

Description: Internal Revenue Code section 21 allows a credit for certain child and dependent care expense to be claimed on Form 1040 (reduced by employer-provided day care excluded under section 129). Day care provider must be reported to IRS for both the credit and exclusion. Form 2441 is used to verify that the credit and exclusion are properly figured, and that provider information is reported.

Respondents: Individuals or households.

Estimated Number of Respondents: 6,729,251.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping 20 minutes. Learning about the law or the form 12 minutes. Preparing the form 32 minutes. Copying, assembling, and sending the form to IRS 25 minutes.

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 9,959,291 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-10209 Filed 4-27-89; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 81

Friday, April 28, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, May 2, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 28, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.
* * *

By direction of the Federal Election Commission, the Open Meeting scheduled for May 5, 1989, is cancelled.

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer,
Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-10307 Filed 4-26-89; 9:50 am]

BILLING CODE 6715-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Wednesday, May 3, 1989, 2:00 p.m.

PLACE: 1776 G Street NW., Board Room, Third Floor, Washington, DC 20006.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION:

Keith Earley, 1759
Business Center Drive, P.O. Box 4115,
Reston, Virginia 22090, (703) 759-8414.

MATTERS TO BE CONSIDERED:

Closed—Minutes of the March 27, 1989 Board of Directors' Meeting
Closed—President's Report
Closed—Risk Management Update
Closed—Financial Authorities
Closed—Various Compensation Matters

Date: April 26, 1989.

Maud Mater,

Secretary.

[FR Doc. 89-10425 Filed 4-26-89; 2:32 pm]

BILLING CODE 6719-01-M

BOARD OF GOVERNORS FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, May 3, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street

entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne,
Assistant to the Board; (202) 452-3204.
You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: April 25, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-10297 Filed 4-25-89; 4:45 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register

Vol. 54, No. 81

Friday, April 28, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-042]

Varroa Mite Regulations

Correction

In proposed rule document 89-9263 beginning on page 15217 in the issue of Monday, April 17, 1989, make the following correction:

On page 15217, in the third column, in the SUMMARY, in the fifth line, "guarantined" should read "quarantined".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-044]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

Correction

In notice document 89-8203 beginning on page 14124 in the issue of Friday,

April 7, 1989, make the following correction:

On page 14124, in the table, under "Product", in the fifth entry, in the second line, "Parain-fluenza" should read "Parain-fluenza₃"#

BILLING CODE 1505-01-D

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

Correction

In notice document 89-8301 beginning on page 14129 in the issue of Friday, April 7, 1989, make the following correction:

On page 14130, in the first column, under the heading **Commodities**, add "7105-00-496-9866" as a final entry under the sub-heading "Mirror, Glass".

BILLING CODE 1505-01-D

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Proposed Additions

Correction

In notice document 89-9633 appearing on page 16148 in the issue of Friday, April 21, 1989, make the following correction:

In the second column under **SUPPLEMENTARY INFORMATION**, immediately following the third paragraph, under "Compress and Bandage, Camouflaged", the first entry should read "6510-00-200-3075".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP89-88-001]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 89-9581 appearing on page 16401 in the issue of Monday, April 24, 1989, the docket number was omitted from the heading and should have read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 78N-0349]

Certain Glycerides; Affirmation of Gras Status; Correction

Correction

In rule document 89-7600 appearing on page 13168 in the issue of Friday, March 31, 1989, make the following corrections:

On page 13168, in the first column, under **EFFECTIVE DATE**, the date should read "May 1, 1989."

On the same page, in the third column, in amendatory instruction 2., in the first line, "Section 184-1101" should read "Section 184.1101".

§ 184.1101 [Corrected]

On the same page, in the same column, in § 184.1101(e), in the fifth line, "diglycerides" was misspelled.

BILLING CODE 1505-01-D

FRIDAY
APRIL 28, 1989

Friday
April 28, 1989

Part II

Department of Transportation

Coast Guard

33 CFR Parts 151, 155, and 158

46 CFR Part 25

Regulations Implementing the Pollution
Prevention Requirements of Annex V of
MARPOL 73/78; Interim Rule With
Request for Comments

DEPARTMENT OF TRANSPORTATION

33 CFR Parts 151, 155, and 158

46 CFR Part 25

[CGD 88-002]

RIN 2115-AC89

Regulations Implementing the Pollution Prevention Requirements of Annex V of MARPOL 73/78

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is publishing an interim rule to implement the requirements of the "Act to Prevent Pollution from Ships," as recently amended by Congress. This rule applies to marine craft of any size or type, including commercially operated ships and fishing vessels, uninspected vessels, recreational boats, and oil drilling rigs and platforms. The rule also requires ports or terminals, including recreational boating facilities, commercial fishing facilities, and mineral and oil industry shorebases, to ensure the availability of facilities to receive ship-generated garbage. This rule implements Annex V of the Protocol of 1978 relating to the Prevention of Pollution from Ships, 1973 (MARPOL 73/78). The Coast Guard expects that this rule will reduce the amount of plastics, including synthetic fishing nets, and other ship-generated garbage intentionally discharged into the marine environment.

DATES: 1. This interim rule becomes effective on May 30, 1989. 2. The Coast Guard will accept written comments on this interim rule until December 31, 1989.

ADDRESSES:

1. Written comments should be submitted to the Executive Secretary, Marine Safety Council (G-LRA-2/3600), U.S. Coast Guard Headquarters, Room 3600, 2100 Second Street, SW., Washington, DC, 20593-0001 Attention: CGD 88-002. A Final Regulatory Evaluation, Environmental Assessment and copies of the comments received on the Advance Notice and Notice of Proposed Rulemaking are available for inspection and copying at the same address. Normal office hours are between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

2. Persons desiring to receive a copy of the International Maritime Organization's Report of the Working Group on Optional Annexes (MEPC 26/WP.6 dated September 8, 1988), including the "Guidelines for the Implementation of Annex V, Regulations

for the Prevention of Pollution by Garbage from Ships" may obtain one by sending a self-addressed 8 1/2" x 11" envelope with postage paid for three ounces to Commandant (G-MPS-3), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC, 20593-0001 Attention: Annex V Guidelines.

3. Persons desiring to learn about the specific requirements of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) certification process should write: U.S. Department of Agriculture—APHIS, PPQ, Federal Building—Room 656, 6501 Belcrest Road, Hyattsville, MD 20782 Attention: Dr. Ronald Caffey, or they may contact the local APHIS inspector at the address or telephone number listed in the blue government pages of the local telephone listings under the U.S. Department of Agriculture, Animal and Plant Health Inspection Service.

4. Persons desiring to comment on the information collection requirements in this interim rule should submit their comments to: Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, Attention: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Joel R. Whitehead, Project Manager, Office of Marine Safety, Security and Environmental Protection (G-MPS-3), (202) 267-0491, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: For the convenience of the reader, the Supplementary Information explaining this rulemaking is organized as indicated below:

- I. Preliminary Information
- II. Background
- III. Regulatory Approach
- IV. Enforcement
- V. Section by Section Analysis of the Interim Rule and Public Comments
- VI. Regulatory Evaluation and Environmental Impact

I. Preliminary Information

The Coast Guard published an Advance Notice of Proposed Rulemaking in the *Federal Register* on June 24, 1988 (53 FR 23884) and a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* on October 27, 1988 (53 FR 43622). In addition, two minor correction notices were published on November 4, 1988 (53 FR 44617) and November 21, 1988 (53 FR 46977).

Three public hearings were conducted by the Coast Guard to give interested persons an opportunity to express their views on the Notice of Proposed Rulemaking. These hearings were held in Washington, DC (November 10, 1988),

Houston, Texas (November 14, 1988) and in Seattle, Washington (November 15, 1988).

Drafting Information

The principal persons involved in drafting this interim rule are: Lieutenant Commander Joel R. Whitehead, Project Manager, Office of Marine Safety, Security and Environmental Protection and Mr. Stanley Colby, Project Counsel, Office of the Chief Counsel.

II. Background

The Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*), hereafter referred to as The Act, requires the Secretary of the Department in which the Coast Guard is operating to administer and enforce Annex V of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), done at London on February 17, 1978. Annex V of MARPOL 73/78 is entitled "Regulations for the Prevention of Pollution by Garbage from Ships" and was designed to reduce the introduction of ship-generated garbage into the marine environment. Garbage is defined as "all kinds of virtual, domestic and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continually or periodically." A particular focus of Annex V is to prevent the discharge of plastics, including synthetic fishing nets, and other debris which persists in the marine environment.

The International Convention for the Prevention of Pollution from Ships, 1973, was adopted by the International Conference on Marine Pollution convened by the Intergovernmental Maritime Consultative Organization (IMCO), in November 1973. IMCO is now known as the International Maritime Organization (IMO). The Convention was subsequently modified by the Protocol of 1978 and adopted by the International Conference on Tanker Safety and Pollution Prevention, held in February 1978. The Convention, as modified by the 1978 Protocol, is known as MARPOL 73/78.

MARPOL 73/78 was designed to address the problem of marine pollution from ships on a global scale and consists of five annexes, each of which is directed to combat a particular type of marine pollution. States which are parties to MARPOL 73/78 have agreed to implement Annexes I and II which address pollution by oil and noxious liquid substances (bulk liquid chemicals), respectively. Annexes I and

II are known as the mandatory annexes and are already in force internationally. By the terms of MARPOL 73/78, Annexes III, IV and V are optional to party states, and they need not be accepted by states at the time they ratify MARPOL 73/78. The United States elected not to be bound by the optional annexes at the time it ratified. Each optional annex, including Annex V, enters into force separately one year from the date on which at least 15 nations, representing a minimum of fifty per cent of the world's shipping tonnage, have ratified them. The U.S. Senate gave its advice and consent to U.S. ratification of Annex V on November 5, 1987 and the President signed Pub. L. 100-220, including Title II, known as the "Marine Plastic Pollution Research and Control Act of 1987" on December 29, 1987. The U.S. Government deposited its instrument of ratification of Annex V at IMO Headquarters in London on December 30, 1987. With U.S. ratification, MARPOL's requirements for Annex V entry into force were met. Accordingly, Annex V entered into force internationally on December 31, 1988.

III. Regulatory Approach

These regulations amend existing regulations in 33 CFR Parts 151, 155, and 158, and 46 CFR Part 25. 33 CFR Part 151 is concerned with the shipboard requirements to prevent pollution and Part 158 concerns the reception facility requirements for ports or terminals. This interim rule adds new subparts and revises the general sections of Parts 151 and 158 to implement the requirements of Annex V, as directed by Pub. L. 100-220. There are no new requirements in these regulations which change Annex I or Annex II requirements, although minor editorial or typographical errors found in those regulations have been corrected. Minor revisions to 33 CFR Part 155 change references in 33 CFR Part 151 which were redesignated. In 46 CFR Part 25, the interim rule requires uninspected vessels to retain garbage generated on board when it cannot be discharged in accordance with these regulations. Although it is duplicative of the requirements in 33 CFR Part 151, this requirement was included in Title 46 because most uninspected vessel operators are more likely to be familiar with Title 46 than Title 33.

In drafting this rule, the Coast Guard considered the comments received and discussions held over the last year with numerous industry representatives, environmental organizations and federal agencies. The Coast Guard also considered the international guidance provided in the Report of the Working Group on Optional Annexes which

convened at the 26th Session of the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) in London in September 1988. The Working Group's report contains the "Guidelines for the Implementation of Annex V, Regulations for the Prevention of Pollution by Garbage from Ships" which were approved at that meeting. Persons who desire to obtain a copy of that report may obtain one by writing to the address in the second paragraph of ADDRESSES above.

Section 1905(a) of the Act also requires the Coast Guard to consult with appropriate federal agencies in establishing regulations which set the criteria for determining the adequacy of reception facilities. Accordingly, the Coast Guard has consulted with many federal agencies, including the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA), the National Marine Fisheries Service of the National Oceanographic and Atmospheric Administration (NOAA), the Environmental Protection Agency (EPA) and the Minerals Management Service (MMS) of the Department of the Interior. In addition, the Coast Guard advised numerous federal agencies of the ongoing status of these regulations through its active participation on the Interagency Task Force on Persistent Marine Debris, which was chaired by NOAA.

The Coast Guard believes that the regulatory approach it has taken to implement Annex V and the recent amendments to the Act, is a reasonable and prudent one, which recognizes the difficulty of the task at hand. The Coast Guard received numerous comments from both public and private sectors which requested the Coast Guard to reflect in a final rule the lessons learned during the first year of implementation. For this reason, the Coast Guard is publishing an interim rule which will be in effect until a final rule is issued, in early 1990. The Coast Guard expects that the final rule will fine tune this interim rule and will reflect the lessons learned by both ship operators and port or terminal operators during the interim period.

IV. Enforcement

The Coast Guard plans an enforcement scheme which will phase in the most difficult requirements of this rule over the next several months and which is realistic, satisfactorily meets the concerns of the public and industry, and will fulfill our international commitments under Annex V of MARPOL 73/78.

To date, the Coast Guard has enjoyed superb cooperation among all segments of the marine industry and government in developing policy to implement the goals of Annex V of MARPOL 73/78. Despite this cooperation, the Coast Guard is aware that some ports and terminals will have difficulty in immediately providing shoreside reception facilities for garbage which meet APHIS requirements. To account for this, this interim rule allows until August 28, 1989 to acquire APHIS facilities for those ports or terminals which do not already have them. However, the Coast Guard expects that those ports or terminals which do have these facilities available earlier than this date will make them available. Availability of APHIS facilities will, in all likelihood, place these ports in a more competitive position than those nearby which lack them, since those ports or terminals with APHIS facilities will be able to serve the full range of ship's garbage reception needs. Because of this phased-in approach to requiring APHIS reception facilities, until August 28, 1989 some ships will have to retain contaminated plastics regulated by APHIS until they reach a subsequent port or terminal which has APHIS approved facilities. Coast Guard Captains of the Port (COTPs) will work with local ports and terminals, local APHIS field offices, and shipping companies to ensure the availability of APHIS facilities at all ports and terminals which need them by August 28, 1989.

Although the Coast Guard is phasing in certain requirements of these regulations, Annex V of MARPOL 73/78 and the Act are now effective and the Coast Guard will implement them through a variety of enforcement tools. These tools range from on-the-spot corrections, to COTP Letters of Warning, and the assessment of civil penalties. The Coast Guard may also deny ships permission to enter ports or terminals which do not have adequate reception facilities for garbage or do not have Certificate of Adequacy (COA), if required. For gross or willful violations of the law, the Coast Guard will seek the prosecution of violators through criminal sanctions which could include fines of up to \$50,000 and imprisonment. The Coast Guard's enforcement strategy will be to cooperatively work with all members of the marine community in an equitable manner, but with the clear expectation that ports, terminals and shipping companies will take action now to achieve full compliance with Annex V. Local COTPs will decide which enforcement strategy is best suited to

encourage compliance, based upon the progress made by individual ports, terminals, and ships to achieve compliance with these regulations and the intent of Annex V of MARPOL 73/78. Persons who believe a requirement of these regulations is impracticable or unreasonable may submit a waiver request. Waivers are allowed by 33 CFR 158.150 which requires the requestor to state an alternative which provides equivalent compliance with MARPOL 73/78, Annex V.

V. Section-by-Section Analysis of the Interim Rule and Discussion of Comments Received Concerning the Proposed Rules

The rule which was proposed in the Coast Guard's NPRM of October 27, 1988 was changed based upon remarks that were received during the comment period which expired November 28, 1988 and upon oral comments made at three public hearings conducted by the Coast Guard. Each section of the interim rule is described below and is accompanied by a discussion of how and why the regulations proposed in the NPRM were amended.

33 CFR 151.03 Applicability

This section was revised to indicate that the waters and ships to which each annex of MARPOL 73/78 apply are now specified in separate applicability sections, one for each annex of MARPOL 73/78. Before the entry into force of Annex V, one applicability section was sufficient for all ships to which MARPOL 73/78 applied. However, the Coast Guard decided that separate applicability sections for each subpart were appropriate with the entry into force of Annex V, because of the great expansion in the waters to which Annex V applies and the number of additional ships, ports and terminals which will be required to comply with these regulations.

33 CFR 151.04 Penalties for Violation

This section was added as a clear statement of the civil penalties and criminal fines authorized for violations of the regulations in this part, the Act or Annexes I, II or V of MARPOL 73/78. The Coast Guard has added a new § 151.04(b) which did not appear in the NPRM. This new section provides notification of the \$5,000 civil penalty authorized under the Act for persons who make false or fictitious statements or representations in any matter required to be made to the Coast Guard. This penalty was referred to in the Application for a Certificate of Adequacy for a Reception Facility for Garbage (Form C), but was not

specifically mentioned in the penalty section as proposed in the NPRM.

The Coast Guard received four comments relative to this section. One commenter suggested that this section should be located in Subpart A of Part 151 since the penalties and fines apply to all Annexes of MARPOL 73/78, and not just Annex V. The Coast Guard agreed and moved this section from the location proposed in the NPRM (Subpart D) to this section. Another commenter correctly noted that the references to fines and penalties in § 151.181(c) of the NPRM were reversed. The Coast Guard has corrected this error in this interim rule. A third commenter questioned whether the criminal fines as listed in the proposed rule apply per day or per violation. The criminal fines allowed for in the Act apply to each violation, with no additional penalty for each day of a continuing violation, as is the case with civil penalties. The fourth commenter recommended that the Coast Guard remove what appears in this interim rule as § 151.04(d). This section authorizes the Coast Guard to seek criminal fines or civil penalties against a ship *in rem*. This commenter stated that it would be unfair for the Coast Guard to penalize a shipowner, if an individual on board the ship failed to comply with the shipowner's stated policies, provided they were consistent with Annex V. The Coast Guard has retained the wording of the proposed rule, since the statute clearly authorizes *in rem* proceedings. In appropriate cases, the Coast Guard will seek payment of fines or penalties against the ship *in rem*.

33 CFR 151.05 Definitions

This section adds several new definitions relevant to Annex V of MARPOL 73/78 and makes slight revisions in existing definitions. Because of comments received from the public and definitions recently approved by the IMO in the "Guidelines for the Implementation of Annex V," several definitions were added in this interim rule which did not appear in the NPRM: "Cargo associated waste," "Dishwater," "Domestic waste," "Garbage," "Graywater," "Harmful substance," "Maintenance waste," "Medical waste," "Operational waste," "Plastic," and "Victual waste" were added to this part in the proper alphabetical sequence and the definitions of "Discharge," "Special Area" and "Terminal" were revised. All are discussed below:

1. "Cargo associated wastes," "Domestic wastes," "Maintenance waste," and "Operational waste." One commenter requested that the Coast Guard further define the three components of the term "garbage" as

defined in the NPRM. By that definition, garbage consists of "victual, domestic and operational wastes," of which only "victual waste" had been defined in the NPRM. The Coast Guard agrees that addition of the definitions of "domestic waste" and "operational waste" will clarify what is meant by "garbage" under these regulations. In addition, the definition of "maintenance waste" was added since this term is referred to within the definition of the three major components of garbage. With only minor changes, the Coast Guard has adopted the definitions of these terms as found in IMO's "Guidelines for the Implementation of Annex V, Regulations for the Prevention of Pollution by Garbage from Ships." Persons wishing to receive a copy of these Guidelines should write to the address indicated in paragraph two in ADDRESSES above.

Within the definition of "operational waste," the Coast Guard has included "ashes and clinkers" from shipboard incinerators and coal burning boilers. The IMO's "Guidelines for the Implementation of Annex V" specifically note that "ash and clinkers" from incineration of ship-generated garbage and ship boilers are considered "garbage" within the meaning of Annex V since they are "operational wastes." Under this interim rule, ashes and non-plastic clinkers may be discharged at sea (except in a Special Area) outside of 12 nautical miles from "nearest land" in accordance with 33 CFR 151.69(a)(2). Further, those ashes and non-plastic clinkers which can pass through a 25 millimeter (1 inch) screen may be discharged beyond 3 nautical miles from land. "Cargo residues" are also considered to be garbage, since they are "operational wastes" as defined herein.

2. "Discharge." This definition is identical to that found in MARPOL 73/78 and includes any intentional or unintentional discharge of garbage.

3. "Dishwater" and "graywater." The definitions of dishwater and graywater were added to define two important exceptions to the definition of garbage within the meaning of Annex V.

4. "Garbage" is defined as it appears in Annex V of MARPOL 73/78 with the two exclusions for "graywater" and "dishwater," as noted above. The most important concept in this definition is that "garbage," for the purposes of these regulations, must be "generated during the normal operation of the ship" and is liable to be disposed of continuously or periodically.

Two commenters supported the exclusion of the words "fresh fish and parts thereof" from the definition of garbage. This exclusion was provided

for in MARPOL 73/78 and is consistent with existing exemptions granted by the EPA in their ocean dumping regulations in 40 CFR 220.1(c). One commenter requested the Coast Guard to apply the Annex V regulations to all garbage, whether ship-generated or not. The Coast Guard disagrees and has retained the existing definition of garbage because the commenter's proposal goes far beyond the scope of MARPOL 73/78 and the Act, which was intended to address only ship-generated sources of pollution. Other laws, such as the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 *et seq.*) (MPRSA) and the Refuse Act (33 U.S.C. 407), prohibit the disposal of other material and refuse in general. One commenter requested the Coast Guard to specify in this section that garbage entrained in fishing nets should be considered an exception to this definition and is not required to be retained. Congress clearly indicated in House Report 100-360 (the report of the Merchant Marine and Fisheries Committee on H.R. 940, which became Title II of Pub. L. 100-220) at page 101, that fishermen are not obligated to retain refuse not generated by them but which becomes entrained in their fishing nets. The Coast Guard believes that the definition of "garbage" is sufficient to express this viewpoint and a further regulatory statement is unnecessary.

5. "Harmful substance." As defined by MARPOL 73/78, garbage, including, but not limited to plastics, is considered to be a "harmful substance" since it is liable to "create hazards to human health, to harm living resources and marine life, (or) to damage amenities." One person suggested redefining this term so that plastic fishing nets and traps (which are "harmful substances" under MARPOL 73/78) could be intentionally placed into the ocean as artificial reefs. The Coast Guard has retained the definition as it appeared in the NPRM, since construction of artificial reefs is not within the scope of the Act. Depending on location, these activities are regulated by some states and the U.S. Army Corps of Engineers, which generally requires issuance of a permit for artificial reef construction under 33 CFR Part 322.

6. "Medical waste." This definition was added to clarify those substances for which a ship operator must provide 24-hour advance notice that it desires to discharge to a port or terminal. The definition which appears here is the same as that in the recent amendments to section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362), as enacted by Title III of Pub. L. 100-688.

7. "Plastic." This definition is included to provide a technically acceptable and very broad definition of those materials which are totally prohibited from discharge by ships, except to a port or terminal's reception facility. An explanatory note follows this definition and describes, for the nonscientific layman, the types of plastic items which are commonly found on ships which would be included in this definition. The definition is meant to include plastic products, raw resin pellets and composite products in which the plastic component may be a minor, but essential element in its functioning, for example, a plastic-lined paper cup. This definition excludes glass, paints, varnishes, and waxes, all of which might be considered "plastics" by other definitions.

Two commenters, including the EPA, supported the Coast Guard's decision to include the so-called "degradeable" plastics within the meaning of plastic in this rule. "Degradeable" plastics generally consist of synthetic polymers connected by starches. After varying periods of time, often more than six months, the starches degrade and leave smaller pieces of plastic in the marine environment. The Coast Guard specifically intends for these "degradeable" plastics to be included within the meaning of plastic and by this to restrict their discharge, since there could be an undesirable transfer of entanglement related marine deaths to ingestion related ones, especially during a lengthy period of starch degradation. To clarify the status of degradable plastics, one commenter suggested adding the terms "biodegradable" and "photodegradable" plastics to the note following the definition of plastic. While there is no widely accepted definition of either of these terms, the Coast Guard agrees that the addition of the word "degradeable" in the regulation would further clarify the Coast Guard's intent to prohibit their discharge from ships. Accordingly, the Coast Guard has added a statement to this effect in the note following the definition of plastic.

Two commenters objected to the Coast Guard's description in the NPRM's preamble which excluded naturally produced polymers such as chitin from the meaning of plastic. Some plastic materials are produced naturally in the marine environment by living organisms. For example, chitin is a primary component of the shells of crabs, shrimp and lobsters, among others. The Coast Guard's broad definition of plastic is intended to regulate synthetically produced plastics, including chitin-derived and other

plastics which have been harvested and adapted for use by man. Several European nations are now manufacturing packaging materials for personal hygiene products which are primarily chitin-derived. While this rule is intended to prohibit the discharge from ships of synthetically produced plastics, it is not intended to regulate the discharge of naturally produced plastics during fishery activities, such as crabshells and others which appear in the marine environment. In the absence of any evidence to indicate that synthetic plastics degrade so quickly in the marine environment that they do not cause environmental harm, these regulations prohibit the discharge of such plastics by ships at sea and in the navigable waters of the United States.

One commenter requested that the Coast Guard revise the definition of plastics to address not only the physical properties of plastics, but also those harmful characteristics which make them dangerous in the marine environment. Because the Coast Guard cannot identify plastics which are discharged into the ocean and which possess characteristics not harmful, or potentially harmful, to the marine environment, this definition has not been changed.

8. "Port." The Coast Guard has retained the definition of this term as it appeared before the NPRM. The Coast Guard received one comment stating that the proposed revision to the definition as it appeared in the NPRM would destroy what was previously a clear distinction between the definitions of "port" and "terminal." Under Annexes I and II, a terminal was a single entity, such as a loading terminal, and a port was either a geographic "port" or a cooperative of terminals which wished to be considered a "port" for the purposes of the regulations, allowing them to share reception facilities. The proposed definition of port would have meant that certain individual entities, such as "commercial fishing facilities," "recreational boating facilities" and "mineral and oil shorebases" would be considered ports. The Coast Guard agrees that the definition as proposed in the NPRM needlessly confused this distinction and has therefore retained without change the existing definition of "port" found in 33 CFR 151.05.

9. "Special area." This definition is almost identical to that which appears in MARPOL 73/78 and a new phrase has been added to it indicating the sections in 33 CFR Part 151 which specifically define the Special Areas for each annex. Although Annexes I and II currently

have the same special areas, the Coast Guard felt that a separate listing in each Subpart would be more clear to the reader and would allow for the addition of new special areas for individual annexes.

10. "Terminal." The definition of this term has not been changed; however, the Coast Guard added an interpretive note to indicate that "commercial fishing facilities," "recreational boating facilities" and "mineral and oil shorebases" are considered "terminals" under these regulations. See the discussion above under the definition "Port" for further explanation.

11. "Victual waste." This term is defined to mean "food wastes;" since this latter term is used throughout Annex V but is not defined therein. "Victual wastes" and "food wastes" are interchangeable terms within the meaning of Annex V, however, the interim rule refers only to the term "victual wastes" for consistency.

33 CFR 151.07 Delegations

This section remains substantively unchanged, however it was reorganized for clarity. Paragraph (b), which had been reserved, and an out of date legal citation were removed.

33 CFR 151.08 Denial of Entry

The Coast Guard added a new paragraph (b) to indicate that the Captain of the Port (COTP) may deny ships entry to ports and terminals which do not provide or ensure the availability of adequate reception facilities for garbage or hold a Certificate of Adequacy if required under § 158.135.

One commenter mistakenly believed that this section would automatically deny entry to any ship entering a port or terminal which does not meet this section's requirements. The new § 151.08(b) merely grants the Coast Guard authority to deny entry when the COTP believes this would be the most effective enforcement tool.

33 CFR 151.09 Applicability

A new applicability section was added to describe which ships must comply with Subpart B, which implements the oil pollution regulations of Annex I of MARPOL 73/78. This applicability section was extracted from the old 33 CFR 151.03 and makes no changes in applicability of ships which must comply with Annex I of MARPOL 73/78. Separate applicability sections for each annex are intended to make it more clear to industry and enforcement personnel exactly which annexes apply to which ships.

33 CFR 151.10 Control of Discharge of Oil

This section was redesignated from its former section, § 151.09. This redesignation was necessary in order to make room for the insertion of the new applicability section for Annex I, which now appears as 33 CFR 151.09.

33 CFR 151.11 Exceptions for Emergencies

This section refers to exceptions for emergencies under Annex I of MARPOL 73/78. The reference to 33 CFR 151.09 in the introductory paragraph was changed to 33 CFR 151.10 to account for the redesignation of 33 CFR 151.09.

33 CFR 151.13 Special Areas for Annex I of MARPOL 73/78

The section title was changed by adding the words "for Annex I of MARPOL 73/78" to clearly indicate that these special areas are for this specific annex of MARPOL. Paragraph (g) was revised by changing the reference to § 151.09 to its new designation, § 151.10. In addition, there were some typographical errors which appeared in the CFR which have been corrected in this revision.

33 CFR 151.30 Applicability

A new applicability section was added to describe which ships must comply with Subpart C, which implements the noxious liquid substance regulations of Annex II of MARPOL 73/78. This section makes no changes in applicability for those ships required to comply with Annex II, since it was extracted from the old 33 CFR 151.03.

33 CFR 151 Subpart D—Garbage Pollution

This new subpart forms the body of the regulatory changes necessary to implement Annex V of MARPOL 73/78 and the recent amendments to the Act. The rule in Subpart D of Part 151 delineates shipboard requirements only.

33 CFR 151.51 Applicability

This section defines the ships that are subject to regulations implementing Annex V of MARPOL 73/78. This subpart applies to all U.S. ships (except certain government owned or operated ships) wherever located, and to foreign flag ships (whether party to MARPOL 73/78 or not) when in the navigable waters of the U.S. or within the 200 mile Exclusive Economic Zone (EEZ) of the U.S. Readers should understand that "ship," as defined in § 151.05, is very broad and includes "all marine craft operating in the marine environment." This definition includes among others, privately owned recreational vessels,

uninspected vessels, cargo ships, tankships and barges, passenger vessels, oil drilling rigs and platforms and associated vessels such as derrick barges and pipelaying barges.

Two commenters requested a revision in these regulations to state that recreational vessels must also comply, since they are not specifically mentioned. Although most of these vessels are "operated under the jurisdiction of the United States" since they must be numbered under the requirements of 46 U.S.C. Chapter 123, the Coast Guard agrees that this intent was not made clear in the NPRM. Section 151.51(a)(1) has been changed to specifically indicate that recreational vessels and uninspected vessels must also comply with Annex V.

Five commenters objected to the exemption in § 151.51(b)(1) granted to warships, naval auxiliaries and other ships owned or operated by the United States when engaged in noncommercial service, and requested the Coast Guard to require them to comply with these regulations. The Coast Guard has retained this exemption because it is provided for both in MARPOL 73/78 and in the recent amendments to the Act. As authorized in Section 3(a) of the Act, these vessels have five years to achieve full compliance with Annex V.

33 CFR 151.53 Special Areas for Annex V of MARPOL 73/78

This section spells out the special areas for Annex V. Special areas are waterbodies which require additional protections beyond the normal discharge requirements of Annex V found in 33 CFR 151.69. Currently, the special areas for Annex V are the same as for Annex I of MARPOL 73/78 and include the Mediterranean Sea, Black Sea, Red Sea, Baltic Sea and Gulfs Area (Persian Gulf). In this section, the special areas for Annex V are listed and described by navigational coordinates as an aid to the reader. An explanatory note has been added below this section to advise the reader that while these waterbodies are defined as special areas, the discharge restrictions in 33 CFR 151.71 do not apply in these waters until a sufficient number of party states bordering each special area have notified IMO that adequate reception facilities are available. The IMO must also provide one year's notice to party states as to the effective date. On October 1, 1989, the Baltic Sea will become the first special area under Annex V in which the discharge restrictions of § 151.71 apply.

33 CFR 151.55-151.59 Recordkeeping Requirements, Waste Management Plans, Placards [Reserved]

These sections have been reserved for a separate rulemaking in which the Coast Guard will propose specific requirements for these three items. Congress allowed the Coast Guard until December 31, 1989 to publish a rule to implement these requirements for domestic ships.

Seven commenters urged the Coast Guard to include specific requirements for these three sections in this interim rule. These sections remain reserved; however, the Coast Guard has completed a preliminary study concerning future U.S. regulatory requirements and expects to initiate a proposed rulemaking in 1989 for domestic vessels.

Two commenters requested the Coast Guard to initiate a fishing gear marking, registration and identification system and to develop a monetary bounty system to aid in the recovery of fishing gear. The Coast Guard has determined it does not have the authority to accomplish either of these under Title II of Pub. L. 100.220. As discussed above, however, the Coast Guard is actively considering what recordkeeping requirements would be appropriate for commercial fishing vessels to achieve the goals of Annex V.

33 CFR 151.61 Inspection for Compliance and Enforcement

This section allows the Coast Guard or other authorized federal agencies to inspect vessels to determine if they are operating in accordance with these regulations, the Act and Annex V of MARPOL 73/78.

One commenter recommended that the Coast Guard require all grinders and comminuters to be inspected annually or biennially to determine if they are capable of reducing garbage to a size which will pass through a 25 millimeter (1 inch) mesh screen. The Coast Guard considered this, but determined that a mandatory inspection schedule was not necessary since this section already authorizes inspections to determine the continuing satisfactory service of grinders and comminuters.

33 CFR 151.63 Shipboard Control of Garbage

This section contains the substantive requirements to control garbage on board ships and, in paragraph 151.63(b), contains a partial listing of the factors which are considered by enforcement personnel in evaluating compliance with these regulations. Section 151.63(c) contains a requirement that if shipboard

personnel transfer garbage to a port or terminal, it must be properly deposited in the port or terminal's reception facility.

Four commenters objected to the wording of § 151.63(b) as proposed in the NPRM, saying that the presumption of guilt therein placed the master in a position of being guilty until proven innocent. The Coast Guard agrees that the wording of this section was too harsh and has removed it in this interim rule.

Two commenters requested that the Coast Guard define the means by which the master could avoid the presumption of guilt proposed in the NPRM. Although this presumption has been removed in this interim rule, the Coast Guard believes this recommendation has great merit and would promote compliance. Accordingly, a partial listing of the factors which are considered by enforcement personnel in evaluating compliance with these regulations has been added in § 151.63(b).

Two commenters were concerned that ship operators might dump garbage on a pier, or on shore, and requested this rule to prohibit such actions. While the Coast Guard believes such instances would be rare, it recognizes that for these regulations to be effective, they must clearly state the individual responsibilities of both ship operators and port or terminal operators. The Coast Guard is aware that in many ports or terminals, existing contractual arrangements with labor unions will dictate who transports garbage from ships. But in other areas, port or terminal operators will have little control over ensuring that the garbage goes into a reception facility. Because of this, the Coast Guard has added a new § 151.63(c) which states that if ship personnel discharge garbage ashore, they must ensure that the garbage is properly discharged in the reception facilities provided.

Three commenters recommended that the Coast Guard require ships to separate various categories of garbage, to specify that foreign victual waste may be carried ashore only in sealed leakproof containers, and to label the type of ship's garbage coming ashore. Because these suggestions are basically required under the existing regulations enforced by APLIS, the Coast Guard did not incorporate these suggestions in this interim rule.

33 CFR 151.65 Reporting Requirements

This section would require ship operators to advise the port or terminal of its intent to discharge APLIS regulated garbage, medical wastes, or hazardous wastes to a port or terminal's

reception facility 24 hours before entering the port. The types of garbage for which an advance report is required have been expanded since the NPRM to include medical wastes and hazardous wastes, as defined by the EPA in 40 CFR 261.3. The Coast Guard believes these reporting requirements are necessary in order to prevent undue delay to ships, which is a requirement of MARPOL 73/78. The reporting requirement of this section would lessen the possibility that ships would be delayed, since port or terminal operators would be given advance notice of the need for these facilities and would then be able to arrange for outside contractor's availability, if necessary.

Three persons commented upon this 24 hour advance reporting requirement. One shipping company representative favored this as a means of preventing delay to ships and two others expressed the concern that in remote areas, more than 24 hours notice may be required. The Coast Guard believes that a 24 hour notice is generally reasonable and that within a short period of time, demand for these services will encourage other waste management firms to enter the marketplace with the ability to remove APLIS regulated wastes within the 24 hours specified in § 158.410.

One commenter requested the Coast Guard to revise what appeared in the NPRM as § 151.65(b) by requiring tonnage or weight instead of "volume." The Coast Guard does not feel this is necessary since volume, expressed in cubic feet or cubic yards, is a familiar concept to waste management firms.

33 CFR 151.66 Operating Requirements: Discharge of Garbage in Navigable Waters Prohibited

This section specifically states that garbage, as defined in this part, may not be discharged from any ship into the navigable waters of the United States. Two commenters and numerous persons at the public hearings indicated that while it was generally understood that the disposal of garbage in navigable waters was prohibited under the Act, the proposed regulations did not clearly state this. The Coast Guard agrees that this was not clearly expressed and has added this new section to clarify this point.

Section 3(b) of the Act applies the discharge restrictions of Annex V of MARPOL 73/78 to the navigable waters of the United States. This section implements Regulation 3 of Annex V which states that a garbage discharge at sea shall be "made as far as practicable from the nearest land but in any case is prohibited if the distance from the

nearest land is less than 3 nautical miles." This section implements the requirement of Congress to apply the discharge restrictions of Annex V to the navigable waters of the United States.

The use of galley equipment such as garbage disposals in the navigable waters has been raised within the context of Annex V of MARPOL 73/78 and these regulations. A garbage disposal is essentially a grinder or comminuter for victual waste. Because Congress intended to apply the discharge restrictions of the Annex to the navigable waters, victual waste may not be discharged into the navigable waters of the United States through a grinder, comminuter or garbage disposal. However, the Coast Guard does not intend to require the removal of garbage disposals from ships operating on inland waters, since garbage disposals are allowed as a grinder or comminuter described in § 151.75, if used outside 3 miles from nearest land.

One commenter questioned whether "cargo residues" may be discharged into the navigable waters of the U.S., particularly in the Great Lakes. At the 26th Session of Marine Environment Protection Committee (MEPC) in September 1988, it was generally agreed that cargo residues are garbage since they are defined as an "operational waste" in IMO's Guidelines. The Coast Guard concurs with this position. However, the manner in which Annex V would be applied to cargo residues was not fully resolved, and was a source of some disagreement among party states. With respect to the application of Annex V restrictions to the Great Lakes, Canada is not signatory to MARPOL 73/78 and the Coast Guard has been advised that Canada has no laws or regulations which prohibit the discharge of cargo residues into the Great Lakes. Under the revised Great Lakes Water Quality Agreement of 1978, the United States and Canada are obliged to seek compatible regulations for the prevention of pollution on those waters. To resolve the issue of cargo residue discharges on the Great Lakes, the Coast Guard plans to discuss this issue with its Canadian counterparts, toward a goal of achieving compatible U.S.-Canadian pollution prevention regulations.

33 CFR 151.67 Operating Requirements: Disposal of Plastic

This section contains the shipboard operating procedures for disposal of plastics. No person onboard U.S. ships, wherever located, may discharge plastics into the sea or navigable waters of the United States. Also, no person onboard foreign flag ships, either party

or non-party to MARPOL 73/78, may discharge plastics into the navigable waters or 200 mile EEZ of the United States. In order to be consistent with MARPOL 73/78, this section indicates that if garbage containing plastic is mixed with non-plastic garbage, then the entire mixture must be treated as though it were all plastic. Plastic which has been incompletely incinerated so that "clinkers," or small lumps of melted plastic, remain, may not be discharged at sea.

One commenter correctly pointed out that this section, as proposed in the NPRM, only prohibited discharge of plastics "at sea." Although Congress has indicated that "sea" includes the navigable waters, the Coast Guard agrees that this was unclear in the proposed regulation and has added the words "or into the navigable waters" for clarification.

One commenter suggested that the Coast Guard should define the term "incinerate" as referred to in §§ 151.67 through 151.73. The Coast Guard did not feel this was necessary in the interim rule because the term has no special meaning beyond the normal dictionary definition, which means to reduce to an ash.

33 CFR 151.69 Operating Requirements: Disposal of Garbage Outside Special Areas

This section implements Regulation 3 of Annex V of MARPOL 73/78. It establishes three sea zones (measured seaward from the baseline of the territorial sea) where certain types of garbage may be legally discharged from ships, provided the ship is outside the special areas defined in § 151.53. These regulations allow ships to incinerate ship-generated garbage at sea and to dispose of the ash residues outside three miles, provided the ash does not contain incompletely burned plastic, and that the residue can pass through the 25 millimeter (1 inch) mesh screen described in § 151.75.

Eight persons commented on various aspects of incineration of ship-generated garbage at sea. Five commenters recommended that the Coast Guard ban or restrict its use, develop standards for shipboard incinerators, or require incinerator ash to be disposed of at port reception facilities. Two commenters supported the Coast Guard's proposed rule allowing incineration, and another felt the Coast Guard was premature in banning the discharge of incinerator ash within three miles from land and on the navigable waters. The Coast Guard has been advised by the EPA that disposal of incinerator ash and use of incinerators outside the territorial sea is

not prohibited by either the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). While the EPA has expressed reservations about the discharge of incinerator residues at sea and of resulting incinerator emissions, it also stated that it was unaware of any data describing the characteristics, either safe or harmful, of ship's incinerator ash or the environmental effects of discharging ash at sea. The Coast Guard is aware that the Minerals Management Service (MMS) of the Department of Interior currently has airborne emissions regulations in force which apply to fixed and floating rigs on the federal Outer Continental Shelf (OCS). Incinerators on these types of facilities already must be in compliance with these MMS regulations.

The Coast Guard has retained those sections allowing the incineration of ship-generated garbage and the discharge of incinerator ash at sea. The Coast Guard believes that the provisions to allow the incineration of ship-generated garbage at sea are realistic since (1) they are not in conflict with the Clean Air Act, Clean Water Act, and the Act to Prevent Pollution from Ships; (2) the IMO's "Guidelines for the Implementation of Annex V" specifically recognize that incinerator ash and clinkers are considered as "garbage" under the Annex and can be discharged at sea; and (3) Congress clearly intended for incineration of ship-generated garbage at sea to be one option available to ship operators and it even encouraged the U.S. Navy to consider the use of incineration among other methods of garbage disposal.

However, in the absence of information relating to the characteristics of incinerator ash from ship-generated garbage, the Coast Guard is presently chairing an industry working group of the American Society for Testing and Materials (ASTM) whose goal is to develop an acceptable industry standard for shipboard incinerators. In addition, the Coast Guard has actively participated in two workshops of Panel M-17 (Disposal of Shipboard Wastes) of the Society of Naval Architects and Marine Engineers (SNAME). This Panel has recently focused its activities on shipboard incinerators and other means by which ships may comply with the discharge restrictions of Annex V of MARPOL 73/78. Finally, the Coast Guard raised the issue of the use of shipboard incinerators at the 26th Session of the MEPC in September 1988 and had it placed on the agenda for discussion at the 27th Session in March 1989.

Two commenters requested that the Coast Guard require the offloading of all garbage on board a ship upon arrival at a port or terminal, indicating that the subsequent discharge at sea of this garbage might conflict with the ocean dumping prohibitions of the Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA). The MPRSA prohibits the transportation of materials from the United States for the specific purpose of dumping them into ocean waters, unless authorized by permit from the EPA. House Report 100-360 discusses the relationship of the MPRSA and the Act to Prevent Pollution from Ships (APPS), as amended. The Report states at page fourteen that the MPRSA also "prohibits the transport of any material from the United States for the purpose of dumping it into ocean waters" and noted that this provision does not conflict with the provisions of MARPOL, since MARPOL addresses garbage that is generated during the normal operation of a ship and is hence not transported for the purpose of dumping. See also Senate Report 100-266 (the report of the Committee on Commerce, Science and Transportation on H.R. 940) at page seven. The Coast Guard agrees that if garbage, as defined in the Act, is transported for the exclusive purpose of dumping at sea, the prohibitions of the MPRSA would apply. This would include transfers of garbage from ship to ship, if the intent was to dump at sea. However, the Coast Guard does not have the authority under the Act to require the offloading of ship-generated garbage while in port. While the present rulemaking does not deal with the MPRSA, the Coast Guard does enforce its ocean dumping requirements. Ships which intend to transport garbage to sea for the purpose of dumping would be obligated to first obtain an ocean dumping permit from the EPA.

33 CFR 151.71 *Operating Requirements: Disposal of Garbage Within Special Areas*

This section implements Regulation 5 of Annex V of MARPOL 73/78. In these areas, only virtual wastes may be discharged at sea, and then only by a ship which is located at least 12 nautical miles from the nearest land. No other discharge of garbage will be permitted. A statement was added indicating that these strict requirements are effective in each special area only after (1) the government of each party to the Convention, the coastline of which borders the special area, have assured IMO that reception facilities for garbage are available, and (2) IMO has announced an effective date for each area.

33 CFR 151.73 *Operating Requirements: Disposal of Garbage From Fixed or Floating Platforms*

This section implements Regulation 4 of MARPOL 73/78. It prohibits the discharge of garbage from all fixed or floating platforms which are engaged in the exploration, exploitation or associated offshore processing of seabed mineral resources, if located within twelve nautical miles from land. Beyond 12 nautical miles, only comminuted or ground virtual wastes could be discharged into the sea from platforms or from ships alongside or within 500 meters of the platforms. These prohibitions also extend to all ships, including recreational vessels, alongside or within 500 meters of these platforms. The intent of these stringent requirements is to prevent the seabed beneath stationary vessels such as mobile offshore drilling units (MODU's), fixed or floating platforms, drillships, etc., from being inundated with ship-generated garbage. The Coast Guard interprets the phrase "exploration" to have the same meaning as the definition found in 33 CFR 140.10 and that "exploitation" is intended to mean the actual taking of seabed mineral resources.

Two commenters questioned the wisdom of applying such a restrictive rule to fixed or floating platforms. One commenter suggested this section was unnecessary because fixed or floating platforms are, by definition, "ships" under Annex V, and they should therefore be regulated by the same rules applicable to all ships. The Coast Guard agrees that fixed or floating platforms are ships, but believes this section is very necessary and has retained the wording of this section as proposed in the NPRM. Fixed or floating platforms are a special category of "ship" which have unique garbage discharge problems, as was recognized when Regulation 4 of Annex V was adopted. Ships routinely discharge garbage while underway, but the garbage from those fixed or floating platforms which discharge directly to the sea would be likely to build up in one location. A second commenter stated that garbage from a ship underway is no less dangerous to the environment than the same garbage from a fixed or floating platform, and requested the Coast Guard to reconsider this section. The Coast Guard agrees that the garbage from platforms is no different than that from ships. In absence of special requirements such as those found in this section, the Coast Guard believes that garbage from a fixed or floating platform poses a greater risk to the quality of the

marine environment than does garbage from transiting ships because of its accumulation in one location. For this reason, the Coast Guard has retained the restrictions as originally proposed in the NPRM.

Four persons raised the issue of whether the Coast Guard should grant an exemption to fixed or floating platforms which possess a valid EPA National Pollution Discharge Elimination System (NPDES) permit issued pursuant to regulations authorized under the Clean Water Act. NPDES permits issued to fixed or floating platforms prohibit the discharge of floating solid wastes and garbage, but allow sinkable wastes and food to be discharged. Two of the commenters favored and two opposed the idea of waiving these requirements for rigs and platforms which hold a valid EPA NPDES permit. Annex V requires a higher standard for fixed or floating platforms than that allowed by those in possession of an NPDES permit, since no discharge of garbage (except comminuted food wastes beyond 12 nautical miles) is allowed. Therefore, if the Coast Guard granted an exemption to NPDES permit holders, this would in effect authorize discharges of garbage in violation of Annex V of MARPOL 73/78. For this reason, the Coast Guard has not exempted holders of NPDES permits from the restrictions of this section.

One commenter mistakenly thought that all ships associated with the exploration, exploitation or associated offshore processing of seabed mineral resources would be under the same discharge restrictions as fixed or floating platforms engaged in these activities. Ships such as tenders, workboats, crewboats, oceangoing tugs, barges, etc., which are employed in the offshore industries fall under the same restrictions as fixed and floating platforms only when they are within 500 meters of fixed or floating platforms as indicated in § 151.73(a)(2).

Two commenters requested that the Coast Guard allow the discharge of small quantities of food from fixed or floating platforms and also stated that offshore operators should not be required to grind food with a grinder or comminuter. The Coast Guard has retained this section as proposed since the no discharge requirement was taken directly from the wording of MARPOL 73/78 and is also required under the Act.

33 CFR 151.75 *Grinders or Comminuters*

This section specifies a performance standard for grinders or comminuters used by ships which discharge non-

plastic garbage between three and twelve miles from nearest land. While this equipment is not required for discharges outside twelve miles from nearest land, if used for closer inshore discharges, it must be capable of grinding garbage so that it can pass through a 25 millimeter (1 inch) screen. The Coast Guard does not intend that each grinder or comminuter must have the mesh screen attached, but ship operators must be able to demonstrate the satisfactory operation of this equipment if requested by an authorized federal official.

The Coast Guard received two comments concerning this section. One commenter favored this section as a reasonable means of allowing limited discharges of garbage for those vessels which operate for several weeks at a time within twelve miles. The second commenter said that if grinders or comminuters are installed on a ship, then the Coast Guard should require their use wherever the ship discharges garbage at sea, including beyond 12 miles from nearest land. The Coast Guard disagrees and has retained the original wording of this section. The use of grinders or comminuters was intended to provide a practical solution for those ships which operate substantial periods of time within twelve miles of nearest land. By using these devices, ships could discharge some garbage and at the same time hasten the assimilation of the garbage into the marine environment. Implementation of this commenter's recommendation would discourage use of grinders and comminuters and would needlessly penalize operators who choose to install this equipment (through extra labor costs, etc.). In addition, it would require a standard in excess of Regulation 3 of Annex V of MARPOL 73/78 and the Act.

33 CFR 151.77 *Exceptions for Emergency*

This section implements Regulation 6 of Annex V of MARPOL 73/78 and allows, in certain circumstances, garbage discharges which would not normally be allowed. The Coast Guard received four comments relating to this section. Two commenters favored the exemption provided for in § 151.77(c) for the "accidental loss of synthetic fishing nets or the loss of synthetic material during the repair of nets." The Coast Guard wishes to emphasize that this regulation requires "all reasonable precautions" to be taken to avoid these losses. The Coast Guard recognizes that most fishermen are careful to prevent the accidental loss of fishing nets, because of their cost. Under the Act and

MARPOL 73/78, all reasonable care must be taken to retain fishing nets which are no longer usable, as well as net fragments remaining after the repair of nets for proper discharge to reception facilities.

Appendix A to Subpart D of Part 151

Appendix A summarizes the garbage discharge restrictions provided by §§ 151.66-151.75. This appendix is added as an aid to direct the reader to the applicable governing regulation. This appendix appeared in the preamble of both the ANPRM and NPRM and several commenters endorsed its publication in the interim rule.

33 CFR 155.350(a)(2) and 155.400(b)(2)

These sections contain minor revisions due to the redesignation of § 151.09 to § 151.10 to allow the insertion of a new § 151.09 "Applicability." These represent no substantive regulatory change.

33 CFR 158.100 *Purpose*

This section is revised by adding a new paragraph (b)(3) to indicate that the purpose of the subpart is also to show the procedures for certifying the adequacy of reception facilities for garbage.

33 CFR 158.110 *Applicability*

This section revises the existing applicability section to show that Subparts B, C, and E of Part 158 apply to ports and terminals that receive Annex I and II ships, as well as to ship repair yards. Paragraph (b) was added to indicate that all ports and terminals within, or subject to the jurisdiction of the United States, must comply with the reception facility criteria of Subpart D. For the purposes of Annex V, ports or terminals include, but are not limited to, those facilities which receive ships subject to Annex I or II, or that are commercial fishing facilities, mineral and oil industry shorebases or recreational boating facilities, as defined in § 158.120. House Committee Report 100-360 discusses Congress' specific intent to require deepwater ports, such as the Louisiana Offshore Oil Port (LOOP), to provide reception facilities for ship-generated garbage.

One commenter suggested removing the phrase "non-self propelled" from the phrase "non-self propelled tank vessel" in the proposed § 158.110(a)(1)(i), since a tank barge is by definition "non-self propelled." This wording was retained from the preexisting exemption for Annex II applicability. Although this comment is not germane to the regulatory change to implement Annex V of MARPOL 73/78, the Coast Guard

agrees that the term is redundant (see 46 CFR 30.10-65) and has stricken this phrase in the interim rule.

33 CFR 158.115 *Penalties for Violation*

This section was added as a clear statement of the penalties authorized under the Act for violations of Annex V or this part. The Coast Guard moved this section from the location proposed in the NPRM (in Subpart D) to the general section of Subpart A, since the penalties apply to all violations of MARPOL 73/78 and these regulations. Paragraph (c) of this section in the NPRM has been removed, because, as written, it applied only to violations by ships and this penalty section describes only penalties for violations by ports or terminals.

33 CFR 158.120 *Definitions and Acronyms*

This section was revised by adding new definitions of "Certificates of Adequacy," "Commercial fishing facility," "Form C," "Garbage," "Harmful substance," "Medical waste," "Mineral and oil industry shorebases," "Reception facility," "Recreational boating facility" and "The Act". Some of these are identical to their definitions in 33 CFR 151.05. Those not previously addressed are discussed below:

1. "Certificate of Adequacy." This term was revised to clarify that this document is issued by the Coast Guard and indicates that the port or terminal's reception facilities meet the requirements of the appropriate subpart for Annexes I, II or V of MARPOL 73/78.

2. "Commercial fishing facility," "Mineral and oil industry shorebase" and "Recreational boating facility." These definitions were added to indicate that they are specific types of terminals which must comply with the reception facility requirements of Annex V.

3. "Form C." This term was added to indicate the name of the application form for a COA for garbage. The persons in charge of most ports or terminals will be required to meet the reception facility requirements in 33 CFR 158.410 and 158.420, but only those ports and terminals indicated in § 158.135 will have to complete Form C and be issued a COA.

4. "Medical waste." This definition was added to clarify those substances for which a port or terminal must ensure the availability of a reception facility if a ship provides 24 hour notice in accordance with 33 CFR 151.65.

5. "Reception facility." This term was revised to include a description specific to an Annex V reception facility. The

term is broadly defined but connotes the physical containment in which garbage is stored or conveyed. Annex V reception facilities may be "dumpsters" or other garbage containers, or even mobile facilities, such as a modified ship or barge.

6. "The Act." This term refers to the Act to Prevent Pollution from Ships and was revised by removing an inaccurate legal reference (94 Stat. 2297).

33 CFR 158.130 Delegations

This section was revised by adding paragraph (e)(2), which delegates the COTP authority granted in the Act to deny ships entry to ports or terminals which do not have a COA for Annex V if required, or the reception facilities required under § 158.133.

33 CFR 158.133 Which Ports and Terminals Must Have Adequate Reception Facilities?

This section delineates those ports and terminals which must have adequate reception facilities for oil, noxious liquid substances and garbage. It was added because several remarks made at the public hearings indicated that some persons did not understand that all ports or terminals as defined in § 158.120 must provide reception facilities for garbage. One commenter stated that commercial fishing facilities were being unfairly targeted to provide reception facilities and that municipal and private docks which provide services to fishing vessels should also be required to provide them. These regulations require all ports and terminals to provide adequate reception facilities for garbage.

One commenter questioned whether a state could prohibit the offloading of garbage at a port or terminal. This question was raised in comments received during the ANPRM comment period, however the Coast Guard was unable to address this issue in the NPRM. The Coast Guard has completed its research of this question and has found no case in which a state or locality has absolutely prohibited the offloading of garbage. Some states, including California, do require special treatment of garbage in order for it to be received. An absolute prohibition on receiving ship-generated garbage would be contrary to the Act, and no port or terminal can refuse to receive ship-generated garbage in accordance with these regulations.

33 CFR 158.135 Who Must Have a Certificate of Adequacy?

This section was added to specify which ports and terminals must have a COA for each annex of MARPOL 73/78.

The Coast Guard felt addition of this section was necessary since only certain ports and terminals subject to Annex V will be required to obtain an Annex V COA. This is a departure from previous practice relating to Annexes I or II, in which all ports or terminals which received ships subject to these annexes were required to obtain a COA. Under this section, ports and terminals will have to hold Annex V COAs only if they receive oceangoing ships subject to Annex I or II, or if they are commercial fishing facilities which receive more than 500,000 pounds of commercial fishery products from all ships during a calendar year. This last requirement was inadvertently left out of the *Federal Register* of October 27, 1988 (53 FR 43622), due to an administrative error, but was corrected in the *Federal Register* of November 4, 1988 (53 FR 44617).

Six comments were received concerning the Coast Guard's decision to limit the ports and terminals which must actually obtain an Annex V COA. One commenter favored the approach taken by the Coast Guard and five requested the Coast Guard to issue COAs to all ports and terminals which are subject to Annex V of MARPOL 73/78. The Coast Guard has considered these comments, but has decided not to issue COAs to all Annex V ports and terminals. The number of U.S. ports and terminals to which Annexes I and II apply is slightly over 2,000. In contrast, the Coast Guard estimates that Annex V of MARPOL 73/78 will apply to about 9 million ships (including privately owned recreational craft) which utilize more than 10,000 ports and terminals. Because of the large numbers of ports or terminals to which Annex V applies, Congress did not require the Coast Guard to issue COAs to Annex V ports or terminals. In these regulations, the Coast Guard has exercised the discretionary authority provided by Congress, and has limited the number of those ports or terminals required to obtain a COA. This decision balances the Coast Guard's commitment to fulfill its international and domestic obligations under MARPOL 73/78 and the Act against the potential burden on the public and Coast Guard resources, if all ports or terminals were required to apply for COAs.

One commenter requested the Coast Guard to amend this section to require ports and terminals which already receive garbage from ships to continue this practice, and to exempt those terminals not currently providing these services from any obligation to do so.

This suggestion was rejected as being inequitable and contrary to the intent of

MARPOL 73/78 and the recent amendments to the Act.

Four comments were received concerning the requirement that commercial fishing facilities obtain COAs. Two favored the concept of requiring COAs for commercial fishing facilities, but indicated that the Coast Guard had not adequately explained the reason 500,000 pounds of fishery products had been set as the threshold for requiring a COA. This commenter suggested that additional terminals should be brought in under this regulation. The threshold figure in the NPRM was obtained through consultations with the National Marine Fisheries Service which indicated that commercial fishing facilities which received greater than this quantity of fish annually service a majority of commercial fishing vessels. This cutoff was based upon the best information available at the time the decision was made and no new information has been received by any person which would indicate this to be an inappropriate threshold. The Coast Guard will, however, consider adjusting this figure based upon credible and relevant information it may receive during the period the interim rule is in effect.

Two commenters stated that the 500,000 pound threshold was unnecessary and requested this provision be removed in the final rule. Because commercial fishing facilities receive a substantial number of fishing vessels which generate nets and net fragments as garbage, the Coast Guard believes it is important to target them and has, therefore, retained this provision in this interim rule.

One commenter questioned why ports and terminals receiving large passenger cruise ships were not specifically required to obtain a COA for garbage. The Coast Guard feels it is unnecessary to specify passenger ship terminals as a specific category, since they generally receive ships greater than 400 gross tons and they would already be required to obtain COAs under § 158.135(c)(i).

Two commenters requested the Coast Guard to clarify whether a port or terminal could obtain a waiver from obtaining an Annex V COA. This interim rule will not authorize a total waiver of the requirement for a port or terminal to have a COA for reception facilities for garbage, if required under § 158.135. However, the local COTP may issue a waiver under § 158.150 of any unreasonable or impractical requirement for a port or terminal's operations, provided alternatives which meet the intent of MARPOL 73/78 are provided.

33 CFR 158.140 Applying for a Certificate of Adequacy

This section was revised by adding § 158.140(a)(2). The person-in-charge of a port or terminal required by § 158.135(c) to hold a COA for Annex V must apply on Form C, entitled "Application for a Certificate of Adequacy for a Reception Facility for Garbage," to Commandant (G-MPS-1), U.S. Coast Guard Headquarters, by August 28, 1989. Coast Guard Headquarters will review and manage the issuance of Annex V COAs until

August 28, 1989 in order to relieve local COTPs of this administrative burden. After August 28, 1989 ports and terminals must apply to the local COTP, who will review and issue COAs to those qualifying.

One commenter said it was unclear who must actually file the Form C application. Section 158.140 states that the "person in charge" of a port or terminal must make this application. "Person in charge" is defined in § 158.120 as the "owner, operator, or a person authorized to act on behalf of the port or terminal." Person in charge is

defined broadly here, since a given port or terminal could have a myriad of entities responsible for various aspects of a port's operations. The Coast Guard expects that the person who is responsible for the day to day operation of the port or terminal should logically be the person who should file for a COA.

Form C will be available at the offices of the local COTP in early 1989. A copy of Form C appears below for informational purposes.

BILLING CODE 4910-14-M

15 Min. Per Resp.
OMB No. Approved 2115-0543
Exp. Date 12/31/91

APPLICATION FOR A CERTIFICATE OF ADEQUACY

FOR GARBAGE RECEPTION FACILITIES

FORM C

The Act to Prevent Pollution From Ships (33 USC 1901) authorizes the Department of Transportation to issue certificates to terminals and ports verifying their adequacy to receive operational garbage from ships. Regulations implementing this program are in 33 Code of Federal Regulations Part 158. To continue to receive ships at a port or terminal, an applicant must hold a Certificate of Adequacy for Garbage if it receives oceangoing tankers, or any other oceangoing ship of 400 gross tons or more, carrying residues and mixtures containing oil; if it receives oceangoing ships carrying noxious liquid substances; or if it receives fishing vessels which offload more than 500,000 pounds of commercial fish products during a calendar year. To receive a Certificate of Adequacy for Garbage Reception Facilities application is required on this form.

Definitions:

"Terminal": an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance. The definition of "navigable waters" for the purposes of this section may be found in 33 CFR 2.05-25. Garbage is considered a harmful substance under MARPOL 73/78.

"Port": (1) a group of terminals that combines to act as a unit and be considered a port for purposes of this part; or (2) A port authority or other organization that chooses to be considered a port for purposes of this part; and (3) a place (i.e. lightering area) or facility that has been specifically designated as a port by the Captain of the Port.

1 Complete this section if you are applying as a single "Terminal."

A. Terminal Section:

Name of Terminal

Street Address

City State Zip

Name of Terminal Person in charge

()

Phone number area code

Name of reception facility (if subcontracted)

Location of reception facility (City, State)

2 Check the following boxes if the terminal receives or discharges any of the following commodities from or to ships visiting the terminal:

- | | |
|--|---|
| ☐ Oil or petroleum products | ☐ Discharge ☐ Receive |
| ☐ Bulk dry cargoes | ☐ Discharge ☐ Receive |
| ☐ Bulk chemicals | ☐ Discharge ☐ Receive |
| ☐ Fish | ☐ Discharge ☐ Receive |
| ☐ Liquified gases | ☐ Discharge ☐ Receive |
| ☐ General cargo | ☐ Discharge ☐ Receive |
| ☐ Other | ☐ Discharge ☐ Receive |

3 Check the following boxes if the terminal handles or services any of the following ships:

- | | |
|--|---|
| ☐ Ships of foreign registry | ☐ Unmanned barges |
| ☐ U.S. ships in domestic trade | ☐ Chemical ships |
| ☐ U.S. ships in foreign trade | ☐ Container ships |
| ☐ Passenger ships | ☐ Break bulk ships |
| ☐ Vessels servicing the offshore mineral and oil industry | ☐ Ferry boats |
| | ☐ Fishing vessels |

After completing this section go to Section C.

1 Complete this section if you are applying as a "Port."

B. Port Section:

Name of Port

Name of Port Person in charge

Street Address

City State Zip

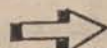
Phone number area code

Name of reception facility (if subcontracted)

Location of reception facility (City, State)

Number of Terminals which
will be members of this
Port? _____

Section B continues on the next page



B. Port Section: (cont'd)

Ports are to complete the following block entries for each individual terminal which is a member of the Port. If the Port listed in Section B.1. is also one of the terminals which will be using the reception facilities, please complete one of the terminal entries below.

2 Individual Terminal information:

(for terminals who wish to be members of a port)

Name of Terminal

Street Address

City State Zip

Name of Terminal Person in Charge

()

Phone Number area code

Name of Reception Facility (if subcontracted)

Location of Reception Facility (City, State)

Signature of Person in Charge of Terminal

Signature indicates person in charge of terminal acknowledges and consents to being considered as a member of the port, described in Section B.1.

3 Check the following boxes if the terminal receives or discharges any of the following commodities from ships visiting the terminal:

- | | | |
|--|------------------------------------|----------------------------------|
| ☐ Oil or petroleum products | ☐ Discharge | ☐ Receive |
| ☐ Bulk dry cargoes | ☐ Discharge | ☐ Receive |
| ☐ Bulk chemicals | ☐ Discharge | ☐ Receive |
| ☐ Fish | ☐ Discharge | ☐ Receive |
| ☐ Liquefied gases | ☐ Discharge | ☐ Receive |
| ☐ General cargo | ☐ Discharge | ☐ Receive |
| ☐ Other _____ | ☐ Discharge | ☐ Receive |

4 Check the following boxes if the terminal handles or services any of the following ships:

- | | |
|--|---|
| ☐ Ships of foreign registry | ☐ Unmanned barges |
| ☐ U.S. ships in domestic trade | ☐ Chemical ships |
| ☐ U.S. ships in foreign trade | ☐ Container ships |
| ☐ Passenger ships | ☐ Break bulk ships |
| ☐ Ships servicing the offshore mineral and oil industry | ☐ Ferry boat ships |
| | ☐ Fishing ships |

2 Individual Terminal information:

(for terminals who wish to be members of a port)

Name of Terminal

Street Address

City State Zip

Name of Terminal Person in charge

()

Phone Number area code

Name of Reception Facility (if subcontracted)

Location of Reception Facility (City, State)

Signature of Person in Charge of Terminal

Signature indicates person in charge of terminal acknowledges and consents to being considered as a member of the port, described in Section B.1.

3 Check the following boxes if the terminal receives or discharges any of the following commodities from ships visiting the terminal:

- | | | |
|--|------------------------------------|----------------------------------|
| ☐ Oil or petroleum products | ☐ Discharge | ☐ Receive |
| ☐ Bulk dry cargoes | ☐ Discharge | ☐ Receive |
| ☐ Bulk chemicals | ☐ Discharge | ☐ Receive |
| ☐ Fish | ☐ Discharge | ☐ Receive |
| ☐ Liquefied gases | ☐ Discharge | ☐ Receive |
| ☐ General cargo | ☐ Discharge | ☐ Receive |
| ☐ Other _____ | ☐ Discharge | ☐ Receive |

4 Check the following boxes if the terminal handles or services any of the following ships:

- | | |
|--|---|
| ☐ Ships of foreign registry | ☐ Unmanned barges |
| ☐ U.S. ships in domestic trade | ☐ Chemical ships |
| ☐ U.S. ships in foreign trade | ☐ Container ships |
| ☐ Passenger ships | ☐ Break bulk ships |
| ☐ Ships servicing the offshore mineral and oil industry | ☐ Ferry boat ships |
| | ☐ Fishing ships |

After completing this section go to Section C.

This page may be locally reproduced to accommodate larger Ports

Section C: Circle the location of the USCG Captain of the Port Office which has authority in your area.

- | | |
|--|------------------------------------|
| Commanding Officer USCG Marine Safety Office | 1 Portland, ME |
| Commanding Officer USCG Marine Safety Office | 2 Boston, MA |
| Commanding Officer USCG Marine Safety Office | 3 Providence, RI |
| Captain of the Port, Long Island Sound | 4 Long Island Sound, New Haven, CT |
| Captain of the Port, New York | 5 New York, NY |
| Commanding Officer USCG Marine Safety Office | 6 St. Louis, MO |
| Commanding Officer USCG Marine Safety Office | 7 Huntington, WV |
| Commanding Officer USCG Marine Safety Office | 8 Louisville, KY |
| Commanding Officer USCG Marine Safety Office | 9 Memphis, TN |
| Commanding Officer USCG Marine Safety Office | 10 Paducah, KY |
| Commanding Officer USCG Marine Safety Office | 11 Pittsburgh, PA |
| Commanding Officer USCG Marine Safety Office | 12 Baltimore, MD |
| Commanding Officer USCG Marine Safety Office | 13 Hampton Roads, VA |
| Commanding Officer USCG Marine Safety Office | 14 Philadelphia, PA |
| Commanding Officer USCG Marine Safety Office | 15 Wilmington, NC |
| Commanding Officer USCG Marine Safety Office | 16 Charleston, SC |
| Commanding Officer USCG Marine Safety Office | 17 Jacksonville, FL |
| Commanding Officer USCG Marine Safety Office | 18 San Juan, PR |
| Commanding Officer USCG Marine Safety Office | 19 Savannah, GA |
| Commanding Officer USCG Marine Safety Office | 20 Tampa, FL |
| Commanding Officer USCG Marine Safety Office | 21 Miami, FL |
| Commanding Officer USCG Marine Safety Office | 22 Mobile, AL |
| Commanding Officer USCG Marine Safety Office | 23 Morgan City, LA |
| Commanding Officer USCG Marine Safety Office | 24 New Orleans, LA |
| Captain of the Port, Houston | 25 Houston, TX |
| Commanding Officer USCG Marine Safety Office | 26 Galveston, TX |
| Commanding Officer USCG Marine Safety Office | 27 Port Arthur, TX |
| Commanding Officer USCG Marine Safety Office | 28 Corpus Christi, TX |
| Commanding Officer USCG Marine Safety Office | 29 Chicago, IL |
| Commanding Officer USCG Marine Safety Office | 30 Buffalo, NY |
| Commanding Officer USCG Marine Safety Office | 31 Cleveland, OH |
| Commanding Officer USCG Marine Safety Office | 32 Detroit, MI |
| Captain of the Port, Grand Haven | 33 Grand Haven, MI |
| Captain of the Port, Sault Ste. Marie | 34 Sault Ste. Marie, MI |
| Commanding Officer USCG Marine Safety Office | 35 Duluth, MN |
| Commanding Officer USCG Marine Safety Office | 36 Milwaukee, WI |
| Commanding Officer USCG Marine Safety Office | 37 Toledo, OH |
| Commanding Officer USCG Marine Safety Office | 38 Long Beach, CA |
| Commanding Officer USCG Marine Safety Office | 39 San Diego, CA |
| Commanding Officer USCG Marine Safety Office | 40 San Francisco, CA |
| Commanding Officer USCG Marine Safety Office | 41 Portland, OR |
| Commanding Officer USCG Marine Safety Office | 42 Puget Sound, WA |
| Commanding Officer USCG Marine Safety Office | 43 Anchorage, AK |
| Commanding Officer USCG Marine Safety Office | 44 Juneau, AK |
| Commanding Officer USCG Marine Safety Office | 45 Valdez, AK |
| Commanding Officer USCG Marine Safety Office | 46 Honolulu, HI |
| Commanding Officer USCG Marine Safety Office | 47 Guam |

After completing this section go to Section D.

Section D:

1. Does the terminal or port receive visits from ships arriving from foreign ports (except Canada).

☐ Yes ☐ No *If the answer is "NO" go to question number 4.*

2. Does the terminal or port have facilities, either onboard or on contract, approved by the Administrator, Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, for the disposal of garbage from foreign ports (except Canada) in accordance with 7 CFR 330.400 and 9 CFR 94.5.

☐ Yes ☐ No *(If the answer is "No" you may attach a waiver request in accordance with 33 CFR 158 on a separate attached sheet.)*

NAME OF APHIS APPROVED DISPOSAL FACILITY

TYPE (INCINERATOR, STERILIZER, AUTOCLAVE, ETC.)

() -

CITY

STATE

PHONE NUMBER

area code

3. For those terminal(s)/port(s) requiring the services of an Animal and Plant Health Inspection Service approved facility, is the terminal or port capable of receiving all garbage from these ships visiting the terminal/port within 24 hours of vessel after notification of need for such services is given?

☐ Yes ☐ No *(If the answer is "No" you may attach a waiver request in accordance with 33 CFR 158 on a separate attached sheet.)*

4. Is the terminal or port able to receive all garbage as defined in 33 CFR 158.120 which the master or person in charge of a ship desires to discharge, except:

- (1) large quantities of spoiled or damaged cargoes not usually discharged by a ship; or
(2) garbage from ships not having commercial transactions with that terminal or port?

☐ Yes ☐ No *(If the answer is "No" you may attach a waiver request in accordance with 33 CFR 158 on a separate attached sheet.)*

The terminal/port person in charge identified in the Application shall notify the U. S. Coast Guard Captain of the Port (COTP) in writing 30 days after any of the terminal/port information identified under 33 CFR 158.165(b)(3) changes.

Civil Penalties. A person who, after notice and an opportunity for a hearing, is found:

- a. to have made a false, fictitious or fraudulent statement or representation in any matter in which a statement or representation is required to be made under the Act to Prevent Pollution from Ships, or the regulations thereunder, shall be liable to the United States for a civil penalty, not to exceed \$5,000 for each statement or representation; or
b. to have violated the Act to Prevent Pollution from Ships, or the regulations issued thereunder, shall be liable to the United States for a civil penalty, not to exceed \$25,000, for each violation. Each day of a continuing violation constitutes a separate

CERTIFICATION

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED IN THIS APPLICATION FOR A GARBAGE RECEPTION FACILITY CERTIFICATE OF ADEQUACY FOR GARBAGE RECEPTION FACILITIES IS COMPLETE, TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

SIGNATURE OF TERMINAL/PORT PERSON IN CHARGE _____

PRINTED OR TYPED NAME OF PERSON IN CHARGE _____

DATE SIGNED _____

ON OR BEFORE AUGUST 27, 1989 MAIL APPLICATION TO:
COMMANDANT (G-MPS-1), U.S. COAST GUARD HEADQUARTERS
2100 SECOND STREET S.W.
WASHINGTON, D.C. 20583-0001
ATTENTION: RECEPTION FACILITY DESK

AFTER AUGUST 27, 1989 MAIL APPLICATION TO:
THE LOCAL U.S. COAST GUARD CAPTAIN OF THE PORT (COTP) OFFICE
(SEE PAGE 3 FOR THE LIST OF COTP OFFICES)

33 CFR 158.160 Issuance and Termination of a Certificate of Adequacy

This section was revised to provide for the issuance and termination of Annex V COAs. This section indicates that the COTP is required to physically inspect Annex I or II reception facilities prior to issuing a COA and that he is required only to review an Annex V reception facility application. However, the Coast Guard intends to examine ports or terminals at regularly scheduled surveys and inspections for those requiring inspections by regulation, and at other ports or terminals at such time as the Coast Guard may visit them in the course of other business, such as casualty investigations or oil or chemical spill investigations.

Two commenters suggested that the Coast Guard should inspect all ports and terminals to determine that reception facilities comply with the regulations. As discussed earlier, the Coast Guard is not required under the Act to inspect Annex V reception facilities. The Coast Guard estimates that there will be at least 10,000 ports or terminals which will have to comply with these regulations throughout the United States and inspection of all of these is impractical on a regular basis.

33 CFR 158.163 Reception Facility Operations

Paragraph (b)(2) was revised by adding the word "operator" to indicate that an operator of a ship, in addition to a master, is authorized to examine a port or terminal's COA.

33 CFR 158.165 Certificates of Adequacy: Change of Information

This section was revised for clarity and it lists those sections of Form C which, if changed, require written notification to the local COTP within 30 days.

33 CFR 158.167 Reporting Inadequate Reception Facilities

This section was added at the request of one commenter to provide procedures for persons to report the inadequacy of required reception facilities to receive oil, noxious liquid substances or garbage. A formally stated mechanism for reporting inadequate reception facilities will aid in Coast Guard enforcement efforts within the United States and will also allow U.S. ship operators to report to the Coast Guard the existence of inadequate facilities in foreign ports.

33 CFR 158.400 Purpose

This section describes the criteria for determining the adequacy for Annex V

reception facilities. All ports and terminals, whether or not they must have a COA, must comply with the requirements of §§ 158.410 and 158.420.

33 CFR 158.410 Reception Facilities: General

This section contains the general requirements for all Annex V reception facilities. After August 28, 1989 this section requires all ports or terminals to be capable of receiving APHIS regulated garbage within 24 hours of notification under § 151.65, unless it receives only ships which operate exclusively within the navigable waters of the U.S., or which operate exclusively between ports or terminals in the continental U.S. or between continental U.S. ports and Canadian ports. It also requires them to be capable of receiving medical wastes (defined in § 158.120) or hazardous wastes (defined in 40 CFR 261.3), unless the port or terminal operator can provide to the master, operator or person in charge of a ship the names of persons authorized to receive, properly transport and treat such wastes. This section also requires reception facilities to be arranged so that they do not interfere with port or terminal operations and are convenient to mariners. They must also be situated so that ships' garbage will not reenter the water after it has been discharged to the reception facility. Finally, reception facilities for garbage must meet all federal, state and local requirements for garbage handling. Port or terminal operators desiring to learn more about APHIS requirements should contact APHIS at the address listed in paragraph three of ADDRESSES above.

The Coast Guard received five comments concerning the requirement that all ports and terminals be capable of receiving APHIS regulated garbage within 24 hours. Two commenters strongly supported the 24 hour advance notice of arrival requirement and stated this requirement was reasonable to prevent delay to ships because daily operating costs of U.S. ships in port are between \$20,000-\$30,000 per day. Two commenters stated that many small or proprietary ports or terminals in the Great Lakes and in remote areas such as Alaska do not receive ships with APHIS regulated garbage and should not be required to provide facilities which might never be used. The Coast Guard agrees with this comment and has changed the proposed rule in paragraph (a)(1) so that only those ports and terminals which receive ships subject to APHIS inspection are required to provide an APHIS approved reception facility.

Two commenters desired the rule to be changed so that if no APHIS reception facilities were nearby or feasible, then the Coast Guard would not require them, and would allow ships to go to other ports. The Coast Guard did not incorporate this request in this rule, because to do so would discourage ports to take action to acquire these facilities. The Coast Guard believes that the availability of APHIS facilities in areas where they are needed is critical to preventing the undue delay of ships and promoting compliance with Annex V. As discussed in ENFORCEMENT above, the Coast Guard expects that in ports where APHIS facilities are not immediately available, that they will be made available in the near future and that in all cases, ports requiring them will have them available by (insert date 120 days after publication date).

Five commenters requested that this section should require the posting of signs to indicate where port reception facilities are located and to require reception areas specifically for cables, fishing nets, etc. One person commented on the wording of § 158.410(a)(2) in the NPRM and indicated it needed to be strengthened to emphasize that the reception facilities must be convenient to the mariner so that they will be used. The Coast Guard agrees that this section needs strengthening and added § 158.410(a)(4) to require that the reception facilities be convenient to mariners so that they could easily be located by a person unfamiliar with the port, and convenient enough so as not to discourage their use by mariners. The Coast Guard believes this wording strikes a balance between the needs of a ship operator for reception facilities yet allows the flexibility needed for port or terminal operators, given the variety and type of terminals in existence. Port and terminal operators could use a variety of means to ensure ship personnel knew where facilities were located (such as signs, informational brochures, or direct communications provided by ship agents). The Coast Guard does not see a necessity at this time for a mandatory marking requirement, but will consider this during the comment period if experience gained from ship and port operators indicates that reception facilities for garbage have not been generally accessible and convenient.

One commenter requested the Coast Guard to provide in the regulations a method by which ships could directly contract for garbage services, rather than going through a port or terminal. The Coast Guard sees no need for a statement such as this in the regulations. This would seem to be a contractual

arrangement which could be made voluntarily between the ship, port or terminal, or private garbage hauler without specific regulatory authority.

The Coast Guard received four comments from port and terminal operators expressing their concern that some ship operators might mix medical wastes, or hazardous wastes regulated under RCRA, with garbage in reception facilities. The Coast Guard has determined that these materials, if generated by ships, are garbage within the meaning of Annex V and that ports or terminals are obligated under the Act to prevent the undue delay of ships which wish to discharge them. Unlike garbage such as contaminated victual wastes, the Coast Guard believes that most ships do not routinely generate medical or hazardous wastes. However, some passenger liners which have hospitals, and large oceangoing ships which perform extensive maintenance while underway, may generate limited quantities of these wastes and have need to discharge them ashore. The Coast Guard also recognizes that reception of these materials generally requires specialized treatment which is not normally available from most port or terminal operators. For this reason, the Coast Guard has added a new § 158.410(a)(2) which provides ports or terminals flexibility by either providing facilities to receive medical and hazardous wastes when called upon, or alternatively, providing the names of persons approved to transport and treat these wastes. The Coast Guard believes this is a reasonable solution which will prevent unnecessary expenses on the part of ports or terminals. Further, based upon discussions with EPA, the Coast Guard believes that the majority of ships, ports or terminals which may generate hazardous wastes, would receive favorable consideration as "small quantity generators" as defined in 40 CFR 261.5.

One commenter stated that the Coast Guard needs to specify in more detail what is expected of a port or terminal with respect to reception facilities for garbage. The Coast Guard believes that this revised rule does just that: a port or terminal must be able to receive all garbage from ships it services, including APHIS regulated wastes within 24 hours. It is also obligated to receive ship-generated medical wastes or hazardous wastes under RCRA, or to provide a list of competent persons able to transport and treat these wastes, if called upon. Ports or terminals must make the reception facilities plainly accessible and convenient to ship operators so as not to discourage their

use. Finally, the port or terminal must manage their reception facilities in a manner which will prevent ship-generated garbage from reentering the water and which complies with other federal, state and local laws.

33 CFR 158.420 Reception Facilities: Capacity and Exceptions

Under this section, ports and terminals must ensure the availability of reception facilities for garbage capable of receiving all garbage that the master or person who is in charge of a ship wants to discharge ashore, subject to two exceptions. Ports and terminals will not be obligated to receive large quantities of spoiled or damaged cargoes, or garbage from ships not having commercial transactions with that port or terminal.

Two commenters had recommendations regarding the proposed requirement to require ports and terminals to be able to receive all garbage that ships doing business there might desire to discharge ashore. One supported the Coast Guard decision to drop specific reception facility capacity requirements recommended by IMO. Some ports and terminals had suggested that these formulae tended to overestimate capacity required and the IMO later agreed, when it removed this recommendation from the "Guidelines for the Implementation of Annex V" in September 1988. Another commenter stated that the capacity requirement in this rule is too onerous and that ports or terminals should only be required to receive a quantity of garbage which could have been generated within 25 miles from nearest land, since ships may discharge all garbage, except plastics outside this distance. The Coast Guard hopes to learn more about actual quantities of garbage brought ashore during the interim period after implementation of Annex V, but will not at this time limit the capacity requirements as suggested. The Annex allows ships to discharge garbage at sea, but clearly encourages ships to bring garbage to port reception facilities. Reducing the capacity requirements as suggested would only encourage ship operators to discharge garbage at sea.

One commenter questioned why the Coast Guard granted an exception to the capacity requirements for "large quantities of spoiled or damaged cargoes" and asked what ship operators should do with this garbage in such a case. In granting this exemption, the Coast Guard acknowledges that unforeseen situations do occur in the transportation of goods by ship which are not normal and that it would be unrealistic to expect all ports and

terminals to have the capacity to receive a whole ship's cargo as garbage. In such a case, the ship operator could do what was done before Annex V—contact the port or shipping agent and make special arrangements for such special circumstances.

Three persons commented on the provision in § 158.420(b) which exempts ports from the requirement to accept garbage from ships not having commercial transactions with that port or terminal. One commenter favored this concept and two opposed it. The Coast Guard has retained this wording because reception facilities for garbage are an ancillary (though now mandated) service provided by port and terminal operators and it is not their primary reason for being in business and would be inappropriate to establish such a mandate.

Subpart E—Port and Terminal Operations

This Subpart, formerly Subpart D of Part 158, was redesignated "Subpart E" in order to allow for the placement of the new Subpart D, "Criteria for Adequacy of Reception Facilities: Garbage," in numerical sequence immediately after Annex I and II requirements. Sections previously numbered 158.400 and 158.420 were redesignated §§ 158.500 and 158.520 respectively.

46 CFR 25.50-1 Criteria

This section will apply the shipboard discharge requirements of Annex V to those ships which are not normally inspected by the Coast Guard. This section will require them to retain garbage generated on board for later disposal ashore, unless the garbage is discharged at sea in accordance with 33 CFR Part 151.

VI. Regulatory Evaluation and Environmental Assessment

Regulatory Evaluation

The Coast Guard considers these regulations to be significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979) and non-major under Executive Order 12291. A final regulatory evaluation has been prepared and placed in the rulemaking docket. Copies of the evaluation may be inspected or copied at the address indicated in the first paragraph of ADDRESSES above.

The Coast Guard considered several alternatives in this rulemaking: take no regulatory action except for determining the criteria of adequacy for reception facilities; develop a performance based regulatory program requiring inspection

of reception facilities at all ports and terminals before issuing COAs to those which meet standards; or develop a performance based regulatory program requiring all ports and terminals to meet minimal reception facility standards and issue certain ports and terminals COAs after they have certified their compliance with the regulations.

The Coast Guard decided on the final option to implement the requirements of Pub. L. 100-220. The decision was based on several factors. A performance based regulatory program was selected as it was best suited for implementation of legislation prohibiting improper disposal of garbage. Performance standard regulatory programs are more conducive to compliance choices that are custom fitted to individual entities.

The Coast Guard considered the costs of the implementation of these regulations by considering six distinct industry sectors: merchant shipping, the fishing industry, recreational boating, offshore oil and gas operations, research and other miscellaneous classes of vessels, and ports and terminals.

Only those portions of each sector affected by implementation of Pub. L. 100-220 were considered. Vessels on the U.S. portions of the Great Lakes and other internal waters of the United States were not considered as they must currently comply with the provisions of the Refuse Act. Ports and terminals were considered in all areas for the additional burden that provisions for additional waste collection would entail. Costs for each of these sectors were projected after an industry profile was constructed and current garbage disposal practices were analyzed to establish baseline costs. Estimates of cost compliance options were made for each sector except ports and terminals, since it was assumed that costs borne by ports would be passed on to vessels, either explicitly in the form of a garbage handling charge, or implicitly in the form of an increase in dockage fees. The vessels are assumed to pay costs sufficient to cover both a land disposal fee for garbage (imposed by the local waste hauler) and an additional surcharge imposed in some form by the port. Estimates of which compliance options each industry sector would choose were made and the total costs were projected based on these compliance options. The total annual projected costs are approximately \$41.8 million. This burden is apportioned among the sectors as follows: merchant shipping, \$2.9 million; commercial fishing, \$33.9 million; recreational boating, \$1.5 million; offshore oil and

gas, \$3.1 million; and miscellaneous vessels, \$.3 million.

Most quantifiable benefits, from implementation of Pub. L. 100-220, result from savings due to events of pollution not occurring. One source of benefits would accrue from the reduction of damages to vessels from garbage entanglement in propellers, water intakes or other vessel equipment in contact with the water. Benefits could also be realized through avoidance of fishery losses due to "ghost fishing" by discarded nets and traps that continue to catch fish or mammals. Another large benefit would be the reduction of beach cleanup costs. Beach debris problems tend to be localized to specific areas that receive wastes carried on principal ocean currents or that are in proximity to heavily traveled shipping routes or fishing regions. The quantity of plastic, garbage and other debris discharged in the ocean will be reduced under this rule. However, plastic in the ocean originates from several sources, not solely from the vessels regulated by this action; these other sources are not affected by these regulations. It is uncertain whether beach areas will continue to require cleanup efforts, or if the cleanup efforts can be substantially reduced. Therefore, it is not possible to ascribe a quantitative estimate to reduction in beach cleanup costs. Another benefit closely tied to the reduction in beach cleanup costs is increased tourism and its associated spending in beach areas. Again it is difficult to quantify the change that these regulations will have on tourist spending in beach areas. Finally, one could consider increases in the values of beach properties. A net public gain occurs from improvement in ocean environmental conditions to the extent that beach property increases in value.

Environmental benefits are difficult to quantify but their effects can be considered. These benefits include a reduction in damages by plastic wastes to endangered species and the increased enjoyment of beach areas. Plastic garbage is believed to have deleterious effects on certain endangered species including Hawaiian monk seals and various species of sea turtles. These regulations will limit one source of oceanic plastic garbage affecting these species. Persons visiting a beach will receive increased enjoyment of the resource to the extent that less debris is present.

The potential net benefits of the regulations are estimated to be positive. This estimate results from an analysis that considered the potential costs and benefits.

Regulatory Flexibility Act

A regulatory flexibility analysis was conducted to evaluate the impact of the rule on small entities and it has been made part of the Final Regulatory Evaluation in accordance with the Regulatory Flexibility Act. The Coast Guard adopted the Small Business Administration's (SBA) definition of "small business" used when considering SBA loans to concerns engaging in transportation and warehousing (13 CFR 121.3-10(f)) as a definition for small entities. A concern is considered small, under this definition, if its annual receipts do not exceed \$1.5 million.

The Coast Guard does not have accurate information on how many vessels or ports and terminals grouped in the various sectors discussed in the "Potential Costs" portion would qualify as small entities. However, the Coast Guard currently estimates that this will affect 2,200 U.S. flag vessels of less than 1,000 gross tons, 14,800 commercial fishing vessels, 600 offshore service vessels, and 4,400 ports and terminals, including recreational boating facilities.

Vessels which qualify as small entities will decide which option they will choose for compliance:

- Garbage separation, with storage of plastic waste on board and final disposal ashore;
- Storage of all garbage and final disposal ashore;
- Garbage separation, with compaction and storage of plastic wastes on board and final disposal ashore;
- Garbage incineration;
- Product substitution.

Ports which qualify as small entities may have to invest in small-scale incineration equipment, equipment for garbage handling, or make contractual arrangements for reception facilities if they do not already have these.

These regulations contain minimal reporting or recordkeeping requirements for small entities. A small minority of all ports and terminals will also be required to complete an application "Form C" for a COA. Most vessels which are small entities would not have to comply with the reporting requirements for disposal of APHIS regulated garbage. Based upon the above factors, the Coast Guard certifies that this rule will not have a significant economic impact on a substantial number of small entities.

As discussed throughout the SUPPLEMENTARY INFORMATION, some existing legislation may duplicate, conflict or overlap with the rule. Some of these include the Clean Air Act, Clean Water Act, the Resource Conservation

and Recovery Act (RCRA), and the MPRSA. The Clean Air Act and RCRA may restrict the use of incinerators as a compliance choice for vessels in U.S. waters. Specifically, the Clean Air Act may restrict emissions from incinerators and RCRA may restrict the shore disposal of clinkers or ashes from vessel incinerators. The Clean Water Act also prohibits the discharge of pollutants, including garbage, in U.S. waters. There is a duplication of this interim rule and the regulations implementing the Clean Water Act for floating garbage, and an inconsistency between them for non-floating solid wastes. In the interim rule the discharge of non-floating wastes from mobile offshore drilling units and platforms is prohibited, while the regulations which implement the Clean Water Act allow this type of discharge.

Environmental Impact

Under Annex V of MARPOL 73/78, the Act, and its implementing regulations, the discharge of plastic from vessels into the sea is prohibited and the discharge of other ship-generated garbage within 25 nautical miles of land is restricted. Ports and terminals where ships call are required to provide adequate facilities for receiving this garbage.

The reception facility rule in this document does not directly affect the marine environment, but it is an essential part of an overall scheme to limit pollution of the marine environment and substantially reduce the need to dispose of plastics and other ship-generated garbage at sea. The facility regulations will affect the locations where ship generated garbage is received by reception facilities and implement the requirement of Regulation 7 of Annex V of MARPOL 73/78 that adequate reception facilities be available to meet the needs of ships without undue delay. If left unregulated, ships would not be able to discharge garbage, especially APHIS regulated garbage, at all ports and terminals because reception facilities would not be readily available. Further, in those ports and terminals where reception facilities would be available, the demand for reception facilities would exceed the supply. This would drive up the cost of disposal, contribute to the delay of vessels, and adversely affect compliance with the discharge requirements of Annex V and the Act.

The regulations are expected to have a positive but not significant environmental impact, as defined in the National Environmental Policy Act. The regulations are expected to contribute to the reduction of the occurrence of plastic in the marine environment as

well as other ship-generated garbage. However, the impact of the regulations involves several factors. First, is the source of the marine debris. The regulations apply to U.S. vessels and foreign flag vessels when operating in U.S. waters. U.S. vessels account for less than 5% of the world's oceangoing fleet. Foreign flag vessels which operate in U.S. waters make up a much larger percentage of this fleet. Once outside U.S. waters, foreign flag vessels may continue past disposal practices, unless they are under the control of a country which is signatory to Annex V. Over 1,000 public vessels in noncommercial service, including naval vessels and other government owned or operated ships, must comply with regulations established by their own agencies, rather than these regulations. Further, these regulations do not apply to land based sources which, depending upon the predominant activity in the region, may account for more than half of the debris in the marine environment. Therefore, this action can influence only a rather limited portion of the overall marine debris problem.

The second factor is the marine environment. Several negative impacts from marine debris have been noted on marine wildlife including selected endangered species. The effect of this regulatory program on these impacts will be limited for several reasons. First, the limited influence of these regulations on the overall marine debris problem, as noted above. Second, there is little evidence to suggest that persistent marine debris has had a significant adverse impact on environmental populations. There is ample evidence that entanglement and ingestion of persistent marine debris have had an adverse affect on individual members of many species; however, scientists can identify adverse impacts on only a few wildlife populations, e.g., Northern fur seals and the endangered Hawaiian monk seals. The regulations are expected to contribute to a slight reduction of the incidence of entanglement and ingestion, but only by that amount which occurs as a result of debris which is intentionally discharged from ships. Third, the interim rule does not affect accidental loss of fishing gear or active fishing operations which are major contributors to the incidence of entanglement. Fourth, plastics account for a small portion of the debris disposed of by ships. The bulk of ship-generated garbage is still permitted to be discharged further out at sea. A final environmental assessment and a finding of no significant impact have been prepared and are available as indicated

in the first paragraph of ADDRESSES above.

Paperwork Reduction Act

These regulations will change the information collection requirements at 33 CFR 151.65 and 33 CFR 158.140. Revisions to existing OMB paperwork approvals have been submitted to the Office of Management and Budget (OMB) for this interim rule. They have been assigned RCS/OMB Control Numbers 2115-0544 and 2115-0543 respectively. These regulations will require masters to give 24 hour notice of the need for an APHIS approved reception facility and for all ports and terminals which meet the requirements of 33 CFR 158.140 to apply for a COA for garbage. Persons desiring to comment on this information collection requirement should submit their comments to the Office of Management and Budget at the address listed in the fourth paragraph of ADDRESSES above. A copy of these comments should also be submitted to the Coast Guard at the address shown in the first paragraph of ADDRESSES above.

Federalism Statement

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the concepts discussed therein do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Regulatory Information Number (RIN)

A regulatory information number has been assigned to this regulatory action and it is listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center (RISC) publishes the Unified Agenda in April and October of each year. The RIN number listed at the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

33 CFR Part 151

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

33 CFR Part 155

Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 158

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

46 CFR Part 25

Fire prevention, Marine safety.

In consideration of the preceding, Parts 151, 155 and 158 of Title 33, Code of Federal Regulations and Part 25 of Title 46, Code of Federal Regulations are amended as follows:

TITLE 33—[AMENDED]

1. The title of Part 151 is revised to read as follows:

PART 151—OIL, NOXIOUS LIQUID SUBSTANCE AND GARBAGE REGULATIONS

2. The authority citation for Part 151 is revised to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b), E.O. 11735, 3 CFR, 1971-1975 COMP., p.793, 49 CFR 1.46.

3. Section 151.01 is revised to read as follows:

§ 151.01 Purpose.

The purpose of this part is to implement the Act to Prevent Pollution from Ships, 1980, as amended (33 U.S.C. 1901-1911) and Annexes I, II and V of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), done at London on February 17, 1978.

Note: MARPOL 73/78 is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Please include reference number "ADA 168 505" in your request.

4. Section 151.03 is revised to read as follows:

§ 151.03 Applicability.

This part applies to each ship that must comply with Annex I, II or V of MARPOL 73/78.

5. A new § 151.04 is added to Subpart A to read as follows:

§ 151.04 Penalties for violation.

(a) A person who violates MARPOL 73/78, the Act, or the regulations of this part is liable for a civil penalty not to exceed \$25,000 for each violation, as provided by 33 U.S.C. 1908(b)(1). Each day of a continuing violation constitutes a separate violation.

(b) A person who makes a false, fictitious statement or fraudulent representation in any matter in which a statement or representation is required to be made to the Coast Guard under MARPOL 73/78, the Act, or the regulations of this part, is liable for a civil penalty not to exceed \$5,000 for each statement or representation, as provided by 33 U.S.C. 1908(b)(2).

(c) A person who knowingly violates MARPOL 73/78, the Act, or the regulations of this part, is liable for a fine for each violation of not more than \$50,000 dollars, or imprisonment for not more than 5 years, or both, as provided by 33 U.S.C. 1908(a).

(d) A ship operated in violation of MARPOL 73/78, the Act, or the regulations of this part is liable *in rem* for any civil penalty covered by paragraph (a) of this section, or any fine covered by paragraph (b) of this section, and may be proceeded against in the United States District Court of any district in which the ship may be found.

6. Section 151.05 is amended by adding the definitions for the terms "Cargo associated wastes," "Dishwater," "Domestic wastes," "Garbage," "Graywater," "Harmful substance," "Maintenance waste," "Medical waste," "Operational waste," "Plastic," "Vital waste," in the proper alphabetical sequence, by revising the definitions of "Discharge" and "Special Area," and by adding a note following the definition of "Terminal," to read as follows:

§ 151.05 Definitions.

"Cargo associated wastes" means all materials which have become wastes as a result of use on board a ship for cargo stowage and handling. Cargo associated wastes include, but are not limited to dunnage, shoring, pallets, lining and packing materials, plywood, paper, cardboard, wire, and steel strapping.

"Discharge," as defined by MARPOL 73/78 in relation to harmful substances or effluent containing such substances, means any release however caused from a ship, and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying. It does not include—

(1) Dumping within the meaning of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, done at London on November 13, 1972; or

(2) The release of harmful substances directly arising from the exploration, exploitation, and associated offshore processing of seabed mineral resources; or

(3) The release of harmful substances for purposes of legitimate scientific research relating to pollution abatement or control.

"Dishwater" means the liquid residue from the manual or automatic washing of dishes and cooking utensils which have been pre-cleaned to the extent that any food particles adhering to them

would not normally interfere with the operation of automatic dishwashers.

"Domestic wastes" means all types of wastes generated in the living spaces on board a ship, except victual wastes.

"Garbage" means all kinds of victual, domestic, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically, except dishwater, graywater, and those substances that are defined or listed in other Annexes to MARPOL 73/78.

"Graywater" means drainage from dishwasher, shower, laundry, bath, and washbasin drains and does not include drainage from toilets, urinals, hospitals, and cargo spaces.

"Harmful substance" means any substance which, if introduced into the sea, is liable to create hazards to human health, harm living resources and marine life, damage amenities, or interfere with other legitimate uses of the sea, and includes any substance subject to control by MARPOL 73/78.

"Maintenance waste" means materials collected while maintaining and operating the ship, including, but not limited to, soot, machinery deposits, scraped paint, deck sweepings, wiping wastes, and rags.

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and such additional medical items as prescribed by the Administrator of the EPA by regulation.

"Operational waste" means all cargo associated waste, maintenance waste, cargo residues, and ashes and clinkers from shipboard incinerators and coal burning boilers.

"Plastic" means any garbage that is solid material that contains as an essential ingredient one or more synthetic organic high polymers and is formed or shaped during either manufacture of the polymer or fabrication into a finished product by heat or pressure or both.

Note: Plastics possess material properties ranging from hard and brittle to soft and elastic. Plastics are used for a variety of marine applications including, but not limited to: food wrappings, personal hygiene products, packaging (vaporproof barriers,

bottles, containers, liners), ship construction (fiberglass and laminated structures, siding, piping insulation, flooring, carpets, fabrics, adhesives, electrical and electronic components), disposable eating utensils and cups (including styrene products), bags, sheeting, floats, synthetic fishing nets, monofilament fishing line, strapping bands, hardhats, synthetic ropes and lines. "Degradable" plastics which are composed of combinations of degradable starches and either synthetically produced, or naturally produced plastics which are harvested for the use of man, are considered plastics for the purpose of these regulations.

"Special area" means a sea area, where for recognized technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic, the adoption of special mandatory methods for the prevention of sea pollution by oil, NLS, or garbage is required. Special areas for the purposes of Annex I of MARPOL 73/78 include those listed in § 151.13 and for the purposes of Annex V of MARPOL 73/78 include those listed in § 151.53.

"Terminal" means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

Note: The Coast Guard interprets commercial fishing facilities, recreational boating facilities, and mineral and oil industry shorebases to be terminals for the purposes of Annex V of MARPOL 73/78, since these facilities normally provide wharfage and other services, including garbage handling, for ships.

"Victual waste" means any spoiled or unspoiled food waste.

7. Section 151.07 is revised to read as follows:

§ 151.07 Delegations.

Each Coast Guard official designated as a Captain of the Port (COTP) or Officer in Charge, Marine Inspection (OCMI) or Commanding Officer, Marine Safety Office (MSO), is delegated the authority to—

- Issue International Oil Pollution Prevention (IOPP) Certificates;
- Detain or deny entry to ships not in substantial compliance with MARPOL 73/78 or not having an IOPP Certificate or evidence of compliance with MARPOL 73/78 on board;
- Receive and investigate reports under § 151.15; and
- Issue subpoenas to require the attendance of any witness and the production of documents and other evidence, in the course of investigations

of potential violations of the Act to Prevent Pollution from Ships, as amended (33 U.S.C. 1901-1911), this part, or MARPOL 73/78.

8. Section 151.08 is revised to read as follows:

§ 151.08 Denial of entry.

(a) Unless a ship is entering under force majeure, no oceangoing tanker or any other oceangoing ship of 400 gross tons or more required by § 151.10 to retain oil or oily residues and mixtures on board while at sea, and no oceangoing ship carrying a Category A, B, or C NLS cargo or NLS residue in cargo tanks that are required to be prewashed under 46 CFR Part 153, may enter any port or terminal under § 158.110(a) of this chapter unless the port or terminal has a Certificate of Adequacy, as defined in § 158.120 of this chapter.

(b) A COTP may deny the entry of a ship to a port or terminal under § 158.110(b) if—

- The port or terminal does not have a Certificate of Adequacy, as required in § 158.135 of this chapter; or
- The port or terminal is not in compliance with the requirements of Subpart D of Part 158.

§ 151.10 [Redesignated from § 151.09]

9. Section 151.09 (Control of discharge of oil) is redesignated as § 151.10.

10. A new § 151.09 is added to read as follows:

§ 151.09 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to each ship that—

- Is operated under the authority of the United States and engages in international voyages;
- Is operated under the authority of the United States and is certificated for ocean service;
- Is operated under the authority of the United States and is certificated for coastwise service beyond three nautical miles from land;
- Is operated under the authority of the United States and operates at any time seaward of the outermost boundary of the territorial sea of the United States as defined in § 2.05-10 of this chapter; or
- Is operated under the authority of a country other than the United States while in the navigable waters of the United States, or while at a port or terminal under the jurisdiction of the United States.

(b) This subpart does not apply to—

- A warship, naval auxiliary, or other ship owned or operated by a country when engaged in noncommercial service;

(2) A Canadian or U.S. ship being operated exclusively on the Great Lakes of North America or their connecting and tributary waters;

(3) A Canadian or U.S. ship being operated exclusively on the internal waters of the United States and Canada; or

(4) Any other ship specifically excluded by MARPOL 73/78.

Note: The term "internal waters" is defined in § 2.05-20 of this chapter.

11. Section 151.11 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 151.11 Exceptions for emergencies.

(a) Sections 151.10 and 151.13 do not apply to—

12. The section title and paragraphs (a) and (g) of § 151.13 are revised to read as follows:

§ 151.13 Special areas for Annex I of MARPOL 73/78.

(a) For the purposes of this subpart, the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, and the Gulfs Area that are defined as follows:

(1) The Mediterranean Sea area means the Mediterranean Sea proper including the gulfs and seas therein, with the boundary between the Mediterranean and the Black Sea constituted by the 41°N parallel and bounded to the west by the Straits of Gibraltar at the meridian of 5°36' W.

(2) The Baltic Sea area means the Baltic Sea proper with the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic Sea bounded by the parallel of the Skaw in the Skagerrak at 57°44.8' N.

(3) The Black Sea area means the Black Sea proper with the boundary between the Mediterranean Sea and the Black Sea constituted by the parallel 41°N.

(4) The Red Sea area means the Red Sea proper including the Gulfs of Suez and Aqaba bounded at the south by the rhumb line between Ras si Ane (12°35' N, 43°19.6' E) and Husn Murad (12°40.4' N, 43°30.2' E).

(5) The Gulfs Area means the sea area located northwest of the rhumb line between Ras al Hadd (22°30' N, 59°48' E) and Ras al Faste (25°04' N, 61°25' E).

(g) Nothing in this section prohibits a ship on a voyage, only part of which is in a special area, from discharging outside the special area in accordance with § 151.10.

13. By revising § 151.30 to read as follows:

151.30 Applicability.

(a) Except as provided in paragraph (b) of this section this subpart applies to each ship that—

(1) Is operated under the authority of the United States and engages in international voyages;

(2) Is operated under the authority of the United States and is certificated for ocean service;

(3) Is operated under the authority of the United States and is certificated for coastwise service beyond three nautical miles from land;

(4) Is operated under the authority of the United States and operates at any time seaward of the outermost boundary of the territorial sea of the United States as defined in § 2.05-10 of this chapter; or

(5) Is operated under the authority of a country other than the United States while in the navigable waters of the United States, or while at a port or terminal under the jurisdiction of the United States.

(b) This subpart does not apply to—

(1) A tank barge whose certificate is endorsed by the Coast Guard for a limited short protected coastwise route if the barge is constructed and certificated primarily for service on an inland route;

(2) A warship, naval auxiliary, or other ship owned or operated by a country when engaged in noncommercial service;

(3) A Canadian or U.S. ship being operated exclusively on the Great Lakes of North America or their connecting and tributary waters;

(4) A Canadian or U.S. ship being operated exclusively on the internal waters of the United States and Canada; or

(5) Any other ship specifically excluded by MARPOL 73/78.

Note: The term "internal waters" is defined in § 2.05-20 of this chapter.

14-15. Part 151 is amended by adding a new Subpart D to read as follows:

Subpart D—Garbage Pollution

- Sec.
- 151.51 Applicability.
- 151.53 Special areas for Annex V of MARPOL 73/78.
- 151.55 Recordkeeping requirements [Reserved].
- 151.57 Waste management plans [Reserved].
- 151.59 Placards [Reserved].
- 151.61 Inspection for compliance and enforcement.
- 151.63 Shipboard control of garbage.
- 151.65 Reporting requirements.

Sec.

151.66 Operating requirements: Discharge of garbage in the navigable waters prohibited.

151.67 Operating requirements: Discharge of plastic prohibited.

151.69 Operating requirements: Discharge of garbage outside special areas.

151.71 Operating requirements: Discharge of garbage within special areas.

151.73 Operating requirements: Discharge of garbage from fixed or floating platforms.

151.75 Grinders or comminuters.

151.77 Exceptions for emergencies.

Appendix A to Subpart D of Part 151—Summary of Garbage Discharge Restrictions.

Subpart D—Garbage Pollution

§ 151.51 Applicability.

(a) Except as provided by paragraph (b) of this section, this subpart applies to—

(1) Each ship that is of United States registry or nationality, or one operated under the authority of the United States, including recreational vessels defined in 46 U.S.C. 2101(25) and uninspected vessels defined in 46 U.S.C. 2101(43), wherever located; and

(2) Each ship, other than a ship referred to in paragraph (a)(1) of this section, while in the navigable waters or the Exclusive Economic Zone of the United States.

(b) This subpart does not apply to—

(1) A warship, naval auxiliary, or other ship owned or operated by the United States when engaged in noncommercial service; or

(2) Any other ship specifically excluded by MARPOL 73/78.

Note: The Exclusive Economic Zone extends from the baseline of the territorial sea seaward 200 miles as defined in the Presidential Proclamation 5030 of March 10, 1983 (3 CFR, 1983 Comp. p. 22).

§ 151.53 Special areas for Annex V of MARPOL 73/78.

For the purposes of this subpart, the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, and the Gulfs Area that are defined as follows:

(a) The Mediterranean Sea area means the Mediterranean Sea proper including the gulfs and seas therein, with the boundary between the Mediterranean and the Black Sea constituted by the 41° N parallel and bounded to the west by the Straits of Gibraltar at the meridian of 5°36' W.

(b) The Baltic Sea area means the Baltic Sea proper with the Gulf of Bothnia, the Gulf of Finland and the entrance to the Baltic Sea bounded by the parallel of the Skaw in the Skagerrak at 57°44.8' N. The discharge restrictions of § 151.71 are effective in the Baltic Sea on October 1, 1989.

(c) The Black Sea area means the Black Sea proper with the boundary between the Mediterranean Sea and the Black Sea constituted by the parallel 41° N.

(d) The Red Sea area means the Red Sea proper including the Gulfs of Suez and Aqaba bounded at the south by the rhumb line between Ras si Ane (12°8.5' N, 43°19.6' E) and Husn Murad (12°40.4' N, 43°30.2' E).

(e) The Gulfs area means the sea area located northwest of the rhumb line between Ras al Hadd (22°30' N, 59°48' E) and Ras al Fasteh (25°04' N, 61°25' E).

Note: In accordance with paragraph (4)(b) of Regulation 5 of Annex V of MARPOL 73/78, the discharge restrictions in § 151.71 for special areas will enter into effect when each party to MARPOL 73/78 whose coastline borders the special area has certified that reception facilities are available and the IMO has established an effective date for each special area. Notice of the effective dates for the discharge requirements in each special area will be published in the Federal Register and added to this section.

§ 151.55 Recordkeeping requirements [Reserved].

§ 151.57 Waste management plans [Reserved].

§ 151.59 Placards [Reserved].

§ 151.61 Inspection for compliance and enforcement.

While within the navigable waters of the United States or the Exclusive Economic Zone, a ship to which this subpart applies is subject to inspection by the Coast Guard or other authorized federal agency to determine if—

(a) The ship has been operating in accordance with these regulations and has not discharged plastics or other garbage in violation of the provisions of the Act or Annex V of MARPOL 73/78;

(b) Grinders or comminuters used for the discharge of garbage between 3 and 12 nautical miles from nearest land are capable of reducing the size of garbage so that it will pass through a screen with openings no greater than 25 millimeters (one inch);

(c) Information for recordkeeping requirements, when required under § 151.55, is properly and accurately logged;

(d) A waste management plan, when required under § 151.57, is on board and that the condition of the ship, equipment and operational procedures of the ship meet the plan; and

(e) Placards, when required by § 151.59, are posted on board.

§ 151.63 Shipboard control of garbage.

(a) The master, operator, or person who is in charge of a ship shall ensure that all garbage is discharged ashore or in accordance with §§ 151.66–151.73.

(b) The following factors, among others, may be considered by enforcement personnel in evaluating compliance with this subpart:

(1) Records, including receipts, of garbage discharges at port reception facilities.

(2) Log entries indicating discharge of garbage in accordance with §§ 151.67, 151.69, 151.71, or 151.73.

(3) The presence and operability of equipment to treat ship-generated garbage, including, but not limited to, incinerators, grinders, or comminuters.

(4) The presence of and adherence to a written shipboard waste management plan.

(5) The absence of plastics in ship stores.

(6) Ongoing educational programs to train shipboard personnel of garbage handling procedures and the need for these.

(7) The presence of shipboard spaces used for collecting, processing, storing and discharging ship-generated garbage.

(c) The master, operator, or person who is in charge of a ship shall ensure that if garbage is transported from a ship by shipboard personnel, it is properly deposited into a port or terminal's reception facility.

§ 151.65 Reporting requirements.

The master or person who is in charge of each oceangoing ship shall notify the port or terminal, at least 24 hours before entering the port or terminal, of the name of the ship and the estimated volume of garbage requiring disposal, if any of the following types of garbage are to be discharged:

(a) Garbage regulated by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture under 7 CFR 330.400 or 9 CFR 94.5.

(b) Medical wastes.

(c) Hazardous wastes defined in 40 CFR 261.3.

§ 151.66 Operating requirements: Discharge of garbage in the navigable waters prohibited.

No person on board any ship to which this subpart applies may discharge garbage into the navigable waters of the United States.

Note: The navigable waters are defined in § 2.05–25 of this chapter.

§ 151.67 Operating requirements: Discharge of plastic prohibited.

No person on board any ship to which this subpart applies may discharge into the sea, or into the navigable waters of the United States, plastic or garbage mixed with plastic, including, but not limited to, synthetic ropes, synthetic fishing nets, and plastic garbage bags. All garbage containing plastics requiring disposal must be discharged ashore or incinerated.

§ 151.69 Operating requirements: Discharge of garbage outside special areas.

(a) When operating outside of a special area specified in § 151.53, no person may discharge, into the sea, garbage that is separated from plastic, if the distance from nearest land is less than—

(1) 25 nautical miles for dunnage, lining and packing materials that float; or

(2) 12 nautical miles for virtual wastes and all other garbage including paper products, rags, glass, metal, bottles, crockery and similar refuse, except that, such garbage may be discharged outside of three nautical miles from nearest land after it has been passed through a grinder or comminuter specified in § 151.75. (b) Mixtures of garbage having different discharge requirements under paragraph (a)(1) or (a)(2) of this section must be—

(1) Retained on board for later disposal ashore; or

(2) Discharged in accordance with the more stringent requirement prescribed by paragraph (a)(1) or (a)(2) of this section.

§ 151.71 Operating requirements: Discharge of garbage within special areas.

When a ship is located in a special area listed in § 151.53 that entered into

force under Rule 5 of Annex V of MARPOL 73/78, no person may discharge garbage, except that virtual waste may be discharged beyond 12 nautical miles from nearest land

§ 151.73 Operating requirements: Discharge of garbage from fixed or floating platforms.

(a) Except as allowed in paragraph (b) of this section, no person may discharge garbage from—

(1) A fixed or floating platform engaged in the exploration, exploitation or associated offshore processing of seabed mineral resources; or

(2) Any ship within 500 meters (1650 feet) of such platforms.

(b) Virtual waste may be discharged into the sea from a ship or fixed or floating platform regulated by paragraph (a) of this section if—

(1) It passes through a comminuter or grinder meeting § 151.75; and

(2) That ship or fixed or floating platform is beyond 12 nautical miles from nearest land.

§ 151.75 Grinders or comminuters.

Each grinder or comminuter used to discharge garbage in accordance with § 151.69(a)(2) or § 151.73(b)(1), must be capable of processing garbage so that it passes through a screen with openings no greater than 25 millimeters (one inch).

§ 151.77 Exceptions for emergencies.

Sections 151.67, 151.69 and 151.71 of this subpart do not apply to the following:

(a) Discharges of garbage from a ship for the purpose of securing the safety of the ship and those on board or saving life at sea.

(b) The escape of garbage resulting from damage to a ship or its equipment, if all reasonable precautions have been taken before and after the occurrence of the damage, to prevent or minimize the escape.

(c) The accidental loss of synthetic fishing nets or the loss of synthetic material during repair of nets, provided all reasonable precautions have been taken to prevent such losses.

15. Appendix A to Subpart D to Part 151 is added as follows:

Appendix A to Subpart D of Part 151—Summary of Garbage Discharge Restrictions

Garbage Type	All Vessels Except Fixed or Floating Platforms and Associated Vessels		Fixed or Floating Platforms & Assoc Vessels ² (33 CFR 151.73)
	Outside special areas (33 CFR 151.69)	In special areas ² (33 CFR 151.71)	
Plastics—includes synthetic ropes and fishing nets and plastic bags.	Disposal prohibited (33 CFR 151.67).	Disposal prohibited (33 CFR 151.67).	Disposal prohibited (33 CFR 151.67).
Dunnage, lining and packing materials that float.	Disposal prohibited less than 25 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited (33 CFR 151.71).	Disposal prohibited.
Paper, rags, glass, metal bottles, crockery and similar refuse.	Disposal prohibited less than 12 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited (33 CFR 151.71).	Disposal prohibited.

Garbage Type	All Vessels Except Fixed or Floating Platforms and Associated Vessels		Fixed or Floating Platforms & Assoc. Vessels * (33 CFR 151.73)
	Outside special areas (33 CFR 151.69)	In special areas * (33 CFR 151.71)	
Paper, rags, glass, etc. comminuted or ground. ¹	Disposal prohibited less than 3 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited (33 CFR 151.71).	Disposal prohibited.
Virtual waste not comminuted or ground.	Disposal prohibited less than 12 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited less than 12 miles from nearest land.	Disposal prohibited.
Virtual waste comminuted or ground. ¹	Disposal prohibited less than 3 miles from nearest land and in the navigable waters of the U.S.	Disposal prohibited less than 12 miles from nearest land.	Disposal prohibited less than 12 miles from nearest land and in the navigable waters of the U.S.
Mixed garbage types.*	See Note 4.	See Note 4.	See Note 4.

Note 1: Comminuted or ground garbage must be able to pass through a screen with a mesh size no larger than .25 mm. (1 inch) (33 CFR 151.75)

Note 2: Special areas for Annex V are the Mediterranean, Baltic, Red and Black Seas, and Persian Gulf areas. (33 CFR 151.53)

Note 3: Fixed or floating platforms and associated vessels includes all fixed or floating platforms engaged in exploration, exploitation or associated offshore processing of seabed mineral resources, and all ships within 500m of such platforms.

Note 4: When garbage is mixed with other harmful substances having different disposal or discharge requirements, the more stringent disposal restrictions shall apply.

PART 155—OIL POLLUTION PREVENTION REGULATIONS FOR VESSELS

16. The authority citation to Part 155 is revised to read as follows and the authority citations following the sections are removed:

Authority: 33 U.S.C. 1231; 49 CFR 1.46 except 155.450, 155.700, and 155.710 which are issued under 33 U.S.C. 1321(j)(1)(C), E.O. 11735, as amended, 3 CFR, 1971-1975 Comp. p. 793, 49 CFR 1.46. Sections 155.100, 155.110, 155.120, 155.130, 155.350, 155.360, 155.370, 155.380, 155.390, 155.400, 155.430, 155.440, and 155.470 are also issued under 33 U.S.C. 1903(b); 49 CFR 1.46.

17. Section 155.350(a)(2) is revised to read as follows:

§ 155.350 Bilge slops/fuel oil tank ballast water discharges on oceangoing ships of less than 400 gross tons.

(a) * * *

(2) Has approved oily-water separating equipment for the processing of oily bilge slops or oily fuel oil tank ballast and discharges into the sea in accordance with § 155.10.

18. Section 155.400(b)(2) is revised to read as follows:

§ 155.400 Platform machinery space drainage on oceangoing fixed and floating drilling rigs and other platforms.

(b) * * *

(2) Discharge in accordance with § 151.10 (b)(3), (b)(4) and (b)(5) of this chapter.

19. The authority citation for Part 158 is revised to read as follows:

Authority: 33 U.S.C. 1903(b); 49 CFR 1.46.

20. The title of Part 158 is revised to read as follows:

PART 158—RECEPTION FACILITIES FOR OIL, NOXIOUS LIQUID SUBSTANCES, AND GARBAGE

21. The title of Subpart A is revised to read as follows:

Subpart A—General

22. The undesignated center heading for §§ 158.100-158.165, "General" is removed.

23. Section 158.100(b) is revised to read as follows:

§ 158.100 Purpose.

* * * * *

(b) Procedures for certifying that reception facilities are adequate for receiving—

(1) Residues and mixtures containing oil from oceangoing tankers and any other oceangoing ships of 400 gross tons or more;

(2) NLS residue from oceangoing ships; or

(3) Garbage from ships.

* * * * *

24. Section 158.110 is revised to read as follows:

§ 158.110 Applicability.

(a) Subparts B, C, and E apply to each port and each terminal located in the United States or subject to the jurisdiction of the United States that is—

(1) Used by oceangoing tankers, or any other oceangoing ships of 400 gross tons or more, carrying residues and mixtures containing oil, or by oceangoing ships to transfer NLSs, except those ports and terminals that are used only by—

(i) Tank barges that are not configured and are not equipped to ballast or wash cargo tanks while proceeding enroute;

(ii) Ships carrying NLS operating under waivers under 46 CFR 153.491(b); or

(2) A ship repair yard that services oceangoing ships carrying oil or NLS residue.

(b) Subpart D applies to each port and terminal located in the United States or subject to the jurisdiction of the United States.

25. Section 158.115 is added to read as follows:

§ 158.115 Penalties for violation.

(a) A person who violates MARPOL 73/78, the Act, or the regulations of this part is liable for a civil penalty not to exceed \$25,000 for each violation, as provided by 33 U.S.C. 1908(b)(1). Each day of a continuing violation constitutes a separate violation.

(b) A person who makes a false, fictitious statement or fraudulent representation in any matter in which a statement or representation is required to be made to the Coast Guard under MARPOL 73/78, the Act, or the regulations of this part, is liable for a civil penalty not to exceed \$5,000 for each statement or representation, as provided by 33 U.S.C. 1908(b)(2).

(c) A person who knowingly violates MARPOL 73/78, the Act, or the regulations of this part is liable for a fine for each violation, of not more than \$50,000 dollars, or imprisonment for not more than 5 years, or both, as provided by 33 U.S.C. 1908(a).

26. Section 158.120 is amended by adding definitions for the terms "Commercial fishing facility," "Form C," "Garbage," "Harmful substance," "Medical waste," "Mineral and oil industry shorebase," "Recreational boating facility," in the proper alphabetical sequence, by revising the definitions of "Certificate of Adequacy," "Reception facility" and "The Act," and by adding a note after the definition of "Terminal," to read as follows:

§ 158.120 Definitions and acronyms.

* * * * *

"Certificate of Adequacy" means a document issued by the Coast Guard or other authorized agency that certifies a port or terminal meets the requirements of this part with respect to reception facilities required under the Act and MARPOL 73/78, and has Form A, Form B, or Form C attached.

"Commercial fishing facility" means docks, piers, processing houses, or other facilities which receive commercial fishery products from ships.

"Form C" means the application for a Certificate of Adequacy for a Reception Facility for Garbage, Coast Guard form USCG-CG-5401C. "Garbage" means all kinds of victual, domestic, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically, except dishwater, graywater, and those substances that are defined or listed in other annexes to MARPOL 73/78. "Harmful substance" means any substance which, if introduced into the sea, is liable to create hazards to human health, harm living resources and marine life, damage amenities or interfere with other legitimate uses of the sea, and includes any substance subject to control by MARPOL 73/78.

"Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and such additional medical items as prescribed by the Administrator of the EPA by regulation. "Mineral and oil industry shorebase" means a place or onshore structure or facility which is a base of operations for ships serving the mineral and oil industry.

"Reception facility" means anything capable of receiving shipboard residues and mixtures containing oil or NLS residue, or receiving garbage, including, but not limited to—

- (1) Fixed piping that conveys residues and mixtures from the ship to a storage or treatment system;
- (2) Tank barges, railroad cars, tank trucks, or other mobile facilities;
- (3) Containers or other receptacles that are used as temporary storage for garbage; or
- (4) Any combination of fixed and mobile facilities. "Recreational boating facility" means a facility that is capable of providing wharfage or other services

for 10 or more recreational vessels. It includes, but is not limited to, marinas, boatyards, and yacht clubs, but does not include a place or facility containing only an unattended launching ramp.

"Terminal" means an onshore facility or an offshore structure located in the navigable waters of the United States or subject to the jurisdiction of the United States and used, or intended to be used, as a port or facility for the transfer or other handling of a harmful substance.

Note: The Coast Guard interprets commercial fishing facilities, recreational boating facilities, and mineral and oil industry shorebases to be terminals for the purposes of Annex V of MARPOL 73/78, since these facilities normally provide wharfage and other services, including garbage handling, for ships. "The Act" means the Act to Prevent Pollution from Ships, as amended, [33 U.S.C. 1901-1911].

27. Section 158.130 is revised to read as follows:

§ 158.130 Delegations.

Each COTP is delegated the authority to—

- (a) Conduct inspections at ports and terminals required to have reception facilities under this part;
- (b) Issue Certificates of Adequacy;
- (c) Grant waivers under § 158.150;
- (d) Designate ports; and
- (e) Deny entry of ships to any port or terminal, except when a ship is entering under force majeure, that does not have—

- (1) A Certificate of Adequacy if required under § 158.135; or
- (2) Reception facilities for garbage required under Subpart D of this part.

28. Section 158.133 is added to read as follows:

§ 158.133 Which ports and terminals must provide reception facilities?

(a) A port or terminal which receives oceangoing tankers, or any other oceangoing ship of 400 gross tons or more, carrying residues and mixtures containing oil, must have a reception facility which meets Subpart B of this part.

(b) A port or terminal which receives oceangoing ships carrying NLSs must have a reception facility which meets Subpart C of this part.

(c) All ports and terminals under the jurisdiction of the United States, including commercial fishing facilities, mineral and oil shorebases, and recreational boating facilities, must have a reception facility which meets Subpart D of this part.

29. Section 158.135 is added to read as follows:

§ 158.135 Which ports and terminals must have Certificates of Adequacy?

To continue to receive ships, a port or terminal must hold one or more Certificates of Adequacy to show compliance with—

(a) Subpart B of this part if it receives oceangoing tankers, or any other oceangoing ship of 400 gross tons or more, carrying residues and mixtures containing oil.

(b) Subpart C of this part if it receives oceangoing ships carrying NLSs.

(c) Subpart D of this part if it receives—

- (1) The ships under paragraph (a) or (b) of this section; or
- (2) Fishing vessels which offload more than 500,000 pounds of commercial fishery products from all ships during a calendar year.

30. Section 158.140 is revised to read as follows:

§ 158.140 Applying for a Certificate of Adequacy.

(a) To continue to receive ships at a port or terminal required by § 158.135 to have a Certificate of Adequacy for its reception facilities, the person in charge must apply to the Coast Guard for a certificate as follows:

(1) Applicants for a Certificate of Adequacy required by § 158.135(a) or (b) must apply to the COTP of the Zone in which the port or terminal is located using Form A or Form B, respectively.

(2) Before August 28, 1989, an applicant for a Certificate of Adequacy required by § 158.135(c) must apply on Form C to: Commandant (G-MPS-1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, Attention: Annex V Reception Facility Desk. On or after August 28, 1989 applicants must apply on Form C to the COTP of the Zone in which the port or terminal is located.

(b) Applications for Certificates of Adequacy, Forms A, B, or C, may be obtained from the local Coast Guard COTP.

31. Section 158.160 is revised to read as follows:

§ 158.160 Issuance and termination of a Certificate of Adequacy.

(a) After reviewing an application made under § 158.140(a)(1), the COTP determines by inspection the following:

- (1) When the application is made on Form A, whether or not the reception facility meets Subpart B of this part.
- (2) When the application is made on Form B, whether or not the reception facility and the port, or the reception facility and the terminal, meet Subpart C of this part.

Note: If in the instruction manual required by § 158.330(b) there is a certification by a registered professional engineer licensed by a state or the District of Columbia that the backpressure requirements under § 158.330(a) are met, the COTP determines whether or not to accept this finding.

(b) After the inspections under paragraph (a) are conducted, and after consulting with the Administrator of the Environmental Protection Agency (EPA) or his or her designee, the COTP:

(1) Issues a Certificate of Adequacy to the person in charge for the port or terminal; or

(2) Denies the application and informs the person in charge in writing of the reasons for the denial.

(c) After reviewing an application made under § 158.140(a)(2), Commandant (G-MPS-1) or the COTP—

(1) Issues a Certificate of Adequacy to the person in charge for the port or terminal; or

(2) Denies the application and informs the person in charge in writing of the reasons for the denial.

(d) In order to remain valid, the Certificate of Adequacy must have attached to it any waivers that are granted under § 158.150 when the Certificate of Adequacy is issued.

(e) Each Certificate of Adequacy remains valid until—

- (1) Suspended;
- (2) Revoked; or
- (3) This part no longer applies to the port or terminal.

32. Section 158.163(b)(2) is revised to read as follows:

§ 158.163 Reception facility operations.

(b) * * *

(2) Available for inspection by the COTP and the master, operator, person who is in charge of a ship, or agent for a ship.

33. Section 158.165(b) is revised to read as follows:

§ 158.165 Certificate of Adequacy: Change of information.

(b) * * *

(b) The person in charge shall notify the COTP in writing within 30 days after any information required in the following is changed:

- (1) Form A, sections 1, 3B, 3C, 3E, 3F, 3I, or 3J.
- (2) Form B, sections 1, 3, 4, 5B, 5D, 5E, 5F or 5G.
- (3) Form C, sections A1, B1, B2, or C4.

34. Section 158.167 is added to read as follows:

§ 158.167 Reporting inadequate reception facilities.

Any person may report to the local Coast Guard COTP that reception facilities required by these regulations or MARPOL 73/78 are inadequate. Reports of inadequate reception facilities may be made orally, in writing or by telephone.

Subpart E—[Redesignated From Subpart D]

35. Subpart D of Part 158 is redesignated as Subpart E.

§ 158.500 [Redesignated from § 158.400]

36. Section 158.400 is redesignated § 158.500.

§ 158.520 [Redesignated from § 158.420]

37. Section 158.420 is redesignated § 158.520.

38. Part 158 is amended by adding a new Subpart D to read as follows:

Subpart D—Criteria for Adequacy of Reception Facilities: Garbage

Sec.

158.400 Purpose.

158.410 Reception facilities: General.

158.420 Reception facilities: Capacity and exceptions.

158.400 Purpose.

The purpose of this subpart is to supply the criteria for determining the adequacy of reception facilities for garbage at ports and terminals that receive ships and to comply with the Act and Regulation 7 of Annex V to MARPOL 73/78.

§ 158.410 Reception facilities: General.

(a) Except as allowed in paragraph (b) of this section, the person in charge of a port or terminal shall ensure that each port or terminal's reception facility—

(1) Is capable after August 28, 1989 of receiving APHIS regulated garbage at a port or terminal no later than 24 hours after notice under § 151.65 of this chapter is given to the port or terminal, unless it only receives ships that—

(i) Operate exclusively within the navigable waters of the United States;

(ii) Operate exclusively between ports or terminals in the continental United States; or

(iii) Operate exclusively between continental United States ports or terminals and Canadian ports or terminals.

(2) Is capable of receiving medical wastes or hazardous wastes defined in 40 CFR 261.3, unless the port or terminal operator can provide to the master, operator, or person in charge of a ship, a list of persons authorized by federal, state, or local law or regulation to transport and treat such wastes;

(3) Is arranged so that it does not interfere with port or terminal operations;

(4) Is conveniently located so that mariners unfamiliar with the port or terminal can find it easily and so that its use will not be discouraged;

(5) Is situated so that garbage from ships which has been placed in it cannot readily enter the water; and

(6) Holds each federal, state, and local permit or license required by environmental and public health laws and regulations concerning garbage handling.

(b) A reception facility for a ship repair yard does not have to meet the requirements of paragraph (a)(1) of this section if it is capable of handling the transfer of garbage from a ship before the ship departs from the yard.

Note: The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) requires virtual wastes or garbage contaminated by virtual wastes, except from vessels that operate only between the continental United States and Canadian ports, to be incinerated or sterilized in accordance with their regulations in 7 CFR 330.400 and 9 CFR 94.5.

§ 158.420 Reception facilities: Capacity and exceptions.

Each day a port or terminal is in operation, the person in charge of a port or terminal must provide, or ensure the availability of, a reception facility that is capable of receiving all garbage that the master or person who is in charge of a ship desires to discharge, except—

(a) Large quantities of spoiled or damaged cargoes not usually discharged by a ship; or

(b) Garbage from ships not having commercial transactions with that port or terminal.

TITLE 46—[AMENDED]

Chapter I of Title 46 Code of Federal Regulations is amended as follows:

PART 25—[AMENDED]

39. The authority citation to Part 25 is revised to read as follows:

Authority: 33 U.S.C. 1903(b), 46 U.S.C. 3306, 4104, and 4302; 49 CFR 1.46.

40. A new Subpart 25.50 is added to Part 25 to read as follows:

Subpart 25.50—Garbage Retention

§ 25.50-1 Criteria.

Each uninspected vessel must retain all garbage generated on board the vessel for later shoreside disposal, unless it is discharged at sea as specified under 33 CFR Part 151.

Note: The Act to Prevent Pollution from Ships, as amended (33 U.S.C. 1901-1911), prohibits the discharge of all plastics from U.S. vessels and limits discharges of other types of garbage in these waters. See 33 CFR 151.05 for definitions of "plastic" and "garbage."

Dated: February 9, 1989.

P.A. Yost,

Admiral, Commandant, U.S. Coast Guard.

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