

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.258, a new paragraph (a) is added and the current regulation is revised and redesignated as paragraph (b) to read as follows:

**§ 117.258 Apalachicola River.**

(a) The draw of the Apalachicola and Northern Railroad Bridge, mile 4.5 (GIWW mile 347.0 EHL), at Apalachicola, is maintained in the fully open-to-navigation position and untended. The bridge will not be returned to service until proper notification is published in **Federal Register**.

(b) The draw of the CSX Railroad Bridge, mile 105.9, at River Junction shall open on signal if at least eight hours notice is given.

Dated: July 13, 2012.

**Peter Troedsson,**

*Captain, U.S. Coast Guard, Commander, Eighth Coast Guard District, Acting.*

[FR Doc. 2012–18343 Filed 7–27–12; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 151**

[Docket No. USCG–2004–19621]

RIN 1625–AA89

**Dry Cargo Residue Discharges in the Great Lakes**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes replacing its existing interim rule with a new rule to regulate the operation of U.S. and foreign vessels carrying bulk dry cargo such as limestone, iron ore, and coal on the U.S. waters of the Great Lakes, and the operation of U.S. bulk dry cargo vessels anywhere on the Great Lakes. Specifically, the Coast Guard proposes new requirements for the discharge of bulk dry cargo residue

(DCR) on the U.S. waters of the Great Lakes. The Coast Guard also announces the availability of the tiered Draft Environmental Impact Statement (DEIS) prepared in support of this proposal. The proposed rule would continue to allow non-hazardous and non-toxic discharges of bulk DCR in limited areas of the Great Lakes. However, vessel owners and operators would need to minimize DCR discharges using methods they would be required to document in DCR management plans. The proposed rule would prohibit limestone and clean stone DCR discharges in some waters where they are now permitted. The proposed rule promotes the Coast Guard's strategic goals of maritime mobility and safety and protection of natural resources.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before October 29, 2012 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before October 29, 2012.

**ADDRESSES:** You may submit comments identified by docket number USCG–2004–19621 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

*Collection of Information Comments:* If you have comments on the collection of information discussed in section VII.D. of this document, you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by email to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov) (include the docket number and “Attention: Desk Officer for Coast Guard, DHS” in the subject line of the email) or fax at 202–

395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email John C. Morris, Office of Operating and Environmental Standards (CG–OES–3), U.S. Coast Guard; telephone 202–372–1433, email [John.C.Morris@uscg.mil](mailto:John.C.Morris@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:****Table of Contents for Preamble**

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**I. Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

**A. Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG–2004–19621), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing

address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2004-19621" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

#### B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2004-19621" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

#### D. Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under ADDRESSES. In your request, explain why you believe a public meeting would be

beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### II. Abbreviations

AB Able Bodied Seaman  
 APPS Act to Prevent Pollution from Ships  
 CZMA Coastal Zone Management Act  
 DCR Dry Cargo Residue  
 DEIS Draft Environmental Impact Statement  
 DHS Department of Homeland Security  
 EIS Environmental Impact Statement  
 EPA Environmental Protection Agency  
 FEIS Final Environmental Impact Statement  
 FR **Federal Register**  
 ICR Information Collection Request  
 IR Interim Rule  
 MARPOL 73/78 International Convention for the Prevention of Pollution from Ships  
 NPRM Notice of Proposed Rulemaking  
 OIRA Office of Information and Regulatory Affairs, Office of Management and Budget  
 ROD Record of Decision  
 PIC Person in charge  
 SNPRM Supplemental Notice of Proposed Rulemaking  
 § Section symbol  
 U.S.C. United States Code  
 VGP Vessel General Permit

#### III. Basis and Purpose

This supplemental notice of proposed rulemaking (SNPRM) proposes a rule to replace the interim rule (73 FR 56492, Sep. 29, 2008) now in effect. It also announces the availability of the tiered Draft Environmental Impact Statement (DEIS), which we previously announced we would prepare in support of this proposed rule (scoping notice, 73 FR 79496; Dec. 29, 2008). The legal basis for this rulemaking is section 623(b) of the Coast Guard and Maritime Transportation Act of 2004 ("the Act," Pub. L. 108-293). Section 623(b) of the Act gives the Coast Guard the authority, "notwithstanding any other law \* \* \* to promulgate regulations governing the discharge of dry bulk cargo residue on the Great Lakes."

The purpose of this rulemaking, as a whole, is to exercise the authority conferred on the Coast Guard by the Act in a way that appropriately balances the needs of maritime commerce and environmental protection, by determining how, if at all, the discharge of dry cargo residue (DCR) can continue in the Great Lakes within a regulatory framework that imposes environmentally appropriate conditions on DCR discharges. The purpose of this SNPRM phase of the rulemaking is to propose a rule that would allow some DCR discharges to continue, under a regulatory framework that imposes additional conditions on the vessels from which those discharges take place.

#### IV. Background

Prior to opening this rulemaking, we published a notice of inquiry requesting information about the then-current status of dry cargo operations in the Great Lakes (69 FR 77147, Dec. 27, 2004; correction, 70 FR 1400, Jan. 5, 2005). The regulatory history for this rulemaking began with an announcement of our intent to prepare an Environmental Impact Statement (EIS) in support of the rulemaking and a request for public comments on the scope of the EIS ("scoping notice," 71 FR 12209, March 9, 2006). On June 8, 2006, we published a notice for a public meeting on the scope of the EIS, and again requested public comments (71 FR 33312). The scoping meeting was held in Cleveland, OH, on July 6, 2006. Our notice of proposed rulemaking (NPRM) and notice of the availability of the accompanying draft environmental impact statement appeared on May 23, 2008 (73 FR 30014). Public meetings on the NPRM and DEIS were announced on June 6, 2008 (73 FR 32273) and held in Duluth, MN, and Cleveland, OH, on July 15 and 17, 2008, respectively. Availability of the final environmental impact statement (FEIS) was announced on August 22, 2008, by the Environmental Protection Agency (73 FR 49667) and by the Coast Guard (73 FR 49694), and the Record of Decision (ROD) adopting the findings of the FEIS was signed September 23, 2008. An interim rule was published September 29, 2008 (73 FR 56492). On December 29, 2008 (73 FR 79496), we published a second scoping notice announcing our intent to prepare a new "tiered" (updated) EIS in support of a final rule, requested public comments, and announced a public scoping meeting, which was held in Chicago, IL, on January 28, 2009.

There are several factors that must be taken into account when addressing DCR discharges in the waters of the U.S. side of the Great Lakes. The Lakes support a significant volume of bulk dry cargo shipping that remains within the Great Lakes system. The Lakes are, in places, very deep and wide and either adjoin Canadian waters or are land-locked. Therefore, vessels that remain within the Great Lake system—unlike their East, West, or Gulf Coast counterparts—are continually subject to the navigable waters laws of both the United States and Canada.

The legislative conference report prepared in support of section 623(b) of the Act expressed Congress's expectation that in regulating Great Lakes DCR discharges, given these special characteristics, the U.S. Coast

Guard would adopt an approach “that appropriately balances the needs of maritime commerce and environmental protection.” House Report 108–617.

Our interim rule amended 33 CFR 151.66, a Coast Guard regulation that implements the Act to Prevent Pollution from Ships (APPS) 33 U.S.C. 1901 *et seq.* That regulation generally prohibits the discharge of DCR—an “operational waste” and, hence, “garbage” as both terms are defined in 33 CFR 151.05—in all U.S. navigable waters. The interim rule amended that prohibition with respect to the U.S. waters of the Great Lakes. It allows non-hazardous and non-toxic DCR discharges in limited areas of the Great Lakes, provided that carriers observe recordkeeping and reporting requirements, and it encourages carriers to adopt voluntary control measures for minimizing discharges. The interim rule applies to the owners and operators of U.S., Canadian, and other foreign vessels carrying bulk dry cargo on the U.S. waters of the Great Lakes, and also to the owners and operators of U.S. vessels carrying bulk dry cargo when they are on the Canadian waters of the Great Lakes. Non-self-propelled barges are excluded unless they are part of an integrated tug-and-barge unit.

Our Record of Decision in support of the interim rule concluded that the interim rule’s only adverse environmental impacts would be minor and indirect, and that an outright ban of DCR discharges could cause an adverse economic impact for carriers and related industries in the Great Lakes region. Therefore, we found that allowing DCR discharges in the Great Lakes, under the conditions imposed by the interim rule, struck “the best balance between economic and environmental concerns that can be achieved, given currently available information.” ROD, p. 4. The conditions the interim rule imposed on DCR discharges were intended to limit even minor and indirect impacts of DCR discharges, and to give us the regulatory tools we needed to monitor discharges in the future.

We stated in the interim rule that, before taking action in this rulemaking, we would “determine if, in the long term, the optimal balancing of commercial and environmental interests requires the mandatory use of DCR control measures, the adjustment of the geographical boundaries within which those discharges are currently allowed, or other regulatory changes.” (73 FR at 56495.) We have now made a tentative determination of that issue and, in this SNPRM, we propose a rule based on that tentative determination. We request your comments on that determination and on the proposed rule.

## V. Discussion of Comments on Interim Rule

In response to our September 2008 interim rule and December 2008 scoping notice, we received comments from 19 sources, including 5 State agencies (representing 4 States, with 1 State providing comments from 2 separate agencies, and 1 agency submitting multiple comments), 4 industry groups, 2 non-industry groups, 1 Indian Tribal group, and 7 individuals.

Three commenters expressed support for the interim rule or said DCR discharges should be permitted because of their low environmental impact and the high cost of eliminating discharges. Eight commenters expressed opposition to the interim rule or favored prohibiting all DCR discharges in the Great Lakes; one of the eight said our rule should move toward eliminating those discharges. These comments were unsupported by argument or evidence and therefore we can only acknowledge them.

Three State agency commenters said the interim rule is inconsistent with their State laws and with their coastal zone management plans. The interim rule states that it does not expressly preempt State laws and that it expressly cautions carriers that they must comply with all applicable Federal and State laws regulating DCR discharges. It also states that the Coast Guard will work with States and carriers to make sure carriers are informed of any State laws that could impose more restrictions on DCR discharges than the Coast Guard allows. 73 FR at 56497 col. 2.

Two State agency commenters said that DCR discharges are harmful because they provide favorable substrate conditions for invasive or exotic species. We acknowledge this as a legitimate concern, but point out that our tiered DEIS continues to support our 2008 ROD’s finding that, with the mitigating measures the interim rule provides, any such adverse environmental impact is only minor and indirect. Furthermore, except for the Western Basin of Lake Erie, our proposed rule prohibits the discharge of any type of DCR within 3 miles of any shoreline in the Great Lakes. (The existing exception for the Western Basin recognizes that some vessels carrying limestone or clean stone never leave that area, so a complete prohibition on DCR discharges on those vessels could pose an extreme hardship on them.) This change to the interim rule would eliminate the introduction of any additional DCR substrate to shallower near-shore waters, the preferred habitat

of several invasive species found in freshwater.

Two State agency commenters disagreed with our characterization of DCR as non-toxic and non-hazardous. Our tiered DEIS continues to support the interim rule’s characterization of any DCR discharge it allows as non-toxic and non-hazardous.

Two State agency commenters pointed out that Lake Superior is the subject of a “Demonstration Lake” agreement between several States and the Province of Ontario, Canada, pursuant to which the parties commit themselves to the elimination of pollutants in Lake Superior. The International Joint Commission’s 1990 designation of Lake Superior as a “demonstration area” led to a Binational Program to Restore and Protect the Lake Superior Basin, under which a zero-discharge standard applies, but only to particularly toxic heavy metals and organochlorine compounds. The Binational Program does not apply a zero discharge standard to other materials, such as DCR, so long as discharges of those other materials do not threaten identified key near-shore and wetland habitats. Our environmental analysis identified such habitats, based on all the data supplied to us by commenters or otherwise available to us. Both the interim rule and the proposed rule prohibit discharges in those habitats and other special protection areas.

Two State agency commenters said the interim rule is at odds with the EPA’s Vessel General Permit (VGP) for discharges incidental to the normal operation of vessels. EPA requires VGP permittees to engage in specific behaviors or best management practices in order to minimize those discharges; the approach this SNPRM proposes for our rule. However, there is no conflict between the VGP and the interim rule, because the VGP specifically excludes from its coverage “discharges of bulk dry cargo residues as defined at 33 CFR 151.66(b),” citing the interim rule-amended version of 33 CFR 151.66. See VGP (Feb. 5, 2009), sec. 1.2.3.4; docket number EPA–HQ–OW–2008–0055–0717 (available at <http://www.regulations.gov>). One State agency commenter asked us to require specific technological and procedural measures for controlling DCR, pointing out for example that decks can be swept while cargo loading is in progress, and that shoreside facilities can stop their conveyor belts while a vessel repositions itself during loading operations. Another commenter offered information about specific control measures, recommended requiring the

use of best management practices to minimize DCR discharges, and recommended that we regulate shoreside facilities because vessels have no control over those facilities. Our proposed rule's "broom clean" requirement does not specify how to comply with that requirement, but one way would be to sweep the deck while loading takes place. We assume that the other control measures cited by these commenters would be among the voluntary options vessel owners and operators would consider in preparing the DCR management plans that we propose to require. With respect to shoreside facilities, we understand that vessels do not control those facilities, but they can voluntarily arrange with a facility to identify measures that the facility is willing to take to help the vessel comply with 33 CFR 151.66's requirements. As we subsequently discuss, we think that our regulatory focus needs to be on vessels rather than on shoreside facilities.

One State agency commenter said that we should voluntarily extend the interim rule's comment period and the period for consulting with States within the framework of the Coastal Zone Management Act (CZMA). The Coast Guard routinely grants State requests for additional time to evaluate Coast Guard CZMA consistency determinations, and both States and the general public will have that additional time to consider the Coast Guard's proposal for regulating DCR during the public comment period for this SNPRM, and therefore we do not see the need for additional extensions of time as requested by this commenter at this time.

One commenter, representing many States with coastal zone management plans, said that we should rely on States to provide us with information about developing port-based DCR control measures. As we subsequently discuss, we think that our regulatory focus needs to be on vessels, rather than on shoreside facilities. However, in proposing that vessels develop DCR management plans, we assume that a vessel's owner or operator will want to consult with shoreside facilities to assess what each facility can do to help the vessel comply with discharge minimization requirements.

Two commenters asked us to remove the quarterly reporting requirement as unnecessary, while two commenters recommended modifications to the Coast Guard recordkeeping form. We lack sufficient information to remove the reporting requirement at this time, and we specifically seek further public comment on the costs and benefits of indefinitely requiring the reporting to

continue. Because the recommended modifications came from only two of the commenters and would require the costly revision of a commonly used standard form that provides the information we need, we also decline to modify the form at this time.

Another commenter, representing several associations, said that our reliance on the Act to regulate DCR discharges in the Great Lakes "notwithstanding any other law" was misplaced in the absence of a stronger showing of congressional intent to override international treaties like the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), or a stronger showing of the irreconcilability of MARPOL 73/78 and Great Lakes DCR regulations. MARPOL 73/78 is not irreconcilable with our interim rule or our proposed rule. Our interim rule already shares MARPOL Annex V's requirements for recordkeeping and for avoiding near-shore discharges, and our proposed rule would add an Annex V-like requirement for maintaining and following a DCR management plan. However, MARPOL 73/78 is inapplicable to the U.S. waters of the Great Lakes. APPS and the Act provide the statutory authority for 33 CFR 151.66. In the preamble to our interim rule, 73 FR at 56493, we extensively discussed the reasons why the zero-discharge approach to operational waste discharges (including DCR discharges) generally taken by APPS and Coast Guard regulations is not necessary for protecting the environment and could be disruptive for Great Lakes commerce. We also stated our interpretation that House Report 108-617, which accompanied passage of the Act, clearly expresses Congress's expectation that the Coast Guard will exercise its authority "notwithstanding any other law" to "appropriately balance[e] the needs of maritime commerce and environmental protection." We believe the approach we took in the interim rule, and that we now propose strengthening in this rule, meets that expectation by adapting the pollution-preventing spirit of APPS to the special characteristics of the Great Lakes cited in our interim rule preamble's discussion.

The commenter representing several associations also called on the Coast Guard to review DCR control measures every three years. While we acknowledge that industry practices and technology may evolve over time, the Coast Guard declines to set a requirement for a three-year review. However, the Coast Guard will monitor that evolution and expects industry participants to do the same. In

evaluating a vessel's compliance with the proposed DCR management plan requirement, the proposed rule would allow Coast Guard inspectors to take into account the extent to which the procedures described in the DCR management plan reflect current industry standard practices for vessels with comparable characteristics, cargoes, and operations. Furthermore, the Coast Guard is subject to statutes, executive orders, and agency policies that require the periodic reevaluation of existing regulations, including 33 CFR 151.66, to make sure that regulations continue to be appropriate despite changes in conditions.

Finally, the commenter representing several associations said that the Environmental Impact Statement (EIS) for the final rule should reevaluate DCR controls that affect special protected areas, and that we should add studies of discharge prohibitions under section 312 of the Clean Water Act, mandate complete discharge bans for new commercial operations and phased-in eliminations for existing operations, require mandatory discharge controls, and undertake additional studies of DCR toxicity. The interim rule already prohibits DCR discharges in special protected areas, and we have reevaluated that prohibition in the environmental analysis for this SNPRM. [www.regulations.gov](http://www.regulations.gov). Section 312 of the Clean Water Act seeks to address the dumping of untreated or inadequately treated sewage from vessels into U.S. navigable waters; DCR is not considered sewage waste and therefore this aspect of the comment is beyond the scope of our rulemaking. Our ongoing environmental analysis affirms our earlier assessment that "any toxic components of DCR deposits in the Great Lakes do not exist in concentrations known to be toxic to organisms." 73 FR at 56494 col. 2; [www.regulations.gov](http://www.regulations.gov). We do not agree with the commenter's suggestion that mandatory discharge controls be imposed on all operations, but we do propose requiring each vessel to have a DCR management plan describing specifically how it will minimize discharges. This approach would require a vessel's owner or operator to determine and to implement those measures that best achieve discharge minimization, given the vessel's characteristics, cargoes, and operations. We also disagree with the commenter's suggestion that DCR discharge prohibitions be imposed on new operations and phased in for existing operations. We believe our proposal for discharge minimization, in accordance

with a vessel's DCR management plan, best achieves the balance of commercial and environmental considerations that Congress had in mind when it passed the Act.

One commenter said that the EIS for the final rule should study specific best management practices and technology. We agree, and our tiered DEIS reflects our evaluation of specific best management practices and technology.

One commenter, a Canadian association, said that we should harmonize our regulatory treatment of DCR with Canada's. We believe that our interim rule and our proposed rule are in harmony with Canadian DCR regulations for the Great Lakes, which may be found in Division 5, Subdivisions 1–4 of the Statutory Orders and Regulations of Canada (SOR)/2007–86, "Regulations for the Prevention of Pollution from Ships and for Dangerous Chemicals." In promulgating these 2007 regulations, Transport Canada stated that its intent was to make Canadian regulations compatible with the then-current U.S. DCR enforcement policy. Like that policy, and like the interim rule and our proposed rule, the Canadian regulations prohibit the discharge of DCR in near-shore or special protected areas and require DCR discharge recordkeeping. In addition, Canadian regulations require that vessels carry and operate in accordance with a garbage management plan that covers its DCR procedures, and we are proposing a similar requirement with this rule.

The Canadian association also suggested some voluntary industry programs that could provide information about DCR control measures. We agree that owners and operators might find that such programs offer good advice on minimizing DCR discharges.

One commenter, representing Indian tribal interests, asked for consultation with the Coast Guard and asked that the EIS for the final rule add fish spawning grounds as a separate area of focus. Although we determined in the interim rule that Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, is not applicable to this rulemaking 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, 73 FR at 56496 col. 3, we have nevertheless engaged in consultation with this commenter. Documentation of that consultation appears in the docket as

item USCG–2004–19621–0182. Fish spawning grounds have already been incorporated in our environmental analysis and DCR discharges in these areas are prohibited.

## VI. Discussion of Proposed Rule

*The context in which we developed this proposal.* We stated in the interim rule that, before taking action in this rulemaking, we would "determine if, in the long term, the optimal balancing of commercial and environmental interests requires the mandatory use of DCR control measures, the adjustment of the geographical boundaries within which those discharges are currently allowed, or other regulatory changes." 73 FR at 56495.

To help us achieve that long term balance, we analyzed the DCR discharge records reported to us in accordance with the interim rule. This helped us describe and quantify DCR discharges, and to determine what control measures were common and effective in controlling DCR discharges. This information is available in the appendices to the tiered DEIS. We also observed Great Lakes dry cargo operations firsthand. During the 2009 and 2010 shipping seasons, we visited vessels and facilities in the region, and observed cargo loading and unloading, and DCR discharge operations. This enabled us to gather DCR data using a known consistent set of metrics and a process that was completely independent of any used by vessel owners or operators to complete and submit their DCR discharge reports.

From this analysis and observation, we drew the following conclusions:

There is significant variation in the amount of DCR that vessels discharge; a finding that is supported by results reported by the regulated industry. However, most vessels appear to be minimizing the volume of DCR they discharge. They treat their cargo as a commodity to be conserved and not wasted. They deal with shoreside facilities that take the same practical view. These vessels and facilities use best practices to prevent cargo spillage in the first place, and to clean it up when it occurs. Most best practices are simple, intuitive, and cost little: For example, lining conveyor belts with fabric skirts, communicating with the shoreside facility to shut down loading chutes while moving from one hold to the next, and using brooms and shovels to clean up DCR and return it to the hold before the hold is sealed.

Deck spillage is a relatively minor source of DCR, and easily addressed through simple measures. By far the greater source of DCR is from cargo hold

spillage into vessel tunnels. Tunnel spillage predominantly occurs during cargo unloading.

Within tunnels, large pieces of DCR that remain after unloading should be easy to recover while the vessel is underway, and to place on the conveyor belt with the rest of the cargo during the vessel's next unloading. Dust and small particles, however, inevitably make their way into the vessel's sump water. The sump must be pumped periodically, to preserve the vessel's trim and stability. Sump pumping can take several hours. If performed shoreside, this operation may delay the vessel, increasing its operating costs. It would be economically more rational to perform sump pumping only while the vessel is underway, though this would likely result in sump discharges being the main contributor to DCR discharges in the Great Lakes.

In this SNPRM, we propose a rule that would make three general changes to the current interim rule. (We also propose the non-substantive addition or amendment of two definitions, "commercial vessel" and "mile," for stylistic purposes.) Our tiered DEIS supports all of these changes. The proposed rule would, like the interim rule, continue to apply to the owners and operators of U.S., Canadian, and other foreign vessels carrying bulk dry cargo on the U.S. waters of the Great Lakes, and also to the owners and operators of U.S. vessels carrying bulk dry cargo when they are on the Canadian waters of the Great Lakes. It would continue the interim rule's exclusion of non-self-propelled barges, unless they are part of an integrated tug and barge unit. The three proposed changes are as follows:

First, we would require the volume of DCR discharges to be minimized. Except for a new, objectively verifiable, "broom clean" standard applying to decks, discharge minimization would be achieved through methods of the vessel owner or operator's choice. "Broom clean" would be defined in 33 CFR 151.66(b)(2) as a condition in which deck residues "consist only of dust, powder, or isolated and random pieces none of which exceeds 1 inch in diameter." "Minimization" would also be defined, as the "reduction, to the greatest extent practicable, of any bulk dry cargo residue discharge from the vessel." Reinforcing the concept of minimization, we would also redefine bulk DCR to emphasize that DCR can exist "regardless of particle size."

Second, we would require discharge minimization methods to be documented in a vessel-specific DCR management plan, which we would

define as a written plan, subject to Coast Guard inspection, meeting at least the minimum criteria we would describe in 33 CFR 151.66(b)(5)

Third, limestone and clean stone DCR discharges would no longer be permitted within 3 miles of shore, except within a limited area of the Western Basin of Lake Erie.

*Minimization and the DCR management plan.* The proposed rule would require U.S. and foreign carriers conducting bulk dry cargo operations on the Great Lakes to minimize the amount of cargo residue discharged into the Great Lakes. Except for the new broom clean standard, our focus would be on discharge minimization, not on minimizing DCR. Nor would we require vessels to eliminate DCR discharges, because we continue to believe, as we did when we issued the interim rule, that a “zero discharge” requirement would be more costly than necessary to protect the environment against adverse impacts, and because the adverse impacts that can be associated with DCR discharges are only minor and indirect. Nevertheless, the elimination of DCR discharges remains the ideal, and we expect vessels to come as close to that ideal as practicable, given current industry standard practices for vessels of “comparable characteristics, cargoes, and operations”—a term we would define in 33 CFR 151.66(b)(2) as meaning “similar vessel design, size, age, crew complement, cargoes, operational routes, deck and hold configuration, and fixed cargo transfer equipment configuration.”

Discharge minimization would include keeping the vessel’s deck in broom clean condition. All vessels should be able to achieve the broom clean standard on deck, by sweeping spilled cargo back into holds before they are sealed, if not by some other method. However, as noted, deck DCR only accounts for a relatively small proportion of overall DCR discharges. For the more significant tunnel sump discharges, it is not possible for us to define a similar standard that could be applied to all vessels. We believe that the degree of minimization that will be practicable for those discharges will depend on the variables of a vessel’s characteristics, cargoes, and operations, and on the technology or procedures used to compensate for those variables.

Rather than mandating the use of specific procedures or technologies that may be ineffective or impracticable for some vessels, each vessel’s owner or operator would select the method or methods best suited for minimizing that vessel’s DCR discharges. We believe that the great majority of vessels affected by

the proposed rule are already effectively minimizing those discharges. However, by making minimization a regulatory requirement, we would level the playing field to ensure that all affected vessels engage in responsible discharge minimization practices.

The proposed requirement for each vessel to carry its own vessel-specific DCR management plan on board, and to have that plan available for inspection, is central to the enforceability of a discharge minimization requirement.

Coast Guard inspectors would enforce discharge minimization by making sure that the vessel has a DCR management plan onboard, that the plan is complete and addresses all required items, and that the master or person in charge (PIC) ensures that the vessel and its crew operate according to the plan. The Coast Guard could infer the vessel’s failure to minimize discharges from evidence such as:

- A missing plan;
- A plan that fails to address obvious DCR situations on the vessel that raise the probability of an eventual DCR discharge, such as obvious DCR buildup in the vessel’s tunnels;
- Discharge minimization equipment that is called for in the plan but not maintained or operating properly; or
- A crewmember’s inability to perform a discharge-minimization task for which the plan makes the crewmember responsible.

To ensure that the vessel’s owner and operator exercise due diligence in writing the management plan, we would require the plan to describe:

- The equipment and procedures the vessel uses to minimize cargo spillage during loading and unloading;
- The equipment and procedures the vessel uses to recover spilled cargo and place it in holds or on unloading conveyances;
- How the owner or operator ensures crew familiarity with management plan procedures;
- Who has onboard responsibility for the vessel’s discharge minimization procedures;
- What arrangements, if any, the vessel has with specific ports or cargo terminals for unloading and disposing of the vessel’s DCR ashore; and
- How unavoidable DCR discharges will be conducted.

Our regulatory focus has been, and will remain, the vessels that carry bulk dry cargo—even though shoreside cargo loading and unloading facilities undoubtedly play a role in creating, or limiting the creation of, the shipboard DCR that is eventually discharged into the Great Lakes. Focusing on vessels makes sense because the Coast Guard’s

inspection infrastructure is more geared toward vessels than to shoreside facilities. We would expect each vessel’s DCR management plan to describe how the vessel works with shoreside facilities to facilitate the vessel’s compliance with the requirements of 33 CFR 151.66.

Another important aspect of the proposed management plan requirement is that the plan would need to be revised whenever there was a substantive change to the procedures or the equipment used to manage dry cargo residues on the vessel covered by the plan. Although regular or periodic revisions of the management plan are not required under this proposed rule, vessel owners would be required to maintain the plan in a manner that assures it accurately reflects the current procedures, practices, and technology employed in managing dry cargo residues on the vessel.

We expect that industry standard practices for the management of dry cargo residue will evolve as existing dry cargo conveyance technologies are supplanted by those that are more efficient, effective, and reliable. “Industry standard practices” would be specifically defined in 33 CFR 151.66(b)(2) and would include practices for installation, maintenance, operation, training, and supervision relating to bulk dry cargo transfer and DCR control measures. A primary premise of this proposed rule is that a vessel owner or operator will employ dry cargo residue management practices that are on par with the current industry standard for vessels of comparable characteristics, cargoes, and operations. “Comparable characteristics, cargoes, and operations” would be defined in 33 CFR 151.66 (b)(2) as meaning “similar vessel design, size, age, crew complement, cargoes, operational routes, deck and hold configurations, and fixed cargo transfer equipment configurations”. A vessel’s compliance with this requirement of the proposed rule would be determined in part by how well the vessel’s DCR management practices, as outlined in its management plan, compare with the current industry standard practices employed by the majority of vessels with comparable characteristics, cargoes, and operations. If, for example, a vessel’s plan continues to rely on technology or procedures that have been supplanted by more recent, affordable, and easily implemented industry standard practices, a Coast Guard inspector could consider this as evidence of failure to maintain the plan or failure to minimize DCR discharges.

*Limestone and clean stone.* While we propose to retain the interim rule’s

approach toward the discharge of DCR in general, we propose a change with respect to limestone and clean stone DCR discharges. For most substances, DCR discharges have been and would remain subject to several geographic limitations, including a flat prohibition on discharges within a certain distance from shore and in special protected areas. For limestone and clean stone, however, the interim rule continued the prior policy, which allowed DCR from limestone and clean stone to be discharged close to shore, except where the nearest shore is in a special protected area or where the discharge would have an “apparent impact” on wetlands, fish spawning areas, or potable water intakes. We think this standard is too subjective and that it could be difficult for vessel crews to determine whether or not a stone DCR discharge would have an apparent impact on the local environment. Therefore, we propose making limestone and clean stone DCR discharges subject to the same 3 mile restriction we impose on other DCR discharges. Our 2009 and 2010 field research and the EIS indicated that limestone and clean stone vessels already avoid DCR discharges within 3 miles of shore because of near-shore operational hazards. Thus, those vessels should not incur any additional cost from the proposed extension of the

exclusion zone. (We would preserve the existing exception for a limited portion of Lake Erie’s Western Basin because some vessels carrying limestone or clean stone never leave that area, and if such a vessel wanted to discharge DCR it could be unusually and adversely affected by a complete prohibition on DCR discharges in the area.) Our proposed change would ensure that near-shore wetlands, fish spawning areas, and potable water intakes within the entire Great Lakes ecosystem are protected from DCR discharges, while simultaneously simplifying understanding and compliance with the rule for the regulated industry. It should also mitigate an environmental impact identified in the Final EIS for the interim rule; that is, possible changes in the physical structure of the lake bottom sediment, which may cause a less than 10% increase in zebra and quagga mussel attachment rates.

**VII. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

*A. Regulatory Planning and Review*

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563

(“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This SNPRM has not been designated a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the SNPRM has not been reviewed by the Office of Management and Budget. A draft Regulatory Assessment follows:

The Coast Guard proposes a rule that would require vessels to minimize their DCR discharges, to document their DCR minimization methods, and to observe new restrictions on limestone and clean stone DCR discharges.

Table 1 compares components of the interim rule (baseline used for this rulemaking) and this SNPRM. It summarizes any changes in the component that we propose in the SNPRM.

**TABLE 1—NO-ACTION (IR) AND PREFERRED ALTERNATIVE COMPARISON SUMMARY**

Provision description	IR Provision	IR Provision synopsis	SNPRM Provision	SNPRM Provision synopsis	Change from IR to SNPRM
Record-keeping.	33 CFR 151.66(c)(1)(iv).	Vessels must record all DCR loading, unloading and sweeping on form CG-33.	NA .....	.....	Recordkeeping requirement would remain in place. The industry would not incur any change in cost.
Reporting/Certification.	33 CFR 151.66(c)(1)(iv).	The data collected are used to determine vessel practices in handling DCR, and the amount of DCR that is being managed by the vessels.	NA .....	.....	Vessels will continue to certify and submit reports on a quarterly basis. The industry will not incur any change in cost.
Limestone & clean stone.	33 CFR 151.66(b)	Limestone and clean stone are exempt from the 3-mile near-shore sweeping boundary. Under the IR, these commodities can be discharged anywhere along the shoreline, provided there is no apparent impact on environmentally sensitive areas.	33 CFR 151.66(b)(2).	Limestone and clean stone DCR discharges, under the proposed rule, would not be allowed within 3 miles of shore.	There would be a no-cost change; our research indicates that vessels already avoid DCR discharges within 3 miles of shore because of near-shore operational hazards.
Voluntary minimization.	33 CFR 151.66(b)	Vessels are encouraged to minimize the amount of DCR going into the water and the use of control measures to reduce the amount of DCR falling on the decks and tunnels of vessels.	NA .....	The portion of 33 CFR 151.66(b) in the IR dealing with voluntary minimization would be removed in the SNPRM.	There is no cost associated with the removal of this IR requirement. (See the management plan below for details on mandatory minimization.)

TABLE 1—NO-ACTION (IR) AND PREFERRED ALTERNATIVE COMPARISON SUMMARY—Continued

Provision description	IR Provision	IR Provision synopsis	SNPRM Provision	SNPRM Provision synopsis	Change from IR to SNPRM
Broom clean standard.	NA .....	.....	33 CFR 151.66(b)(3).	This requirement stipulates that vessels must show that decks have been swept to a standard that is in keeping with the mandatory minimization requirement of this proposed rule.	Vessels would realize a new cost for this requirement. We anticipate that vessels would see an annual cost increase ranging from \$14,203 to \$53,263 (non-discounted). Foreign vessels would incur an average annual cost of \$28,847 (non-discounted). The benefit of this requirement is a reduction in the amount of discharge going into the waters of the Great Lakes.
Management plan.	NA .....	.....	33 CFR 151.66(b)(4).	The plan must describe the specific measures the vessel employs to ensure the minimization of bulk dry cargo residue discharge.	The new requirement would have an initial year cost of \$24,777 (non-discounted) to prepare a management plan. After the initial year, existing U.S. vessels would not incur additional cost (within the 10-year period of analysis) from this new requirement. Foreign vessels would incur a first year cost of \$17,340 and an annual cost of \$1,530 (all non-discounted) from this new requirement. This requirement would ensure that vessels are minimizing the amount of DCR going into the waters of the Great Lakes, and provide USCG with the means of policing DCR discharge.

**Costs**

The proposed rule has costs associated with having vessel owners and operators develop and maintain a management plan that describes the specific measures the vessel employs to ensure the minimization of bulk DCR discharges in the waters of the Great Lakes. The proposed rule would not impose any additional capital

expenditures on the U.S. bulk dry cargo fleet operating exclusively on the Great Lakes, since we believe that vessels would use equipment already available onboard their vessels to comply with this proposed rule (for further information on specific measures currently being used, see DEIS).

We estimated the annualized costs of the SNPRM for the US fleet to range

from \$17,500 to \$56,298 (with a per vessel average cost of \$671), and the annualized costs of the SNPRM for the foreign fleet to range from \$13,922 to \$48,697 (with a per vessel average cost of \$368), all costs are estimated using a 7 percent discount rate. The following table summarizes the affected population of vessels, costs and benefits of the proposed rule.

TABLE 2—SUMMARY OF AFFECTED POPULATION, COSTS AND BENEFITS OF THE SNPRM

Affected Population	
US .....	55 Vessels (14 owners).
Foreign .....	85 Vessels.
<b>Total .....</b>	<b>140 Vessels.</b>
Costs*	
US .....	Annualized = \$17,500—\$56,298. 10 year = \$122,916—\$395,413.
Foreign .....	Annualized = \$13,922—\$48,697. 10 year = \$97,786—\$342,029.
<b>Total .....</b>	<b>Annualized = \$31,423—\$104,995. 10 year = \$220,701—\$737,444.</b>

**Benefits**

Minimizing the amount of DCR discharged into the waters of the Great Lakes would improve the aquatic environment. Promotion of environmental stewardship among owners and operators.

\* Costs are presented as ranges and estimated using a 7 percent discount rate.

The proposed rule would require all vessels loading or unloading bulk dry

cargo at ports within the U.S. waters of the Great Lakes, and each U.S. bulk dry

cargo vessel anywhere on the Great Lakes, to have a management plan

onboard and available for Coast Guard inspection that describes the specific measures the vessel employs to minimize DCR discharges. Foreign vessels greater than 400 GT can meet the management plan requirement under this proposed rule because they are required to meet the similar waste management plan requirement in Annex V of MARPOL 73/78. However, since Annex V of MARPOL 73/78 does not cover all of the requirements in 33 CFR 151.66(b)(4), foreign vessels would be required to address any additional management plan requirements under this proposed rule.

We estimate that the proposed rule would affect 14 entities that currently manage the 55 U.S. dry bulk carrier vessels, and 85 foreign dry bulk carrier vessels (70 Canadian and 15 non-Canadian) operating within U.S.

jurisdictional waters of the Great Lakes in any given year. We anticipate that the controlling entities of U.S. vessels would write the management plans. We assume that a management plan for a foreign vessel operating in the U.S. waters of the Great Lakes would be written by the vessel master.

We estimate the affected population of foreign dry bulk carriers to be 85 vessels based on the data obtained from reporting requirements established by the 2009 interim rule. We originally estimated the foreign vessel population to be 219 vessels for 2008 NPRM and the 2009 interim rule. Our revised estimate of the foreign vessel population is based on recent data on foreign vessel dry cargo operations that was not available for the NPRM or the interim rule publications.

To maintain consistency with the cost methodology used in the interim rule, we continue to use Coast Guard reimbursable standard rates found in COMMANDANT INSTRUCTION 7310.1M (“COMDTINST”) to analyze the changes in wages for this rulemaking.<sup>1</sup> We have verified that the wages found in the COMDTINST are comparable to the loaded wages found in the Bureau of Labor Statistics. Therefore, that comparison between the interim rule and the SNPRM is straightforward.

Table 3 below shows estimated costs for developing the management plan required by proposed 33 CFR 151.66(b)(4) and for having onboard a hard copy of the plan available for inspection by the Coast Guard.

TABLE 3—COST OF COMPANY DEVELOPMENT OF A MANAGEMENT PLAN  
[Non-discounted]

33 CFR 151.66 (b)(4)	Developer rating	Labor rate (loaded)	Time in hours	Cost per plan	Number of plans	Total initial cost	Recurring cost
US							
Company management plan ...	GS-12 .....	\$69	25	\$1,725	14	\$24,150	.....
Cost of copies .....	GS-3 .....	28	.05	<sup>a</sup> 11.40	55	627	.....
Foreign							
Canadian Vessel .....	O-6 .....	136	<sup>b</sup> 1.5	204	70	14,280	.....
Non-Canadian Foreign .....	O-6 .....	136	<sup>b</sup> 1.5	204	15	3,060	<sup>c</sup> 1,530
Total .....	.....	.....	.....	.....	.....	42,117	1,530

**Note:** Values may not total due to rounding.

(a): Assumes that companies would spend \$10 on supplies for each copy of the management plan. The \$10 is added to the labor and time estimated to be \$1.40 (\$28 \* 0.05 hrs), therefore the total cost of copies per plan is \$11.40.

(b): We assume that foreign vessels greater than 400 GT would develop a modified management plan, since foreign vessels greater than 400 GT are required to have a waste management plan in accordance with Annex V of MARPOL 73/78. Therefore, the time required by foreign vessels greater than 400 GT to develop a management plan would be less than the time estimated for the U.S. fleet. Time required for foreign vessels developing a management plan was provided by the USCG Environmental Standards Division.

(c): The recurring cost of the management plan is only for half of the non-Canadian foreign vessels entering the Great Lakes in any given year. We anticipate that half the number of these vessels would return the following year, while the other half would be new visitors to the Great Lakes.

In addition to the management plan, the proposed rule would require that the deck be maintained in a broom clean condition whenever a vessel is in transit (33 CFR 151.66(b)(4)). We assume for the purpose of this regulatory analysis that an Able Body Seaman (AB) would be tasked with maintaining the broom clean standard as required under this proposed rule during loading and unloading operations, to the best of the AB's abilities under current vessel conditions. The requirement is intended to ensure that vessels are active in reducing the amount of DCR going into the waters of the Great Lakes. We do not expect that vessels would need to

purchase additional brooms, shovels, etc., since these items are standard equipment on those vessels.

In order to determine the cost of maintaining decks in broom clean condition, we established that the surface area requiring broom cleaning would be those areas around the cargo hatches. During a site visit to the Great Lakes to observe vessel loading and unloading operations, we recorded the number of hatches for each vessel visited. We extrapolated the observed data to obtain an estimated number of total hatches for the Great Lakes bulk dry cargo fleet. We estimated the total number of hatches for the 55 U.S.

vessels to be 1,169, while the total number of hatches for the 70 Canadian and 15 non-Canadian foreign vessels was estimated at 1,672. We estimate that 15 to 56 percent of the hatches would be affected by the broom clean standard after every loading and unloading event, and that it would take an AB three minutes per hatch (at a wage rate of \$27 per hour) to meet the broom clean standard. Table 4 shows the annual estimated cost to the U.S. fleet for maintaining the broom clean standard. The cost range for this requirement is \$14,203 to \$53,001 (non-discounted). Costs are based on all vessels making an average of 60 trips per year.<sup>2</sup>

<sup>1</sup> COMMANDANT INSTRUCTION 7310.1M, “COAST GUARD REIMBURSABLE STANDARD RATES”, FEB 28 2011, <http://www.uscg.mil/>

[directives/ci/7000-7999/CI\\_7310\\_1M.PDF](http://directives/ci/7000-7999/CI_7310_1M.PDF) (begins on page 3).

<sup>2</sup> Annual vessel trip information comes from the DEIS.

TABLE 4—U.S. FLEET COST FOR MEETING THE BROOM CLEAN STANDARD

33 CFR 151.66 (b)(3)	Crew member	Labor rate	Time req'd (%/Hr)	Total number of fleet hatches	% of Hatches swept	% Vessels broom clean	Avg number of trips/yr.	Number of crew	Total hrs/yr.	Total cost
Broom Clean (Low)	Deckhand (AB) .....	\$27	0.05	1,169	15	100	60	1	526	\$14,203
Broom Clean (High)	Deckhand (AB) .....	27	0.05	1,169	56	100	60	1	1,963	53,001

Note: Values may not total due to rounding.

The cost to Canadian and non-Canadian foreign vessels is shown in Tables 5(a) and (b). The combined cost of the broom clean standard for foreign

vessels is estimated to range from \$69 to \$45,247 (non-discounted). Costs are based on Canadian vessels making an average of 45 trips per year and non-

Canadian foreign vessels averaging only one trip per year.

TABLE 5(A)—CANADIAN FLEET COST FOR MEETING THE BROOM CLEAN STANDARD

33 CFR 151.66 (b)(3)	Crew member	Labor rate	Time req'd (%/Hr)	Total number of fleet hatches	% of Hatches swept	% Vessels broom clean	Avg number of trips/yr.	Number of crew	Total hrs/yr.	Total cost
Broom Clean (Low)	Deckhand (AB) .....	\$27	0.05	1,330	15	100	45	1	449	\$12,120
Broom Clean (High)	Deckhand (AB) .....	27	0.05	1,330	56	100	45	1	1,676	45,247

Note: Values may not total due to rounding.

TABLE 5(B) NON-CANADIAN FOREIGN FLEET COST FOR MEETING THE BROOM CLEAN STANDARD

33 CFR 151.66 (b)(3)	Crew member	Labor rate	Time req'd (%/Hr)	Total number of fleet hatches	% of Hatches swept	% Vessels broom clean	Avg number of trips/yr.	Number of crew	Total hrs/yr.	Total cost
Broom Clean (Low)	Deckhand (AB) .....	\$27	0.05	342	15	100	1	1	3	\$69
Broom Clean (High)	Deckhand (AB) .....	27	0.05	342	56	100	1	1	10	259

Note: Values may not total due to rounding.

The cost of complying with the management plan and broom clean requirements for the U.S. fleet is estimated to have a first-year cost range

of \$38,982 to \$77,778 (non-discounted) and recurring annual costs ranging from \$14,203 to \$53,001 (non-discounted). Table 6 shows the U.S. fleet cost

estimate for the 10-year period of analysis.

TABLE 6—U.S. VESSELS HIGH AND LOW COST ESTIMATES

Year	High Cost Estimate			Low Cost Estimate		
	Undiscounted	3%	7%	Undiscounted	3%	7%
1 .....	\$77,778	\$75,513	\$72,690	\$38,982	\$37,846	\$36,432
2 .....	53,001	49,959	46,293	14,203	13,388	12,406
3 .....	53,001	48,503	43,265	14,203	12,998	11,594
4 .....	53,001	47,091	40,434	14,203	12,619	10,836
5 .....	53,001	45,719	37,789	14,203	12,252	10,127
6 .....	53,001	44,388	35,317	14,203	11,895	9,464
7 .....	53,001	43,095	33,006	14,203	11,549	8,845
8 .....	53,001	41,839	30,847	14,203	11,212	8,266
9 .....	53,001	40,621	28,829	14,203	10,886	7,726
10 .....	53,001	39,438	26,943	14,203	10,569	7,220
Total Cost .....	554,787	476,165	395,413	166,812	145,214	122,916
Annualized Cost .....	.....	55,821	56,298	.....	17,024	17,500

Note: Values may not total due to rounding.

In addition, we estimate that foreign vessels would incur a first-year cost that ranges from \$15,249 to \$59,527 (non-discounted). All foreign vessels would incur an annual cost due to the broom clean standard; however, half of the 15 non-Canadian foreign vessels entering

the U.S. waters of the Great Lakes would be anticipated to incur an additional cost for developing a management plan since the same non-Canadian foreign vessel is not expected to make the same trip every year. We estimate recurring cost of all foreign vessels to range from

\$13,719 to \$47,035 (non-discounted). Table 7 shows the U.S. fleet cost estimate for the 10-year period of analysis.

TABLE 7—FOREIGN VESSELS HIGH AND LOW COST ESTIMATES

Year	High Cost Estimate			Low Cost Estimate		
	Undiscounted	3%	7%	Undiscounted	3%	7%
1 .....	\$59,527	\$57,793	\$55,632	\$15,249	\$14,805	\$14,251
2 .....	47,035	44,335	41,082	13,719	12,391	11,983
3 .....	47,035	43,044	38,395	13,719	12,555	11,199
4 .....	47,035	41,790	35,883	13,719	12,189	10,466
5 .....	47,035	40,573	33,535	13,719	11,834	9,781
6 .....	47,035	39,391	31,342	13,719	11,489	9,141
7 .....	47,035	38,244	29,291	13,719	11,155	8,543
8 .....	47,035	37,130	27,375	13,719	10,830	7,985
9 .....	47,035	36,049	25,584	13,719	10,514	7,462
10 .....	47,035	34,999	23,910	13,719	10,208	6,974
Total Cost .....	482,843	413,347	342,029	138,719	118,510	97,786
Annualized Cost .....	.....	48,457	48,697	.....	13,893	13,922

Note: Values may not total due to rounding.

The proposed rule would also prohibit all near-shore limestone and clean stone DCR discharges, except in the Western Basin of Lake Erie. Our research found that vessels carrying limestone and clean stone already avoid DCR discharges within 3 miles of shore because of near-shore operational hazards. Therefore, the proposed prohibition of these discharges would not incur any additional cost to the fleet.

We estimate the total annualized cost to industry (US and foreign) of the SNPRM to be \$31,423 to \$104,995 and the total discounted 10-year costs to industry to be \$220,701 to \$737,444 (values discounted at 7 percent). We do not expect there would be additional government costs required to implement the changes from this SNPRM.

Benefits

We examined the benefits of the proposed rule and concluded that the benefits are qualitative. The requirement of the management plan causes all vessel owners and operators to become more active in preserving the Great Lakes' aquatic environment. The proposed rule sets a performance standard that allows the industry to determine its most efficient methods to minimize DCR discharges.

We anticipate that the proposed rule would change the current industry behavior of discharging DCR into the waters of the Great Lakes. The proposed requirement for vessels to have and follow DCR management plans should increase overall compliance levels with today's industry best practices for preventing or minimizing DCR discharges. In enforcing the DCR management plan requirement, the Coast Guard would be able to consider how well a vessel's plan reflects then-

current industry standard practices. This would ensure that if, over time, there is an improvement in most vessels' ability to manage DCR, all vessels will be measured against the improved standard. Although our environmental analysis has shown only minor and indirect adverse environmental impacts from DCR discharges, we assume that any reduction in those impacts would provide at least a qualitative benefit. In addition, the vessel owners and operators themselves could realize efficiency gains from maintaining and gradually improving their DCR management practices. The proposed rule would not impose a rigid prescriptive standard, but would give the industry the flexibility to develop vessel-specific performance standards that achieve the regulatory objectives in the most cost-effective way.

Alternatives

*Alternative 1: no action.* This alternative would simply keep the current DCR interim rule in place. We have re-evaluated the interim rule and concluded that our proposed rule would do more to minimize the volume of DCR discharge going into the waters of the Great Lakes and would reduce the interim rule's regulatory costs. Therefore we reject this alternative.

*Alternative 2: modified regulations with DCR management plan requirement.* This is the preferred alternative described in this SNPRM and evaluated here.

*Alternative 3: baseline control measures.* This alternative would enforce the existing DCR management baseline. Each vessel would be required to maintain its current practices or equipment for managing DCR. We closely evaluated this alternative but

reject it because over time a vessel's baseline operational equipment will wear out and need replacement, and it would be difficult for inspectors to gauge how well the replacement equipment replicates the operational state attained by the original equipment. Moreover, this alternative provides inferior environmental protection, by locking vessels into today's baseline. By contrast, the preferred alternative assumes that DCR management practices and technology will improve over time, and we want the regulatory compliance of vessels in the future to be measured against the best practices and technology then available, and not against today's baseline, which we assume will represent a lower level of DCR management capability.

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.

The Coast Guard analysis did not find any non-profit or governmental small entities. However, we did find 9 small entities affected by this rule classified under one of the following North American Industry Classification System (NAICS) 6-digit codes for water transportation: 238910—Site Preparation Constructor; 483113—Coastal and Great Lakes Freight Transportation; 484110—General Freight Trucking Local; 487210—Scenic & Sightseeing Transportation Water;

483212—Inland Water Passenger Transportation; and 483211—Inland Water Freight. According to the Small Business Administration's size standards, a U.S. company classified under these NAICS codes with annual revenues of less than \$7 million is considered a small business. We estimate the cost of this rule to be less than 1 percent of revenue for 100 percent of the small entities for both initial and recurring costs. The estimated annualized costs per small entity complying with the proposed rule would range from a high estimate of \$7,327 to a low estimate of \$2,267 with both discounted at 7 percent respectively.

Therefore, 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. Comments submitted in response to this finding will be evaluated under the criteria in the "Regulatory Information" section of this preamble.

We are interested in the potential impacts from this proposed rule on small businesses and we request public comment on these potential impacts. 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 where indicated under the "Public Participation and Request for Comments" section of this SNPRM, or see [www.regulations.gov](http://www.regulations.gov), docket number USCG-2004-19621, for additional instruction.

#### 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 consult John C. Morris of the Office of Operating and Environmental Standards (CG-OES-3) at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine

compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### D. Collection of Information

The proposed rule would call for a revision to an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). As defined in 5 CFR 1310.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of those who must collect the information, and an estimate of the total annual burden can be found under, "The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection."

*Title:* Waste Management Plans, Refuse Discharge Logs, and Letters of Instruction for Certain Persons in Charge (PIC).

#### Summary of the Collection of Information

The Information Collection Request (ICR) is a collection of recordkeeping requirements that documents management of waste onboard vessels. It also requires that persons on non-inspected vessels must carry a letter verifying the credential of the PIC, and that they have had instruction on the management of waste. Currently, the ICR covers Waste Management Plans and Refuse Discharge Logs for The International Convention for the Prevention of Pollution from Ships letters of instruction for certain PIC and the DCR recordkeeping.

This proposed rule deals with section D of the current ICR, which addresses all dry bulk carrier vessels (foreign and domestic) operating on the Great Lakes. Under the interim rule, this population is required to report DCR quantities and the location of discharges into U.S. waters of the Great Lakes, in accordance with 33 CFR 151.66(c). We used the information collected from these reports to analyze and determine how best to regulate vessels in handling/managing DCR. The proposed rule would require U.S. and foreign vessels to develop and maintain a management plan that describes the specific measures the

vessel employs to ensure the minimization of bulk DCR discharges.

*Need for Information:* Since there is no uniformity as to the types of equipment used throughout the fleet, the management plan would provide a description of how the individual vessel ensures the minimization of DCR discharges.

*Proposed Use of Information:* The information in the management plan would provide the Coast Guard with the means to monitor how individual operators are effectively managing and minimizing their DCR discharges. In addition, the management plan would be used by Coast Guard inspectors to enforce the minimization requirement.

*Description of the Respondents:* We estimate that all U.S. bulk dry cargo vessels operating anywhere in the Great Lakes, and foreign commercial bulk dry cargo vessels operating on the U.S. waters of the Great Lakes, would be affected by the management plan requirement.

*Number of Respondents:* The management plan would have a total number of 140<sup>3</sup> (55 U.S. vessels + 70 Canadian vessels + 15 non-Canadian foreign vessels) respondents, which account for the total number of bulk dry cargo vessels operating on the waters of the Great Lakes in any given year.

*Frequency of the Response:* All vessels carrying bulk dry cargo on the Great Lakes are required to develop a management plan. The frequency in the development of the management plan would be subject to vessels modifying their vessels and/or equipment. We do not anticipate vessels modifying or adding major equipment during the 10-year period of this analysis. We therefore assume that the development of the management plan would occur once for U.S. and Canadian vessels. However, a percentage (50%) of non-Canadian foreign vessels would be required to develop a management plan each year, since we estimate that this percentage would be entering the Great Lakes for the first time. Therefore, we estimate that in the first year there would be 140 (55 U.S. vessels + 70 Canadian vessels + 15 non-Canadian foreign vessels) total management plans developed by all bulk dry cargo vessels operating in U.S. waters, and 8 (rounded) reoccurring responses by non-Canadian foreign vessels.

*Burden of Response:* We estimate that there would be 55 management plans developed for the entire U.S. dry cargo vessel fleet operating on the Great

<sup>3</sup> The number of foreign vessels affected has been updated (from the interim rule) due to information being provided by Form CG-33.

Lakes, and that it would only affect the burden of response in the first year that the proposed rule is in effect. The total estimated burden hours for the U.S. fleet is 352.75 (350 hours company section + 2.75 hours copies), at a cost to the fleet of \$24,150 (non-discounted). The total foreign vessel fleet would have a burden of response in the first year of 128 hours (1.5 hours for management plan × 85 vessels), at a cost of \$17,340 (non-discounted).

*Estimate of Total Annual Burden:* The proposed rule would not have an annual cost burden after the first year of this rule being implemented for U.S. and Canadian vessels (see “BURDEN OF RESPONSE,” above). After the first year, non-Canadian foreign vessels would incur an annual burden. We anticipate non-Canadian vessels would incur an annual burden of 11 hours for management plan development at a cost of \$1,530 (non-discounted).

As required by the Paperwork Reduction Act of 1995, we have submitted a copy of this proposed rule to OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining the burden are; how we can improve the quality, usefulness, and clarity of the information, and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility 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 the 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 that Order and have determined that it does not have implications for federalism. As

we discussed at length in part V of this preamble, we received comments from several States in response to our interim rule and are aware that some agencies in some States bordering the Great Lakes disagree with the Coast Guard's approach to the discharge of DCR in those waters. We encourage all such States, and any of their agencies with a stake in the outcome of this rulemaking, to continue sharing their input with us. We believe neither the interim rule, nor the rule proposed by this document, necessarily preempts or conflicts with State laws that may prohibit DCR discharges or impose conditions on those discharges that differ from those imposed by the Coast Guard. We do not take the position that such State laws facially frustrate an overriding Federal purpose. Until such time as a cognizant court rules to the contrary, we caution carriers that they must comply with all applicable Federal and State laws regulating DCR discharges. We encourage States to make us aware of laws they think are applicable. As we are so informed, we will share that information with the public by placing it in the docket for this rulemaking.

#### *F. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this 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 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. However, a group representing tribal interests requested consultation, and the Coast Guard agreed to brief that group on the rulemaking. The briefing is described in the docket (see docket item USCG–2004–19621–0182).

#### *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 (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, 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.ID, which guide the Coast Guard in complying with the National

Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). A draft “Environmental Impact Statement” (EIS) is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. We encourage the public to submit comments on the draft EIS.

#### List of Subjects in 33 CFR Part 151

Administrative practice and procedure, 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 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 continues to read as follows:

**Authority:** 33 U.S.C. 1321, 1902, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227 (110 Stat. 3034); Pub. L. 108–293 (118 Stat. 1063), § 623; E.O. 12777, 3 CFR, 1991 Comp. p. 351; DHS Delegation No. 0170.1, sec. 2(77).

2. Amend § 151.66 by revising paragraph (b) to read as follows:

#### § 151.66 Operating requirements: Discharge of garbage in the Great Lakes and other navigable waters.

\* \* \* \* \*

(b)(1) On the U.S. waters of the Great Lakes, commercial vessels may discharge bulk dry cargo residues in accordance with and subject to the conditions imposed by this paragraph

(2) As used in this paragraph—

*Apostle Islands National Lakeshore* means the site on or near Lake Superior administered by the National Park Service, less Madeline Island, and including the Wisconsin shoreline of Bayfield Peninsula from the point of land at 46°57′19.7″ N, 090°52′51.0″ W southwest along the shoreline to a point of land at 46°52′56.4″ N, 091°3′3.1″ W.

*Broom clean* means a condition in which the vessel’s deck shows that care has been taken to prevent or eliminate any visible concentration of bulk dry cargo residues, so that any remaining bulk dry cargo residues consist only of dust, powder, or isolated and random pieces, none of which exceeds 1 inch in diameter.

*Bulk dry cargo residues* means non-hazardous and non-toxic residues, regardless of particle size, of dry cargo carried in bulk, including limestone and other clean stone, iron ore, coal, salt, and cement. It does not include residues

of any substance known to be toxic or hazardous, such as nickel, copper, zinc, lead, or materials classified as hazardous in provisions of law or treaty.

*Caribou Island and Southwest Bank Protection Area* means the area enclosed by rhumb lines connecting the following coordinates, beginning on the northernmost point and proceeding clockwise:

47°30.0′ N, 085°50.0′ W

47°24.2′ N, 085°38.5′ W

47°04.0′ N, 085°49.0′ W

47°05.7′ N, 085°59.0′ W

47°18.1′ N, 086°05.0′ W

*Commercial vessel* means a commercial vessel loading, unloading, or discharging bulk dry cargo in the U.S. waters of the Great Lakes, or a U.S. commercial vessel transporting bulk dry cargo and operating anywhere on the Great Lakes; but the term does not include a non-self-propelled barge unless it is part of an integrated tug and barge unit.

*Comparable characteristics, cargoes, and operations* means similar vessel design, size, age, crew complement, cargoes, operational routes, deck and hold configuration, and fixed cargo transfer equipment configuration.

*Detroit River International Wildlife Refuge* means the U.S. waters of the Detroit River bound by the area extending from the Michigan shore at the southern outlet of the Rouge River to 41°54.0′ N 083°06.0′ W along the U.S.-Canada boundary southward and clockwise connecting points:

42°02.0′ N, 083°08.0′ W

41°54.0′ N, 083°06.0′ W

41°50.0′ N, 083°10.0′ W

41°44.52′ N, 083°22.0′ W

41°44.19′ N, 083°27.0′ W

*Dry cargo residue (or DCR) management plan* means the plan required by paragraph (b)(5) of this section.

*Grand Portage National Monument* means the site on or near Lake Superior, administered by the National Park Service, from the southwest corner of the monument point of land at 47°57.521′ N, 089°41.245′ W to the northeast corner of the monument point of land, 47°57.888′ N, 089°40.725′ W.

*Indiana Dunes National Lakeshore* means the site on or near Lake Michigan, administered by the National Park Service, from a point of land near Gary, Indiana at 41°42′59.4″ N, 086°54′59.9″ W eastward along the shoreline to 41°37′08.8″ N, 087°17′18.8″ W near Michigan City, Indiana.

*Industry standard practices* means practices that ensure the proper installation, maintenance, and operation

of shipboard cargo transfer and DCR removal equipment, proper crew training in DCR minimization procedures and cargo transfer operations, and proper supervision of cargo transfer operations to minimize DCR accumulation on or in a commercial vessel.

*Integrated tug and barge unit* means any tug-barge combination which, through the use of special design features or a specially designed connection system, has increased sea-keeping capabilities relative to a tug and barge in the conventional pushing mode.

*Isle Royale National Park* means the site on or near Lake Superior, administered by the National Park Service, where the boundary includes any submerged lands within the territorial jurisdiction of the United States within 4½ miles of the shoreline of Isle Royale and the surrounding islands, including Passage Island and Gull Island.

*Mile* means a statute mile.

*Milwaukee Mid-Lake Special Protection Area* means the area enclosed by rhumb lines connecting the following coordinates, beginning on the northernmost point and proceeding clockwise:

43°27.0′ N, 087°14.0′ W

43°21.2′ N, 087°02.3′ W

43°03.3′ N, 087°04.8′ W

42°57.5′ N, 087°21.0′ W

43°16.0′ N, 087°39.8′ W

*Minimization* means the reduction, to the greatest extent practicable, of any bulk dry cargo residue discharge from the vessel.

*Northern Refuge* means the area enclosed by rhumb lines connecting the coordinates, beginning on the northernmost point and proceeding clockwise:

45°45.0′ N, 086°00.0′ W

western shore of High Island, southern shore of Beaver Island:

45°30.0′ N, 085°30.0′ W

45°30.0′ N, 085°15.0′ W

45°25.0′ N, 085°15.0′ W

45°25.0′ N, 085°20.0′ W

45°20.0′ N, 085°20.0′ W

45°20.0′ N, 085°40.0′ W

45°15.0′ N, 085°40.0′ W

45°15.0′ N, 085°50.0′ W

45°10.0′ N, 085°50.0′ W

45°10.0′ N, 086°00.0′ W

*Pictured Rocks National Lakeshore* means the site on or near Lake Superior, administered by the National Park Service, from a point of land at

46°26'21.3" N, 086°36'43.2" W eastward along the Michigan shoreline to 46°40'22.2" N, 085°59'58.1" W.

*Six Fathom Scarp Mid-Lake Special Protection Area* means the area enclosed by rhumb lines connecting the following coordinates, beginning on the northernmost point and proceeding clockwise:

- 44°55.0' N, 082°33.0' W
- 44°47.0' N, 082°18.0' W
- 44°39.0' N, 082°13.0' W
- 44°27.0' N, 082°13.0' W
- 44°27.0' N, 082°20.0' W
- 44°17.0' N, 082°25.0' W
- 44°17.0' N, 082°30.0' W
- 44°28.0' N, 082°40.0' W
- 44°51.0' N, 082°44.0' W
- 44°53.0' N, 082°44.0' W
- 44°54.0' N, 082°40.0' W

*Sleeping Bear Dunes National Lakeshore* means the site on or near Lake Michigan, administered by the National Park Service, that includes

North Manitou Island, South Manitou Island and the Michigan shoreline from a point of land at 44°42'45.1" N, 086°12'18.1" W north and eastward along the shoreline to 44°57'12.0" N, 085°48'12.8" W.

*Stannard Rock Protection Area* means the area within a 6-mile radius from Stannard Rock Light, at 47°10'57" N, 087°13'34" W.

*Superior Shoal Protection Area* means the area within a 6-mile radius from the center of Superior Shoal, at 48°03.2' N, 087°06.3' W.

*Thunder Bay National Marine Sanctuary* means the site on or near Lake Huron designated by the National Oceanic and Atmospheric Administration as the boundary that forms an approximately rectangular area by extending along the ordinary high water mark between the northern and southern boundaries of Alpena County, cutting across the mouths of rivers and streams, and lakeward from those points along latitude lines to longitude 83

degrees west. The coordinates of the boundary are:

- 45°12'25.5" N, 083°23'18.6" W
- 45°12'25.5" N, 083°00'00" W
- 44°51'30.5" N, 083°00'00" W
- 44°51'30.5" N, 083°19'17.3" W

*Waukegan Special Protection Area* means the area enclosed by rhumb lines connecting the following coordinates, beginning on the northernmost point and proceeding clockwise:

- 42°24.3' N, 087°29.3' W
- 42°13.0' N, 087°25.1' W
- 42°12.2' N, 087°29.1' W
- 42°18.1' N, 087°33.1' W
- 42°24.1' N, 087°32.0' W

*Western Basin* means that portion of Lake Erie west of a line due south from Point Pelee.

(3) Discharges of bulk dry cargo residue under paragraph (b) of this section are allowed, subject to the conditions listed in Table 151.66(b)(3) of this section.

TABLE 151.66(B)(3)—BULK DRY CARGO RESIDUE DISCHARGES ALLOWED ON THE GREAT LAKES

Location	Cargo	Discharge allowed except as noted
Tributaries, their connecting rivers, and the St. Lawrence River.	Limestone and other clean stone.	Prohibited within 3 miles from shore.
	All other cargoes .....	Prohibited.
Lake Ontario .....	Limestone and other clean stone.	Prohibited within 3 miles from shore.
	Iron ore .....	Prohibited within 6 miles from shore.
Lake Erie .....	All other cargoes .....	Prohibited within 13.8 miles from shore.
	Limestone and other clean stone.	Prohibited within 3 miles from shore; prohibited in the Detroit River International Wildlife Refuge; prohibited in Western Basin, except that a vessel operating exclusively within Western Basin may discharge limestone or clean stone cargo residues over the dredged navigation channels between Toledo Harbor Light and Detroit River Light.
	Iron ore .....	Prohibited within 6 miles from shore; prohibited in the Detroit River International Wildlife Refuge; prohibited in Western Basin, except that a vessel may discharge residue over the dredged navigation channels between Toledo Harbor Light and Detroit River Light if it unloads in Toledo or Detroit and immediately thereafter loads new cargo in Toledo, Detroit, or Windsor.
	Coal, salt .....	Prohibited within 13.8 miles from shore; prohibited in the Detroit River International Wildlife Refuge; prohibited in Western Basin, except that a vessel may discharge residue over the dredged navigation channels between Toledo Harbor Light and Detroit River Light if it unloads in Toledo or Detroit and immediately thereafter loads new cargo in Toledo, Detroit, or Windsor.
Lake St. Clair .....	All other cargoes .....	Prohibited within 13.8 miles from shore; prohibited in the Detroit River International Wildlife Refuge; prohibited in Western Basin.
	Limestone and other clean stone.	Prohibited within 3 miles from shore.
Lake Huron, except Six Fathom Scarp Mid-Lake Special Protection Area.	All other cargoes .....	Prohibited.
	Limestone and other clean stone.	Prohibited within 3 miles from shore; prohibited in the Thunder Bay National Marine Sanctuary.
	Iron ore .....	Prohibited within 6 miles from shore and in Saginaw Bay; prohibited in the Thunder Bay National Marine Sanctuary; prohibited for vessels upbound along the Michigan thumb as follows: (i) Between 5.8 miles northeast of entrance buoys 11 and 12 to the track line turn abeam of Harbor Beach, prohibited within 3 miles from shore. (ii) For vessels bound for Saginaw Bay only, between the track line turn abeam of Harbor Beach and 4 nautical miles northeast of Point Aux Barques Light, prohibited within 4 miles from shore and not less than 10 fathoms of depth.

TABLE 151.66(B)(3)—BULK DRY CARGO RESIDUE DISCHARGES ALLOWED ON THE GREAT LAKES—Continued

Location	Cargo	Discharge allowed except as noted
Lake Michigan	Coal, salt	Prohibited within 13.8 miles from shore and in Saginaw Bay; prohibited in the Thunder Bay National Marine Sanctuary; prohibited for vessels upbound from Alpena into ports along the Michigan shore south of Forty Mile Point within 4 miles from shore and not less than 10 fathoms of depth.
	All other cargoes	Prohibited within 13.8 miles from shore and in Saginaw Bay; prohibited in the Thunder Bay National Marine Sanctuary.
	Limestone and other clean stone.	Prohibited within 3 miles from shore; prohibited within the Milwaukee Mid-Lake and Waukegan Special Protection Areas; prohibited within the Northern Refuge; prohibited within 3 miles of the shore of the Indiana Dunes and Sleeping Bear National Lakeshores; prohibited within Green Bay.
	Iron ore	Prohibited in the Northern Refuge; north of 45°N, prohibited within 12 miles from shore and in Green Bay; south of 45°N, prohibited within 6 miles from shore, and prohibited within the Milwaukee Mid-Lake and Waukegan Special Protection Areas, in Green Bay, and within 3 miles of the shore of Indiana Dunes and Sleeping Bear National Lakeshores; except that discharges are allowed at: (a) 4.75 miles off Big Sable Point Betsie, along established Lake Carriers Association (LCA) track lines; and (b) Along 056.25° LCA track line between due east of Poverty Island to a point due south of Port Inland Light.
	Coal	Prohibited in the Northern Refuge; prohibited within 13.8 miles from shore and prohibited within the Milwaukee Mid-Lake and Waukegan Special Protection Areas, in Green Bay, and within 3 miles of the shore of Indiana Dunes and Sleeping Bear National Lakeshores; except that discharges are allowed— (i) Along 013.5° LCA track line between 45°N and Boulder Reef, and along 022.5° LCA track running 23.25 miles between Boulder Reef and the charted position of Red Buoy #2; (ii) Along 037° LCA track line between 45°20'N and 45°42'N; (iii) Along 056.25° LCA track line between points due east of Poverty Island to a point due south of Port Inland Light; and (iv) At 3 miles from shore for coal carried between Manistee and Ludington along customary routes.
	Salt	Prohibited in the Northern Refuge; prohibited within 13.8 miles from shore and prohibited within the Milwaukee Mid-Lake and Waukegan Special Protection Areas, in Green Bay, and within 3 miles of the shore of Indiana Dunes and Sleeping Bear National Lakeshores, and in Green Bay.
Lake Superior	All other cargoes	Prohibited in the Northern Refuge; prohibited within 13.8 miles from shore and prohibited within the Milwaukee Mid-Lake and Waukegan Special Protection Areas, in Green Bay, and within 3 miles of the shore of Indiana Dunes and Sleeping Bear National Lakeshores.
	Limestone and other clean stone.	Prohibited within 3 miles from shore; and prohibited within Isle Royale National Park and the Caribou Island and Southwest Bank, Stannard Rock, and Superior Shoal Protection Areas, and within 3 miles of the shore of the Apostle Islands and Pictured Rocks National Lakeshores or the Grand Portage National Monument.
	Iron ore	Prohibited within 6 miles from shore (within 3 miles off northwestern shore between Duluth and Grand Marais); and prohibited within Isle Royale National Park and the Caribou Island and Southwest Bank, Stannard Rock, and Superior Shoal Protection Areas, and within 3 miles of the shore of the Apostle Islands and Pictured Rocks National Lakeshores or the Grand Portage National Monument.
	Coal, salt	Prohibited within 13.8 miles from shore (within 3 miles off northwestern shore between Duluth and Grand Marais); and prohibited within Isle Royale National Park and the Caribou Island and Southwest Bank, Stannard Rock, and Superior Shoal Protection Areas, and within 3 miles of the shore of the Apostle Islands and Pictured Rocks National Lakeshores or the Grand Portage National Monument.
	Cement	Prohibited within 13.8 miles from shore (within 3 miles offshore west of a line due north from Bark Point); and prohibited within Isle Royale National Park and the Caribou Island and Southwest Bank, Stannard Rock, and Superior Shoal Protection Areas, and within 3 miles of the shore of the Apostle Islands and Pictured Rocks National Lakeshores or the Grand Portage National Monument.
All other cargoes	Prohibited within 13.8 miles from shore; and prohibited within Isle Royale National Park and the Caribou Island and Southwest Bank, Stannard Rock, and Superior Shoal Protection Areas, and within 3 miles of the shore of the Apostle Islands and Pictured Rocks National Lakeshores or the Grand Portage National Monument.	

(4) The master, owner, operator, or person in charge of any commercial vessel must ensure that the vessel's deck

is kept broom clean whenever the vessel is in transit.

(5) The master, owner, operator, or person in charge of any commercial

vessel must ensure that a dry cargo residue management plan is onboard the vessel, kept available for Coast Guard inspection, and that all operations are

conducted in accordance with the plan. A waste management plan meeting the requirements of 33 CFR 151.57 satisfies this requirement, so long as it provides all the information required by this paragraph (b)(5). If the plan is maintained electronically, at least one paper copy of the plan must be onboard for use during inspections. The plan must describe the specific measures the vessel employs to ensure the minimization of bulk dry cargo residue discharges, and, at a minimum, must list or describe—

(i) Equipment onboard the vessel that is designed to minimize bulk dry cargo spillage during loading and unloading;

(ii) Equipment onboard the vessel that is available to recover spilled cargo from the decks and transfer tunnels and return it to the holds or to unloading conveyances;

(iii) Operational procedures employed by the vessel's crew during the loading or unloading of bulk dry cargoes to minimize cargo spillage onto the decks and into the transfer tunnels and to achieve and maintain the broom clean deck condition required by paragraph (b)(4) of this section;

(iv) Operational procedures employed by the vessel's crew during or after loading or unloading operations to return spilled bulk dry cargo residue to the vessel's holds or to shore via an unloading conveyance;

(v) How the vessel's owner or operator ensures that the vessel's crew is familiar with any operational procedures described by the plan;

(vi) The position title of the person onboard who is in charge of ensuring compliance with procedures described in the plan;

(vii) Any arrangements between the vessel and specific ports or terminals for the unloading and disposal of the vessel's bulk dry cargo residues ashore; and

(viii) The procedures used and the vessel's operating conditions to be maintained during any unavoidable discharge of bulk dry cargo residue into the Great Lakes.

(6) In determining whether a commercial vessel or person is in compliance with this paragraph (b), Coast Guard personnel may consider—

(i) The extent to which the procedures described in the vessel's DCR management plan reflect current industry standard practices for vessels of comparable characteristics, cargoes, and operations;

(ii) The crew's demonstrated ability to perform tasks for which the DCR management plan holds them responsible;

(iii) Whether equipment described in the DCR management plan is maintained in proper operating condition; and

(iv) The extent to which the crew adheres to the vessel's DCR management plan during actual dry cargo loading and unloading operations and DCR discharge operations.

\* \* \* \* \*

**J.G. Lantz,**

*Director of Commercial Regulations and Standards, United States Coast Guard.*

[FR Doc. 2012-18399 Filed 7-27-12; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2012-0427]

RIN 1625-AA00

#### Safety Zone; Gilmerton Bridge Center Span Float-In, Elizabeth River; Norfolk, Portsmouth, and Chesapeake, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Coast Guard is withdrawing its proposed rule concerning the Gilmerton Bridge Center Span Float-in and bridge construction of span placement. The original proposal had a start date of July 31, 2012, and must be rescheduled to start on September 5, 2012, due to unforeseen circumstances with span lift construction.

**DATES:** The proposed rule is withdrawn on July 6, 2012.

**ADDRESSES:** The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2012-0427 in the "Keyword" box, and then clicking "Search."

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice, call or email Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757-668-5581, email [Hector.L.Cintron@uscg.mil](mailto:Hector.L.Cintron@uscg.mil). If you have questions on viewing material in the

docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 25, 2012, we published a notice of proposed rulemaking entitled "Safety Zone; Gilmerton Bridge Center Span Float-in, Elizabeth River; Norfolk, Portsmouth, and Chesapeake, Virginia" in the **Federal Register** (77 FR 43557). The rulemaking concerned establishing a safety zone on the navigable waters of the Elizabeth River in Norfolk, Portsmouth, and Chesapeake, VA, in order to provide for the safety of life on navigable waters during the Gilmerton Bridge Center Span Float-in and bridge construction of span placement.

##### Withdrawal

The proposed rule is being withdrawn due to unforeseen circumstances in the construction timeline of the Center Span, which has caused a 5 week delay in the project.

**Authority:** We issue this notice of withdrawal under the authority of 5 U.S.C. 552(a), 44 U.S.C. 1505(a)(3), and 33 CFR 1.05-1.

Dated: July 17, 2012.

**John K. Little,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. 2012-18559 Filed 7-27-12; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2012-0446; FRL-9703-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Utah; Determination of Clean Data for the 1987 PM<sub>10</sub> Standard for the Ogden Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the Ogden City nonattainment area in Utah is currently attaining the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM<sub>10</sub>) based on certified, quality-assured ambient air monitoring data for the years 2009 through 2011. The State of Utah submitted a letter dated March 30, 2000, requesting EPA to make a clean data