

the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 104

Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels.

33 CFR Part 105

Maritime security, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 160

Administrative practice and procedure; Harbors; Hazardous materials transportation; Marine safety; Navigation (water); Reporting and recordkeeping requirements; Vessels; Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 104, 105, and 160 as follows:

PART 104—MARITIME SECURITY: VESSELS

■ 1. The authority citation for part 104 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 104.105, remove temporary paragraph (a)(12); reinstate temporarily suspended paragraph (a)(9); and revise paragraph (a)(9) to read as follows:

§ 104.105 Applicability.

(a) * * *

(9) Barge carrying certain dangerous cargo in bulk or barge that is subject to 46 CFR Chapter I, subchapter I, that is engaged on an international voyage.

* * * * *

§ 104.115 [Amended]

■ 3. In § 104.115, remove temporary paragraph (d).

§ 104.410 [Amended]

■ 4. In § 104.410, remove temporary paragraph (g).

PART 105—MARITIME SECURITY: FACILITIES

■ 5. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

§ 105.115 [Amended]

■ 6. In § 105.115, remove temporary paragraph (c).

§ 105.410 [Amended]

■ 7. In § 105.410, remove temporary paragraph (g).

PART 160—PORTS AND WATERWAYS SAFETY-GENERAL

■ 8. The authority citation for part 160 is revised to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

■ 9. In § 160.202, revise paragraph (b) to read as follows:

§ 160.202 Applicability.

* * * * *

(b) This subpart does not apply to U.S. recreational vessels under 46 U.S.C. 4301 *et seq.*, but does apply to foreign recreational vessels.

* * * * *

■ 10. In § 160.204, in the definition for “Certain dangerous cargo (CDC)”, remove temporary paragraphs (9) and (10); in the definition for “Certain dangerous cargo (CDC)”, add new paragraphs (8)(ix) and (9); and add a new definition for “Certain dangerous cargo residue (CDC residue)” in alphabetical order to read as follows:

§ 160.204 Definitions.

* * * * *

Certain dangerous cargo (CDC)

* * * * *

(8) The following bulk liquids:

* * * * *

(ix) Propylene oxide, alone or mixed with ethylene oxide.

(9) The following bulk solids:

(i) Ammonium nitrate listed as a Division 5.1 (oxidizing) material in 49 CFR 172.101 that is not certain dangerous cargo residue (CDC residue).

(ii) Ammonium nitrate based fertilizer listed as a Division 5.1 (oxidizing) material in 49 CFR 172.101 that is not CDC residue.

Certain dangerous cargo residue (CDC residue) means ammonium nitrate in bulk or ammonium nitrate based fertilizer in bulk remaining after all saleable cargo is discharged, not exceeding 1,000 pounds in total and not individually accumulated in quantities exceeding two cubic feet.

* * * * *

■ 11. In § 160.210, remove temporary paragraph (e), reinstate temporarily suspended paragraph (a) and revise paragraph (a) to read as follows:

§ 160.210 Methods for submitting an NOA.

(a) *Submission to the National Vessel Movement Center (NVMC)*. Except as

provided in paragraphs (b) and (c) of this section, vessels must submit NOA information required by § 160.206 (entries 1 through 9 in Table 160.206) to the NVMC, United States Coast Guard, 408 Coast Guard Drive, Kearneysville, WV 25430, by:

(1) Electronic submission via the electronic Notice of Arrival and Departure (eNOAD) and consisting of the following three formats:

(i) A Web site that can be used to submit NOA information directly to the NVMC, accessible from the NVMC web site at <http://www.nvmc.uscg.gov>;

(ii) Electronic submission of Extensible Markup Language (XML) formatted documents via web service;

(iii) Electronic submission via Microsoft InfoPath; contact the NVMC at sans@nvmc.uscg.gov or by telephone at 1–800–708–9823 or 304–264–2502 for more information;

(2) E-mail at sans@nvmc.uscg.gov.

Workbook available at <http://www.nvmc.uscg.gov>;

(3) Fax at 1–800–547–8724 or 304–264–2684. Workbook available at <http://www.nvmc.uscg.gov>; or,

(4) Telephone at 1–800–708–9823 or 304–264–2502.

* * * * *

Dated: December 8, 2005.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 05–24126 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 151 and 153

46 CFR Part 4

[USCG–2000–6927]

RIN 1625-AA04 (Formerly RIN 2115-AD98)

Reporting Marine Casualties

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations governing marine casualty reporting requirements by adding “significant harm to the environment” as a reportable marine casualty, and by requiring certain foreign flag vessels, such as oil tankers, to report marine casualties that occur in waters subject to U.S. jurisdiction, but beyond U.S. navigable waters, when those casualties involve material damage affecting the seaworthiness or efficiency of the vessel, or significant

harm to the environment. These changes are required by the Oil Pollution Act of 1990.

DATES: This final rule is effective January 17, 2006.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2000-6927 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Lieutenant Commander Kelly Post, Project Manager, Office of Investigation and Analysis (G-MOA), Coast Guard, telephone 202-267-1418. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-493-0402.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Pursuant to 46 U.S.C. 6101 and Coast Guard regulations, U.S. vessel owners are required to report marine casualties to the Coast Guard. Initially there were four categories of marine casualties that required reporting to the Coast Guard: (1) Death of an individual, (2) serious injury to an individual, (3) material loss of property, and (4) material damage affecting the seaworthiness of the vessel. Section 4106 of the Oil Pollution Act of 1990, Public Law 101-380 (OPA 90), amended 46 U.S.C. 6101 to add "significant harm to the environment" to the list of reportable marine casualties. Additionally, section 4106 extended the requirements for reporting a marine casualty involving "material damage affecting the seaworthiness or efficiency of the vessel" or "significant harm to the environment" to any foreign-flag vessel "constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue" and operating beyond U.S. navigable waters, but within waters subject to the jurisdiction of the United States (principally, the U.S. Exclusive Economic Zone, or EEZ).

The Coast Guard held a public meeting on January 20, 1995, to solicit public comments regarding the requirements of OPA 90. See 59 FR 65522 (December 20, 1994). Subsequently, the Coast Guard published a notice of proposed

rulemaking (NPRM) on November 2, 2000 (65 FR 65808) to solicit comments on amendments to Coast Guard regulations to implement the requirements of OPA 90. The Coast Guard also published a supplemental notice of proposed rulemaking (SNPRM) on July 12, 2001 (66 FR 36530) to solicit comments on federalism issues raised by commenters on the NPRM.

This rule amends Coast Guard regulations as necessary to finalize implementation of the requirements of section 4106 of OPA 90.

Discussion of Comments and Changes

The Coast Guard received 25 letters commenting on the NPRM. Nine letters commented on the Federalism analysis set forth in the NPRM. The comments relating to the Federalism analysis of the NPRM have been discussed in the SNPRM and therefore will not be discussed again in this final rule.

General: Nine commenters expressed general support for the NPRM. One commenter said the basic premise that vessels be subject to reporting requirements for incidents through all navigable waters, including the EEZ, is commendable and should improve the government's ability to respond to incidents, and further our understanding of vessel navigation safety. Another commenter "applauded" our regulation of foreign tank vessels operating within U.S. jurisdiction because such regulation would level the playing field for U.S. marine interests. Five other commenters said foreign vessels plying U.S. waters should have to comply with all the same notification requirements as U.S.-flag vessels.

Ballast water: One commenter asked the Coast Guard to revise the proposed text of 33 CFR 151.15(c)(1) by adding the statement that "this provision does not require reporting of normal or emergency discharges of ballast water during shipping operations." The commenter said such discharges are already covered by 33 CFR part 151, subpart D, and are not normally considered marine casualties. We agree with the commenter that ballast water discharges normally do not constitute marine casualties. However, because nothing in 33 CFR 151.15 amends 33 CFR part 151, subpart D, we see no need to add the requested language.

Industry costs: One commenter said that our estimated burden of response (one hour per form) is not realistic, particularly when the number of people involved in confecting and administering the report form is considered. The estimate of the paperwork burden is an average of the

time and resources likely needed to complete and process report forms currently used by industry to collect information about a wide range of casualties with various impacts. In some cases, the form will take longer to complete and involve more than one person, particularly for casualties with extensive impacts. In other cases, it will take less time and involve only one person, particularly for casualties with small or no impacts.

One commenter said that neither the NPRM's discussion of costs generally, nor of small entity costs in particular, addressed the implied new reporting mandates of 46 CFR 4.03-1(b). Title 46 CFR 4.03-1 does not establish new reporting mandates; rather reporting requirements are provided in 46 CFR 4.05. The NPRM proposed new reporting requirements for occurrences involving significant harm to the environment and material damage to foreign tank vessels operating within the EEZ. The NPRM describes the total industry cost and the impact on small entities as the increase in paperwork burden due to the proposed new reporting requirements.

Duplicative reporting: Eleven commenters remarked on what they considered to be duplicative reporting requirements in the NPRM. One commenter saw our proposal as adding to the paperwork burden affecting U.S. waters generally and the Mississippi River system in particular. Four said that submission of casualty reports is a process that needs to be simplified and streamlined, and that our proposal goes in the wrong direction. Two said they had been advised of Coast Guard plans to initiate a rulemaking to reduce the number of written reports required, while a third said that a comprehensive approach to reforming marine casualty reporting standards is long overdue and that tacking additional requirements onto an antiquated reporting regimen distracts the Coast Guard and responsible industry members from efficiently exchanging information needed to protect the marine environment. All three of these commenters asked us to move quickly with these reform efforts. We consider the streamlining of the marine casualty reporting process to be a continuing project that exceeds the scope of the present rulemaking. We disagree that the present rulemaking goes in the wrong direction. Instead, this final rule extends well-established procedures for reporting marine casualties to events involving significant harm to the environment, in line with statutory requirements.

Four commenters said that Coast Guard pollution investigators already record comprehensive amounts of information when executing their response and investigation responsibilities, and asked what possible benefit the Coast Guard could derive from having the responsible party give this information again via a "one size fits all" marine casualty report form like Form CG-2692. We believe the public, the Coast Guard, and the responsible party all benefit from the marine casualty report. The report gives the marine industry a nationally consistent tool for describing an incident accurately and quickly, and in the responsible party's own words. The report is an important and unique component of the investigative file, not a redundancy.

One commenter was concerned that by creating dual reporting and investigative requirements for oil spills under both 33 CFR 151.15 and 153.203 and 46 CFR part 4, we have set up a situation where operators may comply with one of the reporting requirements but not the other, exposing themselves to potential civil penalties. This commenter said we should put the reporting requirements in one section or another, but not in both. We have embedded cross-references in 33 CFR 151.15(g), 33 CFR 153.203, and 46 CFR 4.05-1(c). Notification reports made under 33 CFR 151.15 and 153.203 will satisfy the reporting requirements in 46 CFR 4.05. However, reports made under 46 CFR 4.05 will not satisfy the notification requirements in 33 CFR 151.15 and 153.203, but, if a discharge is reported to us under 46 CFR 4.05, we will notify the party of its reporting responsibilities under 33 CFR 151.15 and 153.203.

One commenter asked us to revise 46 CFR 4.05-1(c) by inserting "and the written requirements specified in 46 CFR 4.05-10" after "immediate notification requirement of this section," and by adding "and does not involve any other marine casualty as defined in 46 CFR 4.03-1." The commenter said these changes would more clearly state the intent of the regulation and would eliminate the possibility of redundant initial verbal notification and the unnecessary submission of Form CG-2692. We agree with the commenter that paragraph (c) should apply only if the marine casualty exclusively involves significant harm to the environment, and we have revised paragraph (c) accordingly. We do not agree that a report made under 33 CFR 153.203, 40 CFR 117.21, or 40 CFR 302.6 should satisfy 46 CFR 4.05-10 as well as 4.05-1, because 46 CFR 4.05-

10(a) provides for a situation in which immediate notice is given under § 4.05-1, but complete information for the marine casualty report (and its addenda) is not available until later. We want to preserve that two-tiered approach. The existing language of 46 CFR 4.05-10(b) states that, if filed without delay after the occurrence of the marine casualty, the report required by 46 CFR 4.05-10 also suffices as the immediate notification required by 46 CFR 4.05-1.

Existing authority: Two commenters said the Coast Guard already has authority allowing us to require immediate notification of incidents that could threaten the environment. One commenter said that 33 U.S.C. 1321 (b)(5) and (d)(2)(D) provide the Coast Guard with that authority and therefore we do not need to adopt a new rule that raises federalism issues. The other said that OPA 90 does not mandate a redundant, unnecessary, and speculative requirement that overlaps with existing reporting requirements contained in 46 CFR 4.05-1, 49 CFR 176.48, 33 CFR 151.26, 33 CFR 153.203, and 33 CFR 155.1040. We addressed the federalism issues raised by the first commenter in our SNPRM. With respect to 33 U.S.C. 1321, while it does contain requirements similar to those contained in OPA 90 (explaining the overlap with existing regulations noted by the second commenter), this section does not apply to foreign vessels that operate in "waters under U.S. jurisdiction" that are not "navigable waters of the United States." OPA 90 extends coverage to such vessels.

Great Lakes and internal waters: One commenter asked the Coast Guard to address two questions. First, is a vessel that generally operates on the ocean, but occasionally operates in the Great Lakes or U.S. internal waters, subject to 33 CFR 151.15 on those occasions? Second, is a vessel operating under a foreign authority subject to 33 CFR 151.15 when it operates in the Great Lakes (presumably on the U.S. side of the international boundary) or in U.S. internal waters? We consider the answer to be "yes" in both cases, provided the vessel is not specifically exempted by 33 CFR 151.09(b).

Highways: Two commenters compared the regulation of marine commerce with highway regulations, saying it seems odd that the "most environmentally friendly" transportation system is held under microscopic examination while highway runoff from land based transportation is not. The Coast Guard notes that these comments are outside of the scope of the present rulemaking and beyond the jurisdiction of the Coast

Guard's authority. We consider the required report on marine casualties to be essential to the Coast Guard's performance of its statutory duties for the protection of marine safety and the environment.

Inconsistent application: Four commenters complained that inconsistencies among Coast Guard officials in applying the reporting criteria are rampant. These comments are beyond the scope of this rulemaking; however, you can address comments or complaints about how reporting criteria are applied to United States Coast Guard Headquarters (G-MOA), 2100 Second Street, SW., Washington, DC 20593 or by e-mail at fldr-G-MOA@comdt.uscg.mil.

Procedure: One commenter said our proposed changes to 46 CFR 4.03-1(b) added or changed reporting requirements that were not identified in the original meeting notice or in the NPRM, and that were not justified by any discussion of need, goals, or alternatives considered. No reporting requirements were proposed in 46 CFR 4.03-1(b); the new proposed reporting requirements in 46 CFR 4.05 were discussed fully in the NPRM preamble. The NPRM proposed only one substantive change to 46 CFR 4.03-1(b): the addition of paragraph (b)(1)(xii), which adds any incident involving significant harm to the environment. That change also was amply discussed in the NPRM preamble. We also rewrote the section and changed some of the illustrations of events that would constitute a marine casualty or accident, but neither in the former 46 CFR 4.03-1 nor in the new version are these illustrations intended to limit the definition of a marine casualty or accident. It is true that former section 4.03-1 defined a marine casualty or accident to "mean any casualty or accident involving any vessel * * *" while the new version says that the term "applies to events caused by or involving a vessel" * * *. However, dictionary definitions of "involving" include "to have an effect on," so we do not think there is, and did not intend there to be, any substantive difference between the two versions of section 4.03-1 on this count. See Merriam-Webster Online, <http://www.m-w.com>, last checked on Aug. 19, 2005.

Recreational boaters: Two commenters complained that the regulatory burden imposed on industry by rulemakings like this one is not imposed on recreational boaters who, according to the commenters, do not need to be licensed, do not understand the rules of the road, and have nothing to lose from noncompliance with

standards that apply to industry. The present rulemaking applies only to vessels covered by 33 CFR parts 151 and 153, and 46 CFR part 4. To the extent those parts do not apply to recreational boaters, those boaters remain subject to other Federal and State statutory and regulatory controls, including the casualty and accident reporting provisions of 33 CFR part 173.

Requiring other casualties: One commenter said we should amend the rule so that a written report is not required for any actual or potential discharge that does not involve some other marine casualty required to be reported under 46 CFR 4.05–1. We decline to adopt this recommendation because we think it would weaken the apparent intent of OPA 90 to equate “significant harm to the environment” with the other marine casualties listed in 46 U.S.C. 6101(a). In our view, the statute requires a report to be filed when any one of the listed casualties occurs. The requirement is not conditioned upon the presence of multiple events or aggravating factors.

Significant harm: Eight commenters asked for or suggested clarification on the meaning of “significant harm to the environment.” Five said that the Environmental Protection Agency’s definition of significant harm (40 CFR 110.3) is neither reasonable nor appropriate for marine casualty considerations. These five said it is unreasonable that sheen coming from a properly greased but broken rudder stock would meet our proposed definition, as would an eyedropper discharge of diesel fuel or a drop of oil from a \$20 hydraulic steering hose rupture, or any small amount of oil from a commercial source, but that the release of 4,999 lbs. of ammonium sulfate would not meet the definition. We believe 46 CFR 4.03–65 adequately and appropriately defines significant harm to the environment by referencing 40 CFR 110.3 and other existing regulations. The significance of an environmental marine casualty is not necessarily a function of the quantities discharged or of the reasons for the discharge. Information about the causes of a discharge, or measures taken to prevent or abate the discharge, can be given in the marine casualty report itself. Whether discharge of small amounts of ammonium sulfate should also constitute an environmental marine casualty is beyond the scope of this rulemaking.

Three commenters said the NPRM was directly inconsistent with recent Coast Guard initiatives to better align marine casualty investigation and reporting procedures with legitimate

marine safety goals and with a Coast Guard policy against investigating minor incidents where reports provide little or no useful information for improving marine safety. We see no inconsistency. This rule aligns existing regulations with OPA 90’s inclusion of significant harm to the environment in the list of reportable marine casualties under 46 U.S.C. 6101(a). This rule does not alter the Coast Guard’s processing of marine casualty reports or our procedures for determining which reported marine casualties will be investigated.

One commenter said it will report all discharges or probable discharges, but that to require written reports for minor matters will be counterproductive to practical considerations and will not result in any meaningful protection of the environment. It may be that not all marine casualty reports will result in meaningful safety improvements, but reporting requirements are well established and help insure the timely availability of information that may prove critical, either to immediate response efforts or to longer term marine safety programs. This final rule simply extends those established requirements to environmental marine casualties.

One commenter said the Coast Guard should align the definition of “significant harm to the environment” with our existing definition of a major oil spill or chemical release, in lieu of any violation of the Clean Water Act. We note that amended 46 CFR 4.03–65 is aligned with several existing definitions of prohibited discharge. The amended regulation refers to the definition of harmful oil discharges in 40 CFR 110.3, to rules for determining reportable quantities of hazardous substances in 40 CFR part 117, to oil discharge limitations in 33 CFR 151.10 and 33 CFR 151.13, and to noxious liquid substance discharge limitations in 46 CFR 153.1126 and 153.1128.

One commenter suggested amending proposed 33 CFR 151.15(c)(1) by inserting “as set forth in 40 CFR 110.3” after “[a] discharge of oil,” and by inserting “in quantities equal to or exceeding, in any 24-hour period, the reportable quantity determined in 40 CFR part 117” after “hazardous substances.” Reports under § 151.15(c)(1) are required only when a discharge results from damage to the vessel (or its equipment), or from efforts to secure vessel safety or save a life at sea. The Coast Guard understands that under such emergency conditions, which may pose an imminent risk to vessel safety and human life, vessel personnel may be unable to devote their primary attention to avoidance or

mitigation of environmental damage. However, precisely because these circumstances can give way to unintended environmental consequences, we think it is important to require reports even though the discharge may not rise to the levels specified in 40 CFR 110.3 or 40 CFR part 117.

Regulatory Evaluation

Executive Order 12866, “Regulatory Planning and Review”, 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is “significant” and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This final rule is considered to be a “significant regulatory action” under Executive Order 12866. Accordingly, this final rule has been reviewed by OMB.

The following is a discussion of the expected costs and benefits of the rule.

Costs

We estimate that the rule imposes an additional 1,570 hours per year of annual paperwork requirements on the domestic industry. These paperwork requirements are further discussed under the collection-of-information section. Assuming one hour of staff time has a value of \$45, an additional 1,570 hours equates to an aggregate domestic industry cost of \$70,650 per year. Additionally, this rule will require an estimated 186 hours of annual paperwork requirements on foreign industry equating to \$8,370. The total cost to industry, domestic and foreign, is estimated to be \$79,020 annually for a total of 1,756 hours per year.

Benefits

The measures in this rule are mandated by OPA 90. The primary benefit of this rule is the establishment of standardized reporting requirements that address the Coast Guard’s need to track and investigate events that cause “significant harm to the environment.”

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this 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.

The estimated annual impact to U.S. industry of this rule is \$70,650. The measures included in this proposed rule are mandated by OPA 90. Small entities involved in "significant harm to the environment" incidents will be required to prepare a form which will take approximately one hour of staff time to complete. One hour of staff time is valued at \$45. Therefore, the cost per incident of this rule is \$45. If a small entity is not involved in a "significant harm to the environment" incident, this rule will have zero cost.

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

Assistance for Small Entities

Under § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. The NPRM provided small businesses, organizations or governmental jurisdictions a Coast Guard contact to ask questions concerning this rule's provisions or options for compliance. We received no public comments in response to the NPRM regarding any impact on small entities. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Commander Kelly Post, Project Manager, Office of Investigation and Analysis (G-MOA), Coast Guard, telephone 202-267-1418. 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).

Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). As defined in 5 CFR 1320.3(c),

"collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This rule modifies an existing OMB-approved collection 1625-0001. A summary of the revised collection follows.

OMB Control Number: 1625-0001 [formerly 2115-0003].

Title: Marine Casualty Information & Periodic Chemical Drug and Alcohol Testing of Commercial Vessel Personnel.

Summary of the Collection of Information: The Marine Casualty Information portion of this Collection of Information requires foreign-flag tank vessels operating in the U.S. EEZ to report a marine casualty involving either "significant harm to the environment" or material damage affecting the seaworthiness or efficiency of a vessel. This collection also requires U.S.-flag vessels operating anywhere to report a marine casualty involving "significant harm to the environment".

Need for Information: To help the Coast Guard track and investigate marine casualties that may result in significant harm to the environment, and lessen the effects by requiring timely notification needed to ensure a timely and appropriate pollution response clean-up.

Proposed Use of Information: Assist the Coast Guard's efforts to track and help determine the level of investigation needed for reportable marine casualties that may result in significant harm to the environment.

Description of the Respondents: All U.S.-flag vessel operators anywhere, or foreign-flag vessels in the navigable waters of the U.S., involved in a marine casualty involving an actual or probable discharge of oil, hazardous substances, marine pollutants, or noxious liquid substances, as well as foreign-flag tank vessels operating within the EEZ that are involved in a marine casualty resulting in either material damage affecting the seaworthiness or efficiency of the vessel or "significant harm to the environment" within the EEZ.

Number of Respondents: The total number of casualty events used to determine the change in annual paperwork requirements for this rule for both U.S.-flag vessels and foreign-flag

tank vessels is 1,756. This number represents the 5-year average of U.S. flag-vessels pollution events (1,570) during the years 1993 through 1997 plus the 5-year average of marine casualty events for foreign-flag tank vessels operating in U.S. navigable waters, including the EEZ, of 186 events. The information was retrieved from the U.S. Coast Guard Marine Safety Management System Data Base. The existing OMB-approved number of respondents is 33,189. This rule will increase the number by 1,756. With this rule's submission we are also taking into account a program change of removing the Management Information System (MIS) respondents of 830 (See Chemical Testing final rule; USCG 2003-16414; February 11, 2004; 69 FR 6575). The total number of respondents is 34,115.

Frequency of Response: This rule will change existing reporting requirements by adding reports of "significant harm to the environment" incidents involving U.S.-flag vessels or marine casualty incidents involving foreign-flag tank vessels involved in a marine casualty resulting in material damage affecting the seaworthiness of the vessel or significant harm to the environment in waters subject to the jurisdiction of the U.S. including the EEZ. The existing OMB-approved number of responses is 181,089. This rule will increase the number by 1,756. With this rule's submission we are also taking into account a program change of removing the MIS responses of 830. The total number of responses is 182,015.

Burden of Response: Approximately one hour per form.

Estimated Total Annual Burden: The existing OMB-approved annual burden is 19,195 hours. This rule will increase the number by 1,756 hours. With this rule's submission we are also taking into account a program change of removing the MIS annual burden of 2,075 hours. The total annual burden is 18,876 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has approved the collection. The section numbers are 33 CFR 151.15, 153.203 and 46 CFR 4.05-1. The corresponding approval number from OMB is OMB Control Number 1625-0001 [formerly 2115-0003].

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

A rule has implications for federalism under Executive Order 13132 if the rule has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. The law is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. The law also is well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 6101, 7101 and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel certification, manning and the reporting of marine casualties on vessels), and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. See *United States v. Locke and Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (2000)). This final rule concerns the reporting of marine casualties, including the reporting of casualties causing significant harm to the marine environment. Because States may not regulate within this category, preemption under Executive Order 13132 is not an issue.

However, the determination that States are precluded from regulating in the category of marine casualty reporting does not impact the ability of a State to require reports of the discharge, or the substantial threat of a discharge of oil. Pursuant to Section 1018 of OPA 90, States retain their rights to impose additional requirements regarding reports of the discharge or substantial threat of a discharge of oil for the purpose of responding to the discharge or substantial threat of a discharge and instituting liability and compensation proceedings, providing those requirements do not touch on preempted categories described in the *Locke* decision. Therefore, present and future State discharge reporting requirements that do not touch on the preemptive marine casualty reporting category are unaffected by the *Locke* decision and this rule, so in that regard, this rule likewise has no implications for federalism.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal

governments, in the aggregate, or by the private sector of more than \$100 million in any one year (adjusted for inflation with 1995 base year). Before promulgating a rule for which a written statement is needed, section 205 of UMRA requires an agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome option that achieves the objective of the rule. Section 205 allows an agency to adopt an alternative, other than the least costly, most cost-effective, or least burdensome option if the agency publishes an explanation with the final rule.

This final rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector of more than \$100 million in any one year. Therefore, the Coast Guard has not prepared a written assessment under UMRA.

Taking of Private Property

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

Civil Justice Reform

This 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.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply,

Distribution, or Use. We have determined that this final rule is not a “significant energy action” under that Order. Although this final rule is a “significant regulatory action” under Executive Order 12866, the rule only affects the issuance of credentials to merchant mariners and therefore is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated this final rule as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) 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.

Environment

We considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.1D, this final rule is categorically excluded from further environmental documentation. This rule will add a requirement to report marine casualties involving “significant harm to the environment” and for foreign flag tank vessels operating in waters subject to U.S. jurisdiction but beyond U.S. navigable waters to report material damage affecting the seaworthiness or efficiency of the vessel. A “Categorical Exclusion Determination” is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 151

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

33 CFR Part 153

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 4

Administrative practice and procedure, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 151 and 153, and 46 CFR part 4 as follows:

Title 33—Navigation and Navigable Waters**PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER**

■ 1. Revise the authority citation for subpart A of part 151 to read as follows:

Authority: 33 U.S.C. 1321, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227 (110 Stat. 3034); E.O. 12777, 3 CFR, 1991 Comp. p. 351; Department of Homeland Security Delegation No. 170.1.

■ 2. In § 151.05, add the definition of “marine pollutant”, in alphabetical order, to read as follows:

§ 151.05 Definitions.

* * * * *

Marine pollutant means a harmful substance in packaged form, as it appears in Appendix B of 49 CFR 172.101.

* * * * *

■ 3. Revise § 151.15 to read as follows:

§ 151.15 Reporting requirements.

(a) The master, person in charge, owner, charterer, manager, or operator of a vessel involved in any incident described in paragraph (c) of this section must report the particulars of the incident without delay to the fullest extent possible under the provisions of this section.

(b) If a vessel involved in an incident is abandoned, or if a report from that vessel is incomplete or unattainable, the owner, charterer, manager, operator, or their agent must assume the obligations placed upon the master or other person having charge of the vessel under provisions of this section.

(c) The report must be made whenever an incident involves—

(1) A discharge of oil, hazardous substances, marine pollutants, or noxious liquid substances (NLS) resulting from damage to the vessel or

its equipment, or for the purpose of securing the safety of a vessel or saving a life at sea;

(2) A discharge of oil in excess of the quantities or instantaneous rate permitted in §§ 151.10 or 151.13 of this chapter, or NLS in bulk, in 46 CFR 153.1126 or 153.1128, during the operation of the vessel;

(3) A discharge of marine pollutants in packaged form; or

(4) A probable discharge resulting from damage to the vessel or its equipment. The factors you must consider to determine whether a discharge is probable include, but are not limited to—

(i) Ship location and proximity to land or other navigational hazards;

(ii) Weather;

(iii) Tide current;

(iv) Sea state;

(v) Traffic density;

(vi) The nature of damage to the vessel; and

(vii) Failure or breakdown aboard the vessel of its machinery or equipment. Such damage may be caused by collision, grounding, fire, explosion, structural failure, flooding or cargo shifting or a failure or breakdown of steering gear, propulsion, electrical generating system or essential shipboard navigational aids.

(d) Each report must be made by radio whenever possible, or by the fastest telecommunications channels available with the highest possible priority at the time the report is made to—

(1) The appropriate officer or agency of the government of the country in whose waters the incident occurs; and

(2) The nearest Captain of the Port (COTP) or the National Response Center (NRC), toll free number 800–424–8802 (in Washington, DC, metropolitan area, 202–267–2675), fax number 202–479–7165, telex number 892427 for incidents involving U.S. vessels in any body of water; or incidents involving foreign flag vessels in the navigable waters of the United States; or incidents involving foreign-flag tank vessels within waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ).

(e) Each report must contain—

(1) The identity of the ship;

(2) The type of harmful substance involved;

(3) The time and date of the incident;

(4) The geographic position of the vessel when the incident occurred;

(5) The wind and the sea condition prevailing at the time of the incident;

(6) Relevant details respecting the condition of the vessel;

(7) A statement or estimate of the quantity of the harmful substance

discharged or likely to be discharged into the sea; and

(8) Assistance and salvage measures.

(f) A person who is obligated under the provisions of this section to send a report must—

(1) Supplement the initial report, as necessary, with information concerning further developments; and

(2) Comply as fully as possible with requests from affected countries for additional information concerning the incident.

(g) A report made under this section satisfies the reporting requirements of § 153.203 of this chapter and of 46 CFR 4.05–1 and 4.05–2, if required under those provisions.

§ 151.45 [Removed]

■ 4. Remove § 151.45.

PART 153—CONTROL OF POLLUTION BY OIL AND HAZARDOUS SUBSTANCES, DISCHARGE REMOVAL

■ 5. Revise the authority citation for part 153 to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 1321, 1903, 1908; 42 U.S.C. 9615; 46 U.S.C. 6101; E.O. 12580, 3 CFR, 1987 Comp., p. 193; E.O. 12777, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ 153.203 [Amended]

■ 6. In § 153.203, after the words “notifies the NRC as soon as possible.” add the words “A report made under this section satisfies the reporting requirements of § 151.15 of this chapter and of 46 CFR 4.05–1, if required under that provision.”

Title 46—Shipping**PART 4—MARINE CASUALTIES AND INVESTIGATIONS**

■ 7. Revise the authority citation for part 4 to read as follows:

Authority: 33 U.S.C. 1231, 1321; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; Department of Homeland Security Delegation No. 170.1. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); Department of Homeland Security Delegation No. 0170.1.

■ 8. Revise § 4.03–1 to read as follows:

§ 4.03–1 Marine casualty or accident.

Marine casualty or accident means—

(a) Any casualty or accident involving any vessel other than a public vessel that—

(1) Occurs upon the navigable waters of the United States, its territories or possessions;

(2) Involves any United States vessel wherever such casualty or accident occurs; or

(3) With respect to a foreign tank vessel operating in waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ), involves significant harm to the environment or material damage affecting the seaworthiness or efficiency of the vessel.

(b) The term "marine casualty or accident" applies to events caused by or involving a vessel and includes, but is not limited to, the following:

(1) Any fall overboard, injury, or loss of life of any person.

(2) Any occurrence involving a vessel that results in—

- (i) Grounding;
- (ii) Stranding;
- (iii) Foundering;
- (iv) Flooding;
- (v) Collision;
- (vi) Allision;
- (vii) Explosion;
- (viii) Fire;

(ix) Reduction or loss of a vessel's electrical power, propulsion, or steering capabilities;

(x) Failures or occurrences, regardless of cause, which impair any aspect of a vessel's operation, components, or cargo;

(xi) Any other circumstance that might affect or impair a vessel's seaworthiness, efficiency, or fitness for service or route; or

(xii) Any incident involving significant harm to the environment.

(3) Any occurrences of injury or loss of life to any person while diving from a vessel and using underwater breathing apparatus.

(4) Any incident described in § 4.05–1(a).

■ 9. Add § 4.03–60 to read as follows:

§ 4.03–60 Noxious liquid substance (NLS).

Noxious liquid substance (NLS) means—

(a) Each substance listed in 33 CFR 151.47 or 151.49;

(b) Each substance having an "A," "B," "C," or "D" beside its name in the column headed "IMO Annex II pollution category" in table 1 of part 153 of this chapter; and

(c) Each substance that is identified as an NLS in a written permission issued under § 153.900(d) of this chapter.

■ 10. Add § 4.03–65 to read as follows:

§ 4.03–65 Significant harm to the environment.

Significant harm to the environment means—

(a) In the navigable waters of the United States, a discharge of oil as set

forth in 40 CFR 110.3 or a discharge of hazardous substances in quantities equal to or exceeding, in any 24-hour period, the reportable quantity determined in 40 CFR part 117;

(b) In other waters subject to the jurisdiction of the United States, including the EEZ—

(1) A discharge of oil in excess of the quantities or instantaneous rate permitted in 33 CFR 151.10 or 151.13 during operation of the ship; or

(2) A discharge of noxious liquid substances in bulk in violation of §§ 153.1126 or 153.1128 of this chapter during the operation of the ship; and

(c) In waters subject to the jurisdiction of the United States, including the EEZ, a probable discharge of oil, hazardous substances, marine pollutants, or noxious liquid substances. The factors you must consider to determine whether a discharge is probable include, but are not limited to—

- (1) Ship location and proximity to land or other navigational hazards;
- (2) Weather;
- (3) Tide current;
- (4) Sea state;
- (5) Traffic density;
- (6) The nature of damage to the vessel; and
- (7) Failure or breakdown aboard the vessel, its machinery, or equipment.

■ 11. Add § 4.03–70 to read as follows:

§ 4.03–70 Tank vessel.

Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil, hazardous substances, marine pollutants, or noxious liquid substances, in bulk as cargo or cargo residue.

§ 4.05–1 [Amended]

■ 12. In § 4.05–1, in paragraph (a)(2), remove the number "(7)" and add, in its place, the number "(8)"; and add paragraphs (a)(8) and (c) to read as follows:

§ 4.05–1 Notice of marine casualty.

(a) * * *

(8) An occurrence involving significant harm to the environment as defined in § 4.03–65.

* * * * *

(c) Except as otherwise required under this subpart, if the marine casualty exclusively involves an occurrence or occurrences described by paragraph (a)(8) of this section, a report made pursuant to 33 CFR 153.203, 40 CFR 117.21, or 40 CFR 302.6 satisfies the immediate notification requirement of this section.

■ 13. Add § 4.05–2 to read as follows:

§ 4.05–2 Incidents involving foreign tank vessels.

(a) *Within the navigable waters of the United States, its territories, or possessions.* The marine casualty reporting and investigation criteria of this part apply to foreign tank vessels operating on the navigable waters of the United States, its territories, or possessions. A written marine casualty report must be submitted under § 4.05–10 of this chapter.

(b) *Outside the U.S. navigable waters and within the Exclusive Economic Zone (EEZ).* The owner, agent, master, operator, or person in charge of a foreign tank vessel involved in a marine casualty must report under procedures detailed in 33 CFR 151.15, immediately after addressing resultant safety concerns, whenever the marine casualty involves, or results in—

(1) Material damage affecting the seaworthiness or efficiency of the vessel; or

(2) An occurrence involving significant harm to the environment as a result of a discharge, or probable discharge, resulting from damage to the vessel or its equipment. The factors you must consider to determine whether a discharge is probable include, but are not limited to—

- (i) Ship location and proximity to land or other navigational hazards;
- (ii) Weather;
- (iii) Tide current;
- (iv) Sea state;
- (v) Traffic density;
- (vi) The nature of damage to the vessel; and
- (vii) Failure or breakdown aboard the vessel, its machinery, or equipment.

Dated: December 8, 2005.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 05–24125 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–05–106]

RIN 1625–AA11

Regulated Navigation Area; East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated