for a Federal-State cooperative regime in which Federal preemption under NANPCA, as amended by NISA, would be unlikely. The Coast Guard does not intend for the removal of this Federal reporting requirement to be a determination, or have any implications, with regard to the necessity of existing or future state BWM reporting requirements. Therefore, this final rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. 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 (adjusted for inflation) or more in any 1 year. Although this final rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This final rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This final 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.

I. Protection of Children

We have analyzed this final rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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.

K. Energy Effects

We have analyzed this final rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID (COMDTINST M16475.1D),

which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A final Record of Environmental Consideration supporting this determination is available in the docket where indicated under the “ADDRESSES” section of this preamble. This rule is categorically excluded under paragraph L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Paragraph L54 pertains to regulations which are editorial or procedural. This rule involves the removal of the last year of a 3-year annual ballast water reporting requirement.

List of Subjects in 33 CFR Part 151

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 151, subpart D, as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. The authority citation for part 151, subpart D, is revised to read as follows:

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1(II)(57).

2. Amend § 151.2015 as follows:

- a. In paragraph (c), after the text “(ballast water management (BWM) requirements),” add the text “151.2060 (reporting),”; and

- b. Revise the fourth and sixth rows in table 1 to § 151.2015.

The revisions read as follows:

§ 151.2015 Exemptions.

* * * * *

TABLE 1 TO §151.2015—TABLE OF 33 CFR 151.2015 SPECIFIC EXEMPTIONS FOR TYPES OF VESSELS

	151.2025 (Management)	151.2060 (Reporting)	151.2070 (Recordkeeping)
* * * * *			
Vessel operates exclusively on voyages between ports or places within a single COTP Zone	Exempt	Exempt	Exempt.
* * * * *			
Non-seagoing vessel	Exempt	Applicable ¹	Applicable ¹ .
* * * * *			

¹ Unless operating exclusively on voyages between ports or places within a single COTP Zone.

§ 151.2060 [Amended]

3. Amend § 151.2060 as follows:

a. In paragraph (b), remove the words “Unless operating exclusively on voyages between ports or places within a single COTP Zone, the” and add, in their place, the word “The”; and

b. Remove paragraphs (e) and (f).

Dated: September 14, 2018.

J. P. Nadeau,
 Rear Admiral, U.S. Coast Guard,
 Assistant Commandant for Prevention Policy.
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