



Coast Guard Issues Final Rule on Ballast Water Management

New Development

On March 23, 2012, the Coast Guard issued a long awaited Final Rule, Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters, amending the existing ballast water management ("BWM") regulations and creating a standard for the allowable concentration of living organisms in ballast water discharged in U.S. waters consistent with the International Maritime Organization's International Convention for the Control and Management of Ships' Ballast Water and Sediments ("BWM Convention"). Of note, the Final Rule does not contain the additional more stringent Phase 2 standard that was contained in the Coast Guard's proposed rule. The Final Rule requires all vessels, with certain exemptions, to install and operate an approved ballast water management system ("BWMS") to discharge ballast water in U.S. waters. The rule is effective on June 21, 2012, though the particular requirements are phased in over a several year period. The Final Rule can be viewed [here](#).

Background

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 ("NANPCA"), as amended by the National Invasive Species Act of 1996 ("NISA"), authorized the Coast Guard to develop a regulatory program to prevent the introduction and spread of aquatic nuisance species. The Coast Guard issued regulations and guidelines for ballast water management, as well as requirements for reporting and recordkeeping. NISA further

requires reassessment and revision, if necessary, of the BWM regulations every three years based upon the best scientific information available at the time.

Prior to this rulemaking, the Coast Guard reviewed the results of a variety of studies that indicated that the effectiveness of the current BWM regime—ballast water exchange—varies greatly depending on the design of the vessel, the exchange method, and the configuration of the ballasting system. Due to these variations, the Coast Guard concluded that while it was a "useful interim management practice," ballast water exchange is not the best means to meet the requirements of NISA. The Coast Guard also concluded that establishing a standard for the concentration of living organisms that can be discharged in ballast water better advances the intent of NISA and provides simple standards for Coast Guard approval of BWMSs.

New Requirements

Ballast Water Management

The Final Rule requires all vessels equipped with ballast tanks and bound for or departing U.S. ports, with certain exemptions, to utilize one of the following BWM methods:

1. Install and operate a BWMS that has been approved by the Coast Guard.
2. Use only water from a U.S. public water system as ballast water. Vessels using water from a U.S. public water system must meet certain tank cleanliness requirements and use such water exclusively.

3. Perform complete ballast water exchange in an area 200 nautical miles from any shore prior to discharging ballast water unless the vessel is required to employ an approved BWMS. An alternative management system ("AMS") may also be used so long as it was installed on the vessel prior to the date the vessel is required to comply with the BWDS.
4. Do not discharge ballast water into U.S. waters.
5. Discharge all ballast water to an onshore facility or another vessel for treatment.

The Coast Guard has clarified in the Final Rule that discharge of ballast water into waters of the U.S. is a threshold requirement for installation of a BWMS and not simply the presence of ballast tanks on a vessel. A vessel's compliance date varies based upon the date of construction and ballast water capacity. All new vessels constructed on or after December 1, 2013, regardless of ballast water capacity, must comply on delivery. Existing vessels with a ballast water capacity between 1500 and 5000 cubic meters must comply by the first scheduled drydocking after January 1, 2014. Existing vessels with a ballast water capacity less than 1500 cubic meters or greater than 5000 cubic meters must comply by the first scheduled drydocking after January 1, 2016.

Prior to the applicable compliance date, vessels also have the option to perform a complete ballast water exchange in an area 200 nautical miles from any shore prior to discharging ballast water, consistent with existing requirements.

If a vessel intends to install a BWMS prior to its compliance date and the Coast Guard has not yet approved systems appropriate for the vessel's class or type, the vessel may install an Alternate Management System ("AMS") that has been approved by a foreign administration pursuant to the BWM Convention, if the Coast Guard determines it is at least as effective as ballast water exchanges. If an AMS is installed prior to the applicable compliance date, it may be used until five years after the compliance date, which should provide sufficient time for the manufacturer to obtain Coast Guard approval. At present, there are no Coast Guard approved BWMSs in place, however, there are 19 foreign systems approved pursuant to the BWM Convention.

Coast Guard approved BWMSs must meet the following ballast water discharge standards:

1. For organisms greater than or equal to 50 micrometers in minimum dimension: Discharge must include fewer than 10 organisms per cubic meter of ballast water.
2. For organisms less than 50 micrometers and greater than or equal to 5 micrometers: Discharge must include fewer than 10 organisms per milliliter of ballast water.

3. Toxigenic *Vibrio cholera* (serotypes O1 and O139) must have a concentration of less than one colony forming unit per 100 milliliters.
4. *Escherichia coli* must have a concentration of less than 250 colony forming units per 100 milliliters.
5. Intestinal enterococci must have a concentration of less than 100 colony forming units per 100 milliliters.

BWMS manufacturers must meet a variety of design, construction, and testing procedures detailed in the Final Rule to attain Coast Guard approval. The Coast Guard does not anticipate having U.S. approved systems prior to 2015.

The Final Rule requires the Coast Guard to conduct a practicality review to determine whether technology is available to meet more stringent discharge standards and can be accurately tested and measured. The Coast Guard must publish the findings of this review no later than January 1, 2016. If the Coast Guard finds a significantly more stringent standard can be practically implemented, it must initiate a rulemaking no later than January 1, 2017.

General Nonindigenous Species Reduction Practices

The Final Rule requires all vessels equipped with ballast water tanks that discharge ballast water in U.S. waters to follow a number of general nonindigenous species reduction practices. These include practices such as:

- Avoiding or minimizing the uptake of ballast water in a variety of situations;
- Avoiding the uptake or discharge of ballast water near marine sanctuaries, preserves, parks, and reefs;
- Cleaning ballast tanks regularly to remove sediments;
- Discharging only the minimal amount of ballast water essential for operations;
- Rinsing anchors and anchor chains when retrieved;
- Removing fouling organisms from the hull, piping and tanks on a regular basis;
- Maintaining a ballast water management plan developed specifically for the vessel; and
- Training of the master and crew.

Recordkeeping and Reporting

The Final Rule requires all vessels bound for a port or place in the United States to maintain a variety of written records regarding the vessel, voyage, ballast water capacity, BWM, and details of the ballast water to be discharged into U.S. waters. The records must be certified by the master, owner, operator, agent, person in charge, or responsible officer as accurate. The records must be retained

onboard for two years. In addition, the Final Rule requires all vessels bound for ports or places in the United States, regardless of whether the vessel operated outside the Exclusive Economic Zone (“EEZ”), to submit vessel and BWM information to the Coast Guard at least 24 hours prior to arrival.

Exemptions

Certain vessels are exempt from all or portions of the Final Rule. Department of Defense and Coast Guard vessels, vessels of the Armed Forces, and vessels owned or operated by a foreign state and used on government non-commercial service are exempt from the Final Rule. Crude oil tankers engaged in coast-wise trade and vessels that operate exclusively in one Captain of the Port (“COTP”) zone are exempt from the BWM, reporting, and recordkeeping requirements. They must, however, comply with general nonindigenous species reduction practices.

Finally, although the Coast Guard had proposed expanding the applicability of the BWMS to vessels solely operating within the EEZ, the Coast Guard concluded that more analysis would be required and exempted the following vessels from the BWM requirements: (1) seagoing vessels that operate in more than one COTP zone, do not operate outside of the Exclusive Economic Zone, and are less than or equal to 1,600 gross register tons or 3,000 gross tons; (2)

non-seagoing vessels; and (3) vessels that take on and discharge ballast water exclusively in one COTP zone. These vessels must still comply with general nonindigenous species reduction practices, as well as the reporting and recordkeeping requirements. In addition, the Coast Guard noted that it fully intends to expand the applicability of the BWMS to these vessels in a future rulemaking.

Coast Guard Publication of Subsequent Interim Guidance

In follow up action by the Coast Guard, on April 13, 2012 it published interim guidance for the acceptance of AMS, Independent Laboratories, and Type Approval of BWMS for review and comment by industry, BWMS manufacturers, and other stakeholders to review. This interim guidance can be found by clicking [here](#).

Conclusion

Owners and operators of vessels equipped with ballast tanks that operate in U.S. waters should review the Final Rule to ensure compliance with the new requirements. Owners and operators should pay particular attention to the implementation schedule for new vessels (those constructed on/after December 1, 2013), which must have a U.S. approved system installed upon delivery.

For Additional Information

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