

applicable here because, pursuant to 5 U.S.C. 804(3)(C), this final rule “does not substantially affect the rights or obligations of non-agency parties.”

#### List of Subjects

##### 29 CFR Part 2200

Administrative practice and procedure.

##### 29 CFR Part 2203

Sunshine Act.

Signed at Washington, DC, on the 23rd day of September, 2008.

**Horace A. Thompson III,**  
*Chairman.*

**Thomasina V. Rogers,**  
*Commissioner.*

■ Accordingly, 29 CFR parts 2200 and 2203 are corrected by making the following amendments:

#### PART 2200—RULES OF PROCEDURE

■ 1. The authority citation for part 2200 continues to read as follows:

**Authority:** 29 U.S.C. 661(g), unless otherwise noted. Section 2200.96 is also issued under 28 U.S.C. 2112(a).

■ 2. In § 2200.57, paragraph (a), in the third sentence, remove the ZIP code suffix “3419” and add, in its place, “3457”.

■ 3. In § 2200.63, paragraph (b), correct “zequestenø” to read “requested”.

■ 4. In § 2200.91, paragraph (c), in the fourth sentence, remove the number “20” and add, in its place, “10”.

■ 5. In § 2200.96, in the first sentence, remove the ZIP code suffix “3419” and add, in its place, “3457”.

■ 6. In § 2200.209, paragraph (g), in the last sentence, remove the phrase “21 day” and add, in its place, “11-day”.

#### PART 2203—REGULATIONS IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT

■ 7. The authority citation for part 2203 continues to read as follows:

**Authority:** 29 U.S.C. 661(g); 5 U.S.C. 552b(d)(4); 5 U.S.C. 552b(g).

■ 8. In § 2203.2, in the definition of “Regularly-scheduled meetings,” remove the time “10:00 a.m.” and add, in its place, “10:30 a.m.”

■ 9. In § 2203.4, paragraph (c), in the first sentence, remove the time “10:00 a.m.” and add, in its place, “10:30 a.m.”

■ 10. In § 2203.4, paragraph (c), in the first sentence, remove the ZIP code suffix “3419” and add, in its place, “3457”.

■ 11. In § 2203.7, paragraph (b), in the third sentence, remove the ZIP code

suffix “3419” and add, in its place, “3457”.

[FR Doc. E8–22783 Filed 9–26–08; 8:45 am]

BILLING CODE 7600–01–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:** Interim rule; request for comments.

**SUMMARY:** The Coast Guard is amending its regulations to allow the discharge of bulk dry cargo residue (DCR) in limited areas of the Great Lakes by self-propelled vessels and by any barge that is part of an integrated tug and barge unit. DCR is the residue of non-toxic and non-hazardous bulk dry cargo like limestone, iron ore, and coal. These regulations also add new recordkeeping and reporting requirements and encourage carriers to adopt voluntary control measures for reducing discharges. Discharges are now prohibited in certain protected and sensitive areas where, previously, they were allowed. The Coast Guard also requests public comments on the need for and feasibility of additional conditions that might be imposed on discharges in the future, such as mandatory use of control measures, or further adjustments to the areas where discharges are allowed or prohibited.

**DATES:** This interim rule takes effect September 29, 2008. Initial reports under amended 33 CFR 151.66(c)(4) are due January 15, 2009. Comments and related material submitted in response to the request for comments must reach the Docket Management Facility on or before January 15, 2009.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2004–19621 and are 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 at <http://www.regulations.gov>.

We encourage you to submit comments identified by Coast Guard docket number USCG–2004–19621 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *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.

(3) *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.

(4) *Fax:* 202–493–2251.

Anyone can search the electronic form of all 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 system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this interim rule, call LT Heather St. Pierre, U.S. Coast Guard, telephone 202–372–1432 or e-mail [Heather.J.St.Pierre@uscg.mil](mailto:Heather.J.St.Pierre@uscg.mil). If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

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##### I. Acronyms

APA Administrative Procedure Act  
DCR Dry Cargo Residue

DEIS Draft Environmental Impact Statement  
FEIS Final Environmental Impact Statement  
IEP Interim Enforcement Policy  
NPRM Notice of Proposed Rulemaking  
ROD Record of Decision

## II. Regulatory History and Good Cause for Immediate Effectiveness

In the **Federal Register** on May 23, 2008, we published a notice of proposed rulemaking (NPRM) and a notice of availability for the accompanying Draft Environmental Impact Statement (DEIS) (73 FR 30014). We received written comments on the proposed rule from 55 sources, and heard from 3 commenters at public meetings. The public meetings were announced in the **Federal Register** 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 on [DATE].

This interim rule takes effect immediately upon its publication in the **Federal Register**. Under the Administrative Procedure Act (APA), 5 U.S.C. 553(d), a substantive rule such as this must be published not less than 30 days before its effective date, unless the agency finds good cause for an earlier effective date and publishes that finding with the rule. As we subsequently discuss in more detail, this rule generally allows the continuation of existing practices in the Great Lakes. Those practices have been sanctioned by Congress and, although they have minor indirect adverse impacts on the Great Lakes environment, their discontinuation could impose a substantial economic burden on Great Lakes maritime commerce. Congressional sanction for the existing practices expires on September 30, 2008, and it was Congress's intent that the Coast Guard review existing practices and issue new regulations governing those practices by that date. If the APA's 30-day provision were given effect, then there would be a period of up to a month during which existing practices would be prohibited, and the resulting burden on Great Lakes maritime commerce would be significant in relation to the duration of the prohibition and the potential environmental benefits of such a short prohibition. The Coast Guard has concluded the APA's 30-day provision is unnecessary and contrary to the

public interest due to the disruption entailed by so short a period of prohibition. Therefore, the Coast Guard finds good cause for this interim rule to take effect upon publication in the **Federal Register**.

## III. Background, Purpose, and Discussion of Rule

This interim rule adopts the regulatory text proposed in our May 2008 NPRM, with only minor changes. For a fuller discussion of the background and purpose of this rulemaking, please consult the NPRM.

A substantial portion of Great Lakes shipping involves "bulk dry cargos:" principally limestone, iron ore, and coal, but also lesser quantities of other substances like cement and salt. During ship loading or unloading operations, small portions of these cargos often fall on ship decks or within ship unloading tunnels. This fallen dry cargo residue (DCR) can contaminate other cargos or cause crew members to slip or otherwise injure themselves on a ship's deck. Traditionally, Great Lakes carriers have managed DCR by periodically washing both the deck and cargo unloading tunnels with water in a practice commonly known as "cargo sweeping." In order to reduce costs and minimize in-port time, ships typically conduct this cargo sweeping underway while transiting between ports.

Prior to the adoption of this interim rule, Coast Guard regulations that implement the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. 1901 *et seq.*, have treated DCR as an operational waste, which constitutes garbage. The discharge of any garbage, anywhere on the navigable waters of the United States, was prohibited. Strict enforcement of this regulatory scheme on the Great Lakes would have put an end to the practice of cargo sweeping. However, in recognition of the special characteristics of Great Lakes dry cargo shipping, an "interim enforcement policy" (IEP) allowed "incidental discharges" of non-toxic and non-hazardous DCR on the Great Lakes from 1993 until 2008. The IEP was originally adopted by the Coast Guard's Ninth District, and then mandated by Congress in 1998, 2000, and 2004 (Pub. L. 105–383, sec. 415; Pub. L. 106–554, sec. 1117; Pub. L. 108–293, sec. 623). The IEP allowed cargo sweeping only in defined waters, most of which are relatively deep and far from shore. Additionally, it prohibited or restricted discharges in special areas that are considered environmentally sensitive. The congressionally mandated enforcement of the IEP expires September 30, 2008, or upon the

promulgation of new regulations, whichever date comes first.

The 2004 legislation gave the Coast Guard authority to regulate the discharge of DCR on the Great Lakes, notwithstanding any other law (Pub. L. 108–293, sec. 623(b)). The Coast Guard interprets this authority to allow regulation on the Great Lakes, on water or on shore, of any operation related to the loading, transfer, or unloading of dry bulk cargo, or to cargo sweeping or other discharge of dry bulk cargo residue. All of these operations relate to and are part and parcel of the discharge of dry bulk cargo, as contemplated by Congress in the 2004 legislation. House Report 108–617, the conference report prepared in support of the 2004 legislation, states:

It is expected that the [IEP] will be made permanent or replaced with an alternative regime that appropriately balances the needs of maritime commerce and environmental protection.

This interim rule amends Coast Guard regulations so that DCR discharges may continue in the U.S. waters of the Great Lakes, so long as those discharges are in compliance with regulatory conditions that derive, with modifications, from the IEP. One modification is non-substantive: We are clarifying the current policy but not changing it, to exclude non-self propelled barges that are not part of an integrated tug and barge unit. Integrated tugs and barges remain included because they are designed and operated similarly to self propelled vessels of the same size and service. We are substantively modifying the IEP to add new recordkeeping and reporting requirements for dry cargo carriers. We are adding, to the list of locations in the Great Lakes where DCR discharges will not be allowed, additional areas that the Final Environmental Impact Study designates as protected and sensitive. Finally, we are strongly encouraging carriers to voluntarily adopt control measures for reducing the amount of DCR that accumulates on or within vessels and that would ultimately be discharged into the Great Lakes.

Based on our Final Environmental Impact Statement, we have concluded that continued discharges of DCR will have only a minor indirect impact on most areas within the Great Lakes environment. The FEIS indicated that unconstrained discharges could have a direct significant adverse impact on protected and sensitive areas. We will mitigate that impact by prohibiting most discharges in those areas, and within three miles of land-based protected and sensitive areas. Only discharges under certain conditions and in specified areas

will be allowed in the Western Basin of Lake Erie, in order to avoid the adverse economic impact that the FEIS indicates could accompany the complete prohibition of discharges in that area. Vessels operating exclusively in the Western Basin will be allowed to discharge limestone, clean stone, coal, iron ore, and salt in dredged navigation channels between Toledo Harbor Light and Detroit River Light, where environmental conditions are already disturbed frequently due to dredging.

#### IV. Discussion of Comments

We received 55 comments during the public comment period on our May 2008 NPRM, as well as comments from 3 individuals at our two public meetings. Few, if any, commenters distinguished between the DEIS and NPRM in their comment, and therefore all comments were considered for both documents. We have addressed the comments in detail in the FEIS, which was made available to the public on August 22, 2008. In response to public comments, we are extending the areas where DCR discharges are prohibited to include waters within three miles of shore at the following sites: Indiana Dunes and Sleeping Bear National Lakeshores on Lake Michigan and Grand Portage National Monument and Apostle Islands and Pictured Rocks National Lakeshores on Lake Superior. Otherwise, we are adopting the regulatory text we proposed in the NPRM without substantive change.

A table presenting the substance of each comment received, and the Coast Guard's response, appears in the FEIS which can be found in the docket at <http://www.regulations.gov>. The comments, and our responses, are summarized in the following discussion. During the drafting of this interim rule, we received late comments which did not raise new substantive issues and did not affect the following discussion.

*Comments in favor of prohibiting continued DCR discharges.* Forty-six commenters favored prohibiting continued DCR discharges in the Great Lakes. We agree with these commenters that our environmental analysis shows that prohibition could minimize the potential for adverse environmental impacts, but disagree that DCR discharges should be completely prohibited. In giving the Coast Guard permanent regulatory authority over Great Lakes DCR discharges, Congress expected us to strike an appropriate balance between maritime commercial and environmental protection needs. By balancing the adverse environmental impact of continued DCR discharges in

the Great Lakes against the potentially substantial economic cost of prohibiting discharges anywhere in the Great Lakes, we believe this interim rule best achieves Congress' intent.

*Comments on the toxicity of DCR.* Fifteen commenters expressed concern regarding toxic chemicals in DCR and their effects on humans, animals, and plants. As recounted in detail in the FEIS, we have carefully evaluated the toxic potential of DCR. In general, we found that any toxic components of DCR deposits in the Great Lakes do not exist in concentrations known to be toxic to organisms. In those few instances where a cargo's residue concentration can be found near or above potentially harmful levels, natural sedimentation lowers the concentration to well below potentially harmful levels. There is little or no potential for any fish with toxic concentrations in their tissues to enter the food chain. Moreover, the inclusion of mandatory recordkeeping in our interim rule will enable us to track future DCR discharges, and should environmental conditions change significantly in the future, we retain the regulatory authority needed to address those changed conditions.

*Comments on the impact of DCR on invasive mussels and the aquatic environment.* Eight commenters expressed concern regarding invasive mussels and the aquatic environment. The FEIS contains detailed information about how we evaluated the impact of DCR on the aquatic environment, especially with respect to invasive mussels. We found minor adverse effects on sediment physical structure, the benthic community, and invasive species. Except in portions of Lakes Michigan and Huron where the potential impact is minor, the discharge of DCR will not change the distribution or density of mussels in most of the Great Lakes, either because mussels are already ubiquitous (e.g., in Lakes Erie and Ontario) or because water depth, temperature, and calcium levels limit mussel distribution and density (e.g., in Lake Superior). Once again, we believe our interim rule best achieves the legislative intention behind our regulatory authority by balancing the minor adverse impact of continued DCR discharges on sediment physical structure, the benthic community, and invasive species against the potential economic cost of prohibiting those discharges.

*Comments on the legality of the Coast Guard's proposal.* Thirty-six commenters objected to the continued allowance of DCR discharge on the grounds that it is already illegal under U.S. or international laws, treaties, or

agreements. Among the authorities listed by these commenters are the International Convention for the Prevention of Pollution from Ships (MARPOL), APPS, the Great Lakes Water Quality Agreement (GLWQA), and State laws in Michigan, Minnesota, and Pennsylvania. We discuss the possible interplay between this interim rule and State law more fully in "Federalism," Part V.E. of this preamble.

This interim rule replaces the IEP with new regulations. We initially adopted the IEP in response to concerns that strict enforcement of existing authorities such as APPS would prohibit continued DCR discharge in the Great Lakes. Congress subsequently addressed that same concern by passing legislation in 1998, 2000, and 2004 that required the Coast Guard to implement and enforce the IEP on the Great Lakes. In 2004, Congress also gave the Coast Guard authority "notwithstanding any other law" to regulate the discharge of DCR in the Great Lakes. The legislative history of the 2004 legislation shows that Congress expected the Coast Guard to make the IEP permanent or replace the IEP with an alternative regime that appropriately balances maritime commercial and environmental protection needs. The 2004 legislation is the latest expression of Congress's intentions with respect to regulating Great Lakes DCR discharge, and the basis for the Coast Guard's rulemaking.

*Comments relating to recordkeeping and reporting.* Seventeen commenters either opposed mandatory recordkeeping and reporting as unnecessary, or asked for modifications in the record form or in the frequency of reporting. We agree that some minor modifications to the reporting form are appropriate which will be reflected in Form CG-33. However, we disagree that the quarterly reporting schedule requires excessively frequent reporting. We have found through the numerous rules and programs we administer that recordkeeping is an integral and important part of ensuring regulatory compliance. The Coast Guard is not requiring the recording or reporting of any data that constitutes trade secrets or privileged and confidential commercial or financial information. We consider the economic cost of our new recordkeeping and reporting requirements to be reasonable, especially considering the value of comprehensive DCR practice data and its potential relationship with natural resources. Data reported to the Coast Guard will be useful as we evaluate the costs and benefits of DCR control measures. Quarterly reporting ensures

that data is assembled quickly. Once our data collection needs are satisfied, we will likely retain the recordkeeping requirement, but may modify or eliminate the reporting requirement.

We have removed the facsimile of Form CG-33 from the regulation, but included information on how to obtain the form itself in the regulatory text.

#### V. Request for Additional Comments

In our May 2008 NPRM, we promised to open a new rulemaking to begin a new phase of DCR study, simultaneously with publication of the final rule for the present rulemaking. The new phase would consider what additional conditions, if any, should be

imposed on DCR discharges in order to offset any long term impacts they might have.

We have decided to conduct this new phase as part of the present rulemaking rather than as a separate project. Therefore, in this interim rule we announce the opening of the new phase, and strongly encourage you to submit public comments to assist us. We want to 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 discharges are currently allowed, or other regulatory changes.

The outcome of this new phase is not predetermined. We might find a clear case for imposing new DCR control measure requirements and altering geographical boundaries. Alternatively, we might find that the costs of any new regulatory measures outweigh the environmental benefits the new measures would provide, and leave our regulations unchanged. In determining the regulatory outcome, we intend to be guided by data on DCR discharges and on DCR control measures that are already in voluntary use, and by careful consideration of public comments. The DCR control measures we have identified for analysis are listed in the Table below.

TABLE—POTENTIAL DRY CARGO RESIDUE CONTROL MEASURES

#### Shipboard measures:

- Enclosed conveyor.
- Troughed conveyor.
- Conveyor skirts.
- Belt scrapers.
- Water mist for dust control.
- Conveyor capacity indicators.
- Deck remote controls for conveyors.
- Stop conveyor while ship or belt is repositioned.
- Delay loading/unloading during high wind.
- Radio communication between deck and loader.
- Crew training on procedures to reduce DCR.
- Limit vertical angle of conveyor boom.
- Broom & shovel.
- Tarps to collect DCR.
- Cargo hold vibrator.
- Watertight gate seal.
- Cargo hold lining.
- Minimize hatch removal during poor weather.
- Careful cargo hold gate operation.

#### Shoreside measures:

- Enclosed conveyor.
- Troughed conveyor.
- Conveyor skirts.
- Belt scrapers.
- Water mist for dust control.
- Conveyor capacity indicators.
- Deck remote controls for conveyors.
- Stop conveyor while ship or belt is repositioned.
- Delay loading/unloading during high wind.
- Radio communication between deck and loader.
- Crew training on procedures to reduce DCR.
- Limit vertical angle of conveyor boom.
- Flow feeder.
- Loading chute, including telescoping or conveyors.
- Chemical surfactants.
- Suction pumped cargo, slurry transport, pneumatic or screw conveyors.

To better focus our efforts, we invite you to respond to the following questions:

1. Is there a control measure, other than those listed in the Table, that we should study?

2. Do you have data on the cost of installing, operating and maintaining control measures or their effectiveness in reducing the volume of DCR

discharged? Can you identify a data source we should consult?

3. If control measures were to be required, are you in favor of a phase-in, and if so, how might the phase-in be structured?

4. Are you in favor of limiting the areas in which control measures should be required, and if so, what are the areas where those requirements should apply?

5. Are there other changes the Coast Guard should make in order to regulate

the long term discharge of DCR in the Great Lakes in a way that is both economically and environmentally sustainable?

Please see the **ADDRESSES** section of this document for information on how you can share your responses to these questions with us.

## VI. Regulatory Evaluation

### A. Executive Order 12866

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Public comments on the NPRM are summarized in Part IV of this preamble. We received no public comments that would alter our assessment of impacts in the NPRM. We have adopted the assessment in the NPRM as final. See the “Regulatory Evaluation” section of the NPRM for the complete analysis. A summary of the assessment follows.

The recordkeeping provisions in this rule require owners and operators of self propelled vessels to maintain records and report information on dry cargo operations. This rule does not require the use of control measures to reduce the amount of residue swept into the Great Lakes.

There are minimal costs involved in requiring owners and operators of vessels to keep records of their bulk dry cargo residue sweeping operations and to make those records available to the Coast Guard. Moreover, many vessel operators already record this information voluntarily. We identified 55 U.S., 33 Canadian, and 186 non-Canadian foreign vessels operating on the Great Lakes affected by the recordkeeping and reporting requirements of this rule.

We estimate the annual recurring cost of this rule to industry, both U.S. and foreign, to be \$88,828 (non-discounted). The total combined U.S. and foreign 10-year (2009–2018) present value cost of this rule is \$623,891 discounted at 7 percent and \$757,721 discounted at 3 percent.

We estimate the annual recurring cost of this rule to U.S. industry to be \$60,077 (non-discounted). The total U.S. 10-year (2009–2018) present value cost of this rule is \$421,956 discounted at 7 percent and \$512,469 discounted at 3 percent. See the “Regulatory Evaluation” section of the NPRM for additional details of the population and cost estimates.

This rule will increase the Coast Guard’s ability to understand the practice of dry cargo sweeping, monitor the practice, and, if necessary, subject the practice of dry cargo sweeping to further controls in the future.

### B. Small Entities

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

In the NPRM, we certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities and we requested public comments on this certification. We received no comments on this certification and adopt it as final.

In the NPRM, we identified 13 small entities affected by this rule involving inland water freight transportation, marine cargo handling, packaging and labeling services, and other navigation related industries. We estimated the per vessel annual cost impact of this rulemaking on small entities to be about \$1,092. We determined that the cost of the recordkeeping and reporting requirements would not significantly impact the annual operating revenues of the affected small entities. See the “Small Entities” section of the NPRM for more details.

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

### C. Assistance for Small Business

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult Lt St. Pierre (see **FOR FURTHER INFORMATION CONTACT**).

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). 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.

### D. Collection of Information

This rule calls for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. A summary of the title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. This information has not changed from the NPRM. 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. See the “Collection of Information” section of the NPRM for additional details.

*Title:* Dry Cargo Residue Sweepings in the Great Lakes.

*Summary of the Collection of Information:* These DCR recordkeeping provisions will require vessel operators to maintain a DCR log to document what dry cargos are loaded, unloaded, and swept, when they are swept, how they are swept, how much is swept, what control measures, if any, are in place, and where, when, and how fast the vessel is traveling when the sweepings take place.

*Need for Information:* By making DCR recordkeeping mandatory, we will greatly increase our ability to understand the practice of dry cargo sweeping, monitor the practice, and if necessary, subject the practice of DCR sweeping to further controls in the future.

*Proposed Use of Information:* The DCR recordkeeping and reporting requirements will provide additional data to support Coast Guard analysis of policies to reduce DCR discharges over the long term, beyond the next 6 to 10 years.

*Description of the Respondents:* The respondents are owners and operators of U.S., Canadian, and foreign flag vessels carrying dry-bulk cargos operated on the Great Lakes. The respondents will conduct DCR recordkeeping and handle the submissions.

*Number of Respondents:* Based on estimates from the NPRM, the total number of vessels that handle Great Lakes dry bulk cargo shipments is 274 (= 55 U.S. vessels + 33 Canadian vessels

+ 186 non-Canadian foreign vessels). We estimate the number of respondents equal the number of vessels since there will be crew on each vessel recording the information.

*Frequency of Response:* Based on estimates from the NPRM, the annual frequency of response is 10,615 for U.S. vessels and 5,153 for foreign vessels.

*Burden of Response:* Based on estimates from the NPRM, the total annual burden hours for this rule are 886 hours for U.S. vessel operators and 448 hours for foreign vessel operators. We estimate the annual costs of this burden to be \$60,077 (non-discounted) for U.S. operators and \$28,751 for foreign operators.

During public hearings, one commenter questioned the usefulness of collecting man hour data stating that recording man hours can vary greatly by interpretation and that the data will be unusable. The Coast Guard disagrees with the commenter. The man hour data provided by vessel masters will enable the Coast Guard to better estimate the burden of implementing DCR control measures. The information will provide a benchmark for measuring DCR-related man hours for the different alternatives under consideration. We have provided instructions and guidance for recording man hours. As discussed in the NPRM, we found many vessel operators already record this information voluntarily.

As required by 44 U.S.C. 3507(d), we submitted a copy of the proposed rule to the Office of Management and Budget for its review of the collection of information. OMB approved the collection for 33 CFR part 151 and Form CG-33 on September 4, 2008, and the corresponding approval number from OMB is OMB Control Number 1625-0072, which expires on September 11, 2011.

#### *E. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. The Coast Guard received 10 comments in response to our NPRM regarding the possible interplay between Coast Guard regulations and State laws that may relate to DCR discharges. We understand that at least some States in the Great Lakes region already have legislation that may prohibit certain solid waste discharges in their Great Lakes waters, and that certain of those States take the position that DCR may be or at least may contain solid waste. However, we do not agree with the

commenters that the Federal regulation either expressly preempts or necessarily conflicts with those laws. Rather, and to clarify our Federalism statement in accordance with the responsibilities and the principles contained in EO 13132 regarding Federalism, the Coast Guard states that this regulation does not expressly preempt those State laws. Nor does the Coast Guard by promulgating this regulation take the position that such State laws facially frustrate an over-riding federal purpose. However, the ultimate question regarding preemption of State laws is a legal question that is subject to court interpretation and decision based on the application of particular facts to those individual laws. Because no court has ruled on the questions raised, the Coast Guard cautions carriers that they must comply with all applicable Federal and State laws regulating DCR discharges. We 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 we have proposed.

#### *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 or more in any one year. This rule will not result in such expenditure.

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

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

#### *J. Indian Tribal Governments*

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

#### *K. Energy Effects*

We have analyzed this 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

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

#### *M. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). The Final Environmental Impact Statement and Record of Decision appear in the docket.

**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 amends 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 is revised 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).

**Subpart A—Implementation of MARPOL 73/78 and the Protocol on Environmental Protection to the Antarctic Treaty as it pertains to Pollution From Ships**

■ 2. Revise § 151.66 to read as follows:

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

(a) Except as otherwise provided in this section, no person on board any ship may discharge garbage into the navigable waters of the United States.

(b) On the United States' waters of the Great Lakes, commercial ships, excluding non-self propelled barges that are not part of an integrated tug and barge unit, may discharge bulk dry cargo residues in accordance with this paragraph and paragraph (c) of this section. Owners and operators of ships to which these paragraphs apply are encouraged to minimize the volume of dry cargo residues discharged through the use of suitable residue control measures onboard and by loading and unloading cargo at facilities that use suitable shoreside residue control measures. As used in this paragraph and paragraph (c) of this section:

*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, 90°52'51.0" W southwest along the shoreline to a point of land at 46°52'56.4" N, 91°3'3.1" W.

*Bulk dry cargo residues* means non-hazardous and non-toxic residues 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	85°50.0' W
47°24.2' N	85°38.5' W
47°04.0' N	85°49.0' W
47°05.7' N	85°59.0' W
47°18.1' N	86°05.0' W

*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' N, 083°06' W along the U.S.-Canada boundary southward and clockwise connecting points:

42°02' N	083°08' W
41°54' N	083°06' W
41°50' N	083°10' W
41°44.52' N	083°22' W
41°44.19' N	083°27' W

*Grand Portage National Monument* means the site on or near Lake Superior, administered by the National Park Service, from a southwest corner of the monument point of land, 47°57.521' 89°41.245', to the northeast corner of the monument point of land, 47°57.888' 89°40.725'.

*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.

*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 seakeeping 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 four and one-half miles of the shoreline of Isle Royale and the surrounding islands, including Passage Island and Gull Island.

*Mile* means a statute mile, and refers to the distance from the nearest land or island;

*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	87°14.0' W
43°21.2' N	87°02.3' W
43°03.3' N	87°04.8' W
42°57.5' N	87°21.0' W
43°16.0' N	87°39.8' W

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

45°45' N	86°00' W,
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western shore of High Island, southern shore of Beaver Island:

45°30' N	85°30' W
45°30' N	85°15' W
45°25' N	85°15' W
45°25' N	85°20' W
45°20' N	85°20' W
45°20' N	85°40' W
45°15' N	85°40' W
45°15' N	85°50' W
45°10' N	85°50' W
45°10' N	86°00' 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' N	82°33' W
44°47' N	82°18' W
44°39' N	82°13' W
44°27' N	82°13' W
44°27' N	82°20' W
44°17' N	82°25' W
44°17' N	82°30' W
44°28' N	82°40' W
44°51' N	82°44' W
44°53' N	82°44' W
44°54' N	82°40' 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 87°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 87°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	83°23'18.6" W
45°12'25.5" N	83°00'00" W
44°51'30.5" N	83°00'00" W
44°51'30.5" N	83°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	87°29.3' W
42°13.0' N	87°25.1' W
42°12.2' N	87°29.1' W
42°18.1' N	87°33.1' W
42°24.1' N	87°32.0' W; and

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

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

Location	Cargo	Discharge allowed except as noted
Tributaries, their connecting rivers, and St. Lawrence River.	Limestone and other clean stone ..	Prohibited where there is an apparent impact on wetlands, fish spawning areas, and potable water intakes.
	All other cargos .....	Prohibited.
Lake Ontario .....	Limestone and other clean stone ..	Prohibited where there is an apparent impact on wetlands, fish spawning areas, and potable water intakes.
	Iron ore .....	Prohibited within 6 miles from shore.
	All other cargos .....	Prohibited within 13.8 miles from shore.
Lake Erie .....	Limestone and other clean stone ..	Prohibited where there is an apparent impact on wetlands, fish spawning areas, and potable water intakes; 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.
	All other cargos .....	Prohibited within 13.8 miles from shore; prohibited in the Detroit River International Wildlife Refuge; prohibited in Western Basin.
Lake St. Clair .....	Limestone and other clean stone ..	Prohibited where there is an apparent impact on wetlands, fish spawning areas, and potable water intakes.
	All other cargos .....	Prohibited.
Lake Huron except Six Fathom Scarp Mid-Lake Special Protection Area.	Limestone and other clean stone ..	Prohibited where there is an apparent impact on wetlands, fish spawning areas, and potable water intakes; 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 up bound along the Michigan thumb as follows: (1) 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; and (2) 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.
	Coal, salt .....	Prohibited within 13.8 miles from shore and in Saginaw Bay; prohibited in the Thunder Bay National Marine Sanctuary; prohibited for vessels up bound 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 cargos .....	Prohibited within 13.8 miles from shore and in Saginaw Bay; prohibited in the Thunder Bay National Marine Sanctuary.
Lake Michigan .....	Limestone and other clean stone ..	Prohibited where there is an apparent impact on wetlands, fish spawning areas, and potable water intakes; 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 Lake-shores; prohibited within Green Bay.



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

Location	Cargo	Discharge allowed except as noted
Lake Superior .....	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: (1) 4.75 miles off Big Sable Point Betsie, along established Lake Carriers Association (LCA) track lines; and (2) 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: (1) 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; (2) Along 037° LCA track line between 45°20' N and 45°42' N; (3) Along 056.25° LCA track line between points due east of Poverty Island to a point due south of Port Inland Light; and (4) 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.
	All other cargos .....	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 where there is an apparent impact on wetlands, fish spawning areas, and potable water intakes; and prohibited within Isle Royal 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 Royal 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 Royal 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 Royal 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 cargos .....	Prohibited within 13.8 miles from shore; and prohibited within Isle Royal 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.

(c)(1) The master, owner, operator, or person in charge of any commercial ship loading, unloading, or discharging bulk

dry cargo in the United States' waters of the Great Lakes and the master, owner, operator, or person in charge of a U.S.

commercial ship transporting bulk dry cargo and operating anywhere on the Great Lakes, excluding non-self

propelled barges that are not part of an integrated tug and barge unit, must ensure that a written record is maintained on the ship that fully and accurately records information on:

(i) Each loading or unloading operation on the United States' waters of the Great Lakes, or in the case of U.S. commercial ships on any waters of the Great Lakes, involving bulk dry cargo; and

(ii) Each discharge of bulk dry cargo residue that takes place in United States' waters of the Great Lakes, or in the case of U.S. commercial ships on any waters of the Great Lakes.

(2) For each loading or unloading operation, the record must describe:

(i) The date of the operation;

(ii) Whether the operation involved loading or unloading;

(iii) The name of the loading or unloading facility;

(iv) The type of bulk dry cargo loaded or unloaded;

(v) The method or methods used to control the amount of bulk dry cargo residue, either onboard the ship or at the facility;

(vi) The time spent to implement methods for controlling the amount of bulk dry cargo residue; and

(vii) The estimated volume of bulk dry cargo residue created by the loading or unloading operation that is to be discharged.

(3) For each discharge, the record must describe:

(i) The date and time the discharge started, and the date and time the discharge ended;

(ii) The ship's position, in latitude and longitude, when the discharge started and when the discharge ended; and

(iii) The ship's speed during the discharge.

(iv) Records must be kept on Coast Guard Form CG-33, which can be found at [http://www.uscg.mil/hq/cg5/cg522/cg5224/dry\\_cargo.asp](http://www.uscg.mil/hq/cg5/cg522/cg5224/dry_cargo.asp). The records must be certified by the master, owner, operator, or person in charge and kept in written form onboard the ship for at least two years. Copies of the records must be forwarded to the Coast Guard at least once each quarter, no later than the 15th day of January, April, July, and October. The record copies must be provided to the Coast Guard using only one of the following means:

(A) E-mail to [DCRRRecordkeeping@USCG.mil](mailto:DCRRRecordkeeping@USCG.mil);

(B) Fax to (202) 372-1926, ATTN: DCR RECORDKEEPING; or

(C) Mail to U.S. Coast Guard: Commandant (CG-522), ATTN: DCR RECORDKEEPING, CGHQ Room 1210, 2100 Second Street, SW, Washington, DC 20593-0001.

Dated: September 23, 2008.

J.G. Lantz,

Acting Assistant Commandant for Marine Safety, Security and Stewardship, United States Coast Guard.

[FR Doc. E8-22670 Filed 9-26-08; 8:45 am]

BILLING CODE 4910-15-P

## POSTAL SERVICE

### 39 CFR Part 111

#### Postage Payment for Bound Printed Matter Limited to Permit Imprint

AGENCY: Postal Service™.

ACTION: Final rule.

**SUMMARY:** In this final rule, the Postal Service is revising mailing standards for all Bound Printed Matter (BPM). In March we filed a notice with the Postal Regulatory Commission for a classification change requiring all mailings of Bound Printed Matter be paid by permit only. The Commission agreed, and we are moving forward with the change.

Postage payment for BPM mailings: carrier route, presorted, and nonpresorted (single-piece) flats and parcels, regardless of volume, are limited to permit imprint. Mailers can no longer affix postage by adhesive stamps, postage meter, or PC Postage®. BPM will not be accepted at retail counters, in collection boxes, or by carriers and must be deposited and accepted at the Post Office™ facility that issued the permit. Merchandise Return Service (MRS) permit holders may continue to pay nonpresorted BPM prices on eligible items returned with a MRS label.

**DATES:** This rule is effective September 29, 2008, and is applicable beginning September 11, 2008.

**FOR FURTHER INFORMATION CONTACT:** Carol A. Lunkins at 202-268-7262.

**SUPPLEMENTARY INFORMATION:** Mailers who are presently authorized to pay postage via permit imprint may use their existing permit to mail BPM at the Post Office™ where the permit is held. Mailers who wish to obtain a new authorization to pay postage via permit imprint must complete an application and pay a one-time application fee at each office of mailing to mail BPM on or after September 11, 2008.

Authorization is obtained by submitting PS Form 3615, *Mailing Permit Application and Customer Profile*, and the applicable fee to the Post Office where mailings are to be deposited. As long as a permit remains active, there is no additional fee for use of a permit imprint indicia, but other fees (e.g., an

annual destination entry mailing fee) may be due depending on where the mail is deposited.

Payment for postage must be made for each mailing through an advance deposit account before the mailing can be released for processing. Funds to pay postage must be deposited as directed by the USPS®.

Nonpresorted BPM mailings, except discount mailings (e.g., barcode discounts), will be exempt from the general minimum volume requirement for a permit imprint mailing of at least 200 pieces or 50 pounds of mail and will not have a minimum volume requirement. However, the current requirements for all other commercial nonpresorted and presorted minimum volumes will remain (e.g., nonpresorted barcoded—50 pieces and presorted—300 pieces).

As a reminder, prices for BPM pieces vary by weight and zone of destination. Supporting documentation of postage is required for all nonidentical-weight pieces and for identical-weight pieces that are not separated by price and zone.

This requirement, which limits the payment of postage for all BPM to permit imprint, is effective September 11, 2008.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), which is incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

#### List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

#### PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

\* \* \* \* \*

#### 300 Commercial Flats

\* \* \* \* \*