

many other financial service providers that have access to client assets.<sup>83</sup>

In light of these disparities, we request comment on whether SEC-registered investment advisers should be subject to financial responsibility requirements along the lines of those that apply to broker-dealers.

- What is the frequency and severity of client losses due to investment advisers' inability to satisfy a judgment or otherwise compensate a client for losses due to the investment adviser's wrongdoing?

- Should investment advisers be subject to net capital or other financial responsibility requirements in order to ensure they can meet their obligations, including compensation for clients if the adviser becomes insolvent or advisory personnel misappropriate clients' assets?<sup>84</sup> Do the custody rule and other rules<sup>85</sup> under the Advisers

<sup>83</sup> Fidelity bonds are required to be obtained by broker-dealers (FINRA Rule 4360; New York Stock Exchange Rule 319; American Stock Exchange Rule 330); transfer agents (New York Stock Exchange Rule Listed Company Manual § 906); investment companies (17 CFR 270.17g-1); national banks (12 CFR 7.2013); federal savings associations (12 CFR 563.190).

<sup>84</sup> We note that Congress and the Commission have considered such requirements in the past. In 1973, a Commission advisory committee recommended that Congress authorize the Commission to adopt minimum financial responsibility requirements for investment advisers, including minimum capital requirements. See Report of the Advisory Committee on Investment Management Services for Individual Investors, Small Account Investment Management Services, Fed. Sec. L. Rep. (CCH) No. 465, Pt. III, 64-66 (Jan. 1973) ("Investment Management Services Report"). Three years later, in 1976, the Senate Committee on Banking, Housing and Urban Affairs considered a bill that, among other things, would have authorized the Commission to adopt rules requiring investment advisers (i) with discretionary authority over client assets, or (ii) that advise registered investment companies, to meet financial responsibility standards. S. Rep. No. 94-910, 94th Cong. 2d Sess. (May 20, 1976) (reporting favorably S. 2849). S. 2849 was never enacted. In 1992, both the Senate and House of Representatives passed bills that would have given the Commission the explicit authority to require investment advisers with custody of client assets to obtain fidelity bonds. S. 226, 102d Cong., 2d Sess. (Aug. 12, 1992) and H.R. 5726, 102d Cong. Ed (Sept. 23, 1992). Differences in these two bills were never reconciled and thus neither became law. In 2003, the Commission requested comment on whether to require a fidelity bonding requirement for advisers as a way to increase private sector oversight of the compliance by funds and advisers with the federal securities laws. The Commission decided not to adopt a fidelity bonding requirement at that time, but noted that it regarded such a requirement as a viable option should the Commission wish to further strengthen compliance programs of funds and advisers. Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 25925 (Feb. 5, 2003).

<sup>85</sup> See, e.g., Advisers Act rule 206(4)-7 (requires each investment adviser registered or required to be registered with the Commission to adopt and implement written policies and procedures reasonably designed to prevent violations of the

Act adequately address the potential for misappropriation of client assets and other financial responsibility concerns for advisers? Should investment advisers be subject to an annual audit requirement?

- Should advisers be required to obtain a fidelity bond from an insurance company? If so, should some advisers be excluded from this requirement?<sup>86</sup> Is there information or data that demonstrates fidelity bonding requirements provide defrauded clients with recovery, and if so what amount or level of recovery is evidenced?

- Alternatively, should advisers be required to maintain a certain amount of capital that could be the source of compensation for clients?<sup>87</sup> What amount of capital would be adequate?<sup>88</sup>

- What would be the expected cost of either maintaining some form of reserve capital or purchasing a fidelity bond? Specifically, in addition to setting aside the initial sum or purchasing the initial bond, what would be the ongoing cost and the opportunity cost for investment advisers? Would one method or the other be more feasible for certain types of investment advisers (particularly, smaller advisers)?

- Would the North American Securities Administrators Association Minimum Financial Requirements For Investment Advisers Model Rule 202(d)-1<sup>89</sup> (which requires, among other things, an investment adviser who has custody of client funds or securities

Advisers Act and Advisers Act rules, review those policies and procedures annually, and designate an individual to serve as a chief compliance officer).

<sup>86</sup> As noted above, the 1992 legislation would have given us the explicit authority to require bonding of advisers that have custody of client assets or that have discretionary authority over client assets. Section 412 of ERISA [29 U.S.C. 1112] and related regulations (29 CFR 2550.412-1 and 29 CFR 2580) generally require that every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan shall be bonded. Registered investment advisers exercising investment discretion over assets of plans covered by title I of ERISA are subject to this requirement; it does not apply to advisers who exercise discretion with respect to assets in an individual retirement account or other non-ERISA retirement account. In 1992, only approximately three percent of Commission registered advisers had discretionary authority over client assets; as of March 31, 2018, according to data collected on Form ADV, 91 percent of Commission registered advisers have that authority.

<sup>87</sup> See *supra* note 84.

<sup>88</sup> Section 412 of ERISA provides that the bond required under that section must +be at least ten percent of the amount of funds handled, with a maximum required amount of \$500,000 (increased to \$1,000,000,000 for plans that hold securities issued by an employer of employees covered by the plan).

<sup>89</sup> NASAA Minimum Financial Requirements For Investment Advisers Model Rule 202(d)-1 (Sept. 11, 2011), available at <http://www.nasaa.org/wp-content/uploads/2011/07/IA-Model-Rule-Minimum-Financial-Requirements.pdf>.

to maintain at all times a minimum net worth of \$35,000 (with some exceptions), an adviser who has discretionary authority but not custody over client funds or securities to maintain at all times a minimum net worth of \$10,000, and an adviser who accepts prepayment of more than \$500 per client and six or more months in advance to maintain at all times a positive net worth), provide an appropriate model for a minimum capital requirement? Why or why not?

- Although investment advisers are required to report specific information about the assets that they manage on behalf of clients, they are not required to report specific information about their own assets.<sup>90</sup> Should advisers be required to obtain annual audits of their own financials and to provide such information on Form ADV? Would such a requirement raise privacy concerns for privately held advisers?

By the Commission.

Dated: April 18, 2018.

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2018-08679 Filed 5-8-18; 8:45 am]

**BILLING CODE 8011-01-P**

## 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:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend its regulations on ballast water management by eliminating the requirement for vessels operating on voyages exclusively between ports or places within a single Captain of the Port Zone to submit an Annual Ballast Water Summary Report for calendar year 2018. The Coast Guard views this current reporting requirement as unnecessary to analyze and understand ballast water management practices. This proposal would also serve to reduce the administrative burden on the

<sup>90</sup> Form ADV only requires that advisers with significant assets (at least \$1 billion) report the approximate amount of their assets within one of the three ranges (\$1 billion to less than \$10 billion, \$10 billion to less than \$50 billion, and \$50 billion or more). Item 1.O of Part 1A of Form ADV.

regulated population of vessels which are equipped with ballast tanks.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 8, 2018. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before June 8, 2018.

**ADDRESSES:** You may submit comments identified by docket number USCG–2018–0245 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

*Collection of information.* Submit comments on the collection of information discussed in section V.D. of this preamble both to the Coast Guard’s online docket and to the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget using one of the following two methods:

- *Email:* [dhsdeskofficer@omb.eop.gov](mailto:dhsdeskofficer@omb.eop.gov).
- *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

**FOR FURTHER INFORMATION CONTACT:** For information about this document call or email Mr. John Morris, Program Manager, Environmental Standards Division, Coast Guard; telephone 202–372–1402, email [environmental\\_standards@uscg.mil](mailto:environmental_standards@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

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#### **I. Public Participation and Requests for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you

submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions. Documents mentioned in this proposed rule as being available in the docket, and all public comments, will be available in our online docket at <http://www.regulations.gov>, and can be viewed by following that website’s instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or if a final rule is published.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

#### **II. Abbreviations**

BLS	Bureau of Labor Statistics
BWM	Ballast Water Management
CFR	Code of Federal Regulations
COI	Collection of Information
COT	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NANPCA	Non-Indigenous Aquatic Nuisance Prevention and Control Act of 1990
NBIC	National Ballast Information Clearinghouse
NISA	National Invasive Species Act of 1996
OMB	Office of Management and Budget
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

#### **III. Basis and Purpose**

##### *A. Legal Authority*

The Non-Indigenous 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 are not discharged into U.S. waters 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 (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)).

Coast Guard regulations regarding BWM are located in 33 CFR 151, subparts C (§§ 151.1500 through 151.1518) and D (§§ 151.2000 through 151.2080). The regulations we propose to amend, §§ 151.2015 and 151.2060, were issued in 2015 and deal with BWM reporting and recordkeeping requirements. See “Ballast Water Management Reporting and Recordkeeping” final rule (80 FR 73105, Nov. 24, 2015).

You may find a full discussion of the statutory and regulatory history of the Coast Guard’s broader actions to implement both NANPCA and NISA in the preamble of our 2012 final rule, “Standards for Living Organisms in Ships’ Ballast Water Discharged in U.S. Waters,” published on March 23, 2012 (77 FR 17254, 17255).

##### *B. Reason for This Proposed Rule*

We have determined that the annual reporting requirement in § 151.2060 for vessels operating in a single Captain of the Port (COTP) Zone is unnecessary to analyze and understand ballast water management practices and is an unnecessary burden that should be removed. Our proposal to amend §§ 151.2015 and 151.2060 is 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 Aquatic Nuisance Species 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. These reports contain information, specified in § 151.2060(f), about the vessel, the number of ballast tanks, total ballast water capacity, and a record of ballast water loading and discharges. These reports are submitted to the

National Ballast Information Clearinghouse (NBIC).

The annual reports for calendar years 2016, 2017, and 2018, are due on March 31 of the following year. March 31, 2019 is the due date for the last report required by regulation. This proposed rule seeks to eliminate this annual reporting requirement in § 151.2060(e) before the 2018 report is due. It would also amend § 151.2015(c) to exempt vessels that operate on voyages exclusively between ports or places within a single COTP Zone from § 151.2060 reporting requirements.

The Coast Guard is proposing to remove this requirement because it views the existing reporting requirement as not meeting the necessary objective. We have reviewed the 2016 annual reports and have concluded that they do not contribute to the quality and breadth of BWM data as originally intended. A discussion of the objective of this requirement can be found in the preamble of the 2015 final rule.<sup>1</sup> Our objective was to gather a sufficient amount of data without imposing an undue burden on vessels that were otherwise not required to report. However, we have concluded that the current annual reporting data fields are too simplistic to capture vessel movements and ballasting operations in the necessary level of detail. Therefore, we propose to relieve the affected population of the requirement to submit an annual report for calendar year 2018.

We received recommendations supporting this proposed action 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. To view these recommendations, see submissions 102, 143, and 147 under docket number USCG-2017-0480. One commenter correctly points out that a vessel operator cannot indicate in the Annual Ballast Water Summary Report whether the vessel uses water from a U.S. public water system as ballast.

#### IV. Discussion of Proposed Rule

In this section, we describe how we propose to remove the Annual Ballast Water Summary Report requirement through changes to §§ 151.2015 and 151.2060. Our

proposed amendatory instructions and regulatory text appear at the end of this document.

*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 propose to add the reporting requirements in § 151.2060 to this current list of exemptions in § 151.2015(c). Restoring this reporting exemption provision to § 151.2015(c) 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 also propose to amend Table 1 to § 151.2015, which lists specific exemptions for types of vessels. We propose to amend the column “151.2060 (Reporting)” to reflect vessels that operate exclusively on voyages between ports or places within a single COTP Zone are exempt from the reporting requirements in § 151.2060. We would also add a footnote to the table for non-seagoing vessels. This footnote would replace 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 would also apply the footnote to the table’s “151.2060 (Reporting)” column in that row based on our proposed amendment to § 151.2015(c). Non-seagoing vessels are the only category of vessels in the table that may need this potential exemption reminder. The other categories of vessels are either exempt or operate in multiple COTP zones.

*Section 151.2060.* Paragraph (b) of § 151.2060 currently begins with language exempting vessels operating exclusively on voyages between ports or places within a single COTP Zone. We propose to delete this language because it would no longer be needed based on our proposed amendment to § 151.2015(c) that would exempt such vessels from the requirements in § 151.2060. Also, as previously discussed we propose to remove § 151.2060(e) and (f). Paragraph (e) contains the requirement to submit the

Annual Ballast Water Summary Report to the NBIC and paragraph (f) describes the information to be included in that report.

#### V. Regulatory Analyses

The Coast Guard developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

##### A. Regulatory Planning and Review

Executive Orders 13563 (Improving Regulation and Regulatory Review) and 12866 (Regulatory Planning and 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. OMB considers this rule to be an Executive Order 13771 deregulatory action. See OMB’s Memorandum “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017). A regulatory analysis follows.

The Coast Guard considers all estimates and analysis in this regulatory analysis subject to change in consideration of public comments. Table 1 presents a summary of the economic impact of the proposed rule. A detailed description of the estimates follows in the next section.

<sup>1</sup> See 80 FR 73105, 73106.

TABLE 1—SUMMARY OF THE ECONOMIC IMPACT OF THE PROPOSED RULE

Proposed change	Description	Affected population <sup>2</sup>	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 would not have to report their ballast management practices for the final year of a 3-year commitment to report ballasting operations.	67 owners or operators of 166 vessels operating in one COTP Zone.	One-time savings of \$3,461.	The proposed rule would remove the reporting requirement for the remainder of 2018 and provide a one-time partial year savings for owners or operators.

Under this proposed rule, the Coast Guard would 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.

Since 2016, 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 is able to determine the actual number of vessels affected by the 2015 final rule. The NBIC data confirms that 67 owners or operators of 166 U.S.-flagged vessels<sup>3</sup> 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 PROPOSED RULE

Vessel type	Affected population
Tanker—Other .....	1
Tug only .....	57
Offshore supply vessel .....	38
Other (research, fishing, etc.) .....	21
Passenger .....	2

<sup>13</sup> 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 exclusively operate within a single COTP Zone. This proposed rule, in addition to eliminating § 151.2060(e), would also reduce the affected population estimated in the 2015 final rule from 1,280 to 166 vessels.

TABLE 2—U.S.-FLAGGED VESSELS OPERATING EXCLUSIVELY WITHIN A SINGLE COTP ZONE AFFECTED BY THIS PROPOSED RULE—Continued

Vessel type	Affected population
Bulk carrier .....	2
Barge only .....	45
Total .....	166

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 proposed rulemaking has been scheduled to enable the Coast Guard to issue a final rule by the end of fiscal year 2018, which is September 30, 2018, and to make the rule effective October 1, 2018. The current regulation only requires annual reports through the calendar year 2018. Therefore, any realized savings from this proposed rule would account for the last 3 months of calendar year 2018. We estimate that the total time saved by this proposed rule would 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 would be a vessel Captain, Mate or Vessel 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.<sup>4</sup> We calculated the load factor from data collected in the Employer Cost for Employee Compensation survey done by the BLS and applied it to the mean hourly wage rate to obtain a fully loaded wage rate, which more accurately represents the employers' cost per hour for an employee's work.<sup>5</sup> The load factor we used for this economic analysis is 1.52.<sup>67</sup> The loaded mean hourly wage rate used to assess the savings estimates for this proposed 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 proposed rule would reduce industry's economic burden by 58.1 hours (166 vessels × 0.35 hours). We calculate that the dollar value saved would be \$20.85 per vessel (\$59.57 wage × 0.35 hours). The estimated one-time total savings for removing the reporting requirement for the 166 vessels operating exclusively between port or places within a single COTP Zone would be \$3,461 (\$20.85 per vessel savings × 166 vessels) (non-discounted). Table 3 presents the total savings to the affected population.

<sup>4</sup> 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>.

<sup>5</sup> 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.).

<sup>6</sup> From the BLS, Employer Cost for Employee Compensation survey. Total compensation divided by wage and salary compensation.

<sup>7</sup> 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>.

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 .....	0.35
Savings per Vessel (Hours × Loaded Wage Rate) .....	\$20.85
Affected Population .....	166
Total Savings* (Cost per Vessel × Affected Population) .....	\$3,461

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

This proposed rulemaking would not have annual recurring savings. This proposed rule would not require additional Coast Guard resources to implement and would be budget neutral.

In addition, a one-time savings of \$3,461 in 2018 is equivalent to approximately \$197.76 in 2016 dollars using perpetual discounting at 7 percent.

*B. Small Entities*

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As described in the “Regulatory Planning and Review” section, we expect that the savings per vessel would 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 proposed rule, we conclude that this proposed rule would have no cost burden to industry.

Accordingly, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the docket at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would 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 proposed rule. The Coast Guard will not retaliate against small entities that question or complain about this proposed 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 proposed rule would call for a change to an existing 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.

*Title:* Ballast Water Management Reporting and Recordkeeping.  
*OMB Control Number:* 1625–0069.

*Summary of the Collection of Information:* This proposed rule modifies the existing BWM reporting and recordkeeping requirement in § 151.2060(e) which would amend current reporting. 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 current 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 proposed rule would 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 Collection of Information (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 information being 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. Sections 151.2060(e) and (f) are being removed 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, when we published the final rule in 2015, we incorrectly estimated the additional number of respondents in the collection of information to be 1,280. The population of 1,280 was an overestimation by the Coast Guard 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 2015 final rule and 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.<sup>8</sup> Therefore, in order to revert back to the 2015 baseline, we need to subtract the 1,280 respondents we incorrectly estimated in the final rule.<sup>9</sup> 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 proposed rule would only affect 166 respondents

<sup>8</sup> The goal is to revert the COI Control #1625–0069 back to its original collection prior to the 2015 ballast water recordkeeping and reporting final rule.

<sup>9</sup> Appendix A of COI OMB Control No. 1625–0069.

for the last three months of this calendar year. After this time, the approved 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 the below table.

TABLE 4—SUMMARY OF COLLECTION OF INFORMATION, RESPONDENTS

Reporting items (A)	Current COI respondents (B)	NPRM 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:* Reporting requirement under this COI is scheduled to occur annually. This proposed rule would result in current respondents under § 151.2060(e) to be no longer required to maintain and submit BWM information on an annual basis.

*Burden of Response:* The Coast Guard anticipates that the elimination of the rule would decrease burden by approximately 40 minutes per report for vessels with ballast 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 proposed rule would reduce the private sector burden hours for this COI by 58.1 hours (166 vessels × 0.35 hours [3 months of savings]). There are three items associated with this collection of information: Voyage reports, annual reports (which is applicable to this proposed rule), and compliance extension requests. The voyage reports and compliance extension requests are not included in this proposed rule. The burden estimates in this collection of information, stemming from these, would 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 proposed rule, we are accounting for the 58.1 burden hours of reduction in the last three months of

this calendar year only, when the sunset clause becomes effective. To capture this change and to correct for the incorrect hour burden estimate of 858 hours, the total hour burden in the last three months of this year would be about 61,019 hours (61,819 hours – 858 hours + 58 hours). After December 31, 2018, the burden hours will remain at the 2015 baseline level of 60,691 hours, or the current OMB inventory amount, with the subtraction of the 858 hours for the annual reports.

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

TABLE 5—SUMMARY OF COLLECTION OF INFORMATION, BURDEN HOURS

Reporting items (A)	Current COI burden hours (B)	NPRM 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 proposed rule would add 58.1 hours for the last three 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 would no longer be a need to complete annual reports for vessels traveling exclusively between ports or places within a single Captain of the Port Zone.

(b) *Reduction of annual burden due to the elimination of the current rule:* This proposed rule would result in a reduction of annual burden of 58.1 hours for the last three 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 proposed rule to OMB for its review of the collection of information.

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

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could

enforce the collection of information requirements in this proposed rule, OMB would need to approve the Coast Guard's request to collect this information.

*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 proposed 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 proposed rule would revise the Coast Guard's BWM reporting and recordkeeping requirements promulgated under the authority of NANPCA, as amended by NISA. Specifically, we propose to remove 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 Captain of the Port Zone. NANPCA, as amended by NISA, contains a "savings provision" that saves to States their authority to "adopt or enforce control measures" for aquatic nuisance species (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 proposed rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

The Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please contact the person listed in the **FOR FURTHER INFORMATION** section of this preamble.

#### *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 million (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### *G. Taking of Private Property*

This proposed rule would 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 proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

#### *I. Protection of Children*

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

#### *J. Indian Tribal Governments*

This proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *K. Energy Effects*

We have analyzed this proposed rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a "significant energy action" under that order because it is not 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### *M. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction 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 preliminary 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 preliminary Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This proposed rule would be 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 proposed rule involves the removal of the last year of a 3-year annual ballast water reporting requirement. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### **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 proposes to

amend 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, para. 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)”;
  - b. Revise the fourth and sixth rows in table 1 to § 151.2015 to 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 <sup>1</sup>	Applicable <sup>1</sup> .

<sup>1</sup> 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”;
  - b. Remove paragraphs (e) and (f).

Dated: May 4, 2018.

**J. G. Lantz,**  
*Director of Commercial Regulations and Standards.*

[FR Doc. 2018–09877 Filed 5–8–18; 8:45 am]

BILLING CODE 9110–04–P

**DEPARTMENT OF COMMERCE**

**Patent and Trademark Office**

**37 CFR Part 42**

[Docket No. PTO–P–2018–0036]

RIN 0651–AD16

**Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board**

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Patent and Trademark Office (“USPTO” or “Office”) proposes changes to the claim construction standard for interpreting claims in *inter partes* review (“IPR”), post-grant review (“PGR”), and the

transitional program for covered business method patents (“CBM”) proceedings before the Patent Trial and Appeal Board (“PTAB” or “Board”). In particular, the Office proposes to replace the broadest reasonable interpretation (“BRI”) standard for construing unexpired patent claims and proposed claims in these trial proceedings with a standard that is the same as the standard applied in federal district courts and International Trade Commission (“ITC”) proceedings. The Office also proposes to amend the rules to add that the Office will consider any prior claim construction determination concerning a term of the involved claim in a civil action, or an ITC proceeding, that is timely made of record in an IPR, PGR, or CBM proceeding.

**DATES:** *Comment Deadline Date:* The Office solicits comments from the public on this proposed rulemaking. Written comments must be received on or before July 9, 2018 to ensure consideration.

**ADDRESSES:** Comments should be sent by electronic mail message over the internet addressed to: [PTABNPR2018@uspto.gov](mailto:PTABNPR2018@uspto.gov). Comments may also be sent by electronic mail message over the internet via the Federal eRulemaking Portal at <http://www.regulations.gov>. See the Federal eRulemaking Portal website for additional instructions on providing comments via the Federal eRulemaking Portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking

Portal should include the docket number (PTO–P–2018–0036).

Comments may also be submitted by postal mail addressed to: Mail Stop Patent Board, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of “Vice Chief Administrative Patent Judges Michael Tierney or Jacqueline Wright Bonilla, PTAB Notice of Proposed Rulemaking 2018.”

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message to more easily share all comments with the public. The Office prefers the comments to be submitted in plain text, but also accepts comments submitted in searchable ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that accommodates digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Patent Trial and Appeal Board, located in Madison East, Ninth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office’s internet website, <https://go.usa.gov/xXXFW>, and on the Federal eRulemaking Portal. Because comments will be made available for public inspection, information that the submitter does not desire to be made public, such as address or phone