

112TH CONGRESS
2D SESSION

S. 3570

To provide for the establishment of nationally uniform and environmentally sound standards governing discharges incidental to the normal operation of a vessel in the navigable waters of the United States.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2012

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for the establishment of nationally uniform and environmentally sound standards governing discharges incidental to the normal operation of a vessel in the navigable waters of the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Vessel Incidental Discharge Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; purpose.
- Sec. 3. Definitions.

- Sec. 4. Regulation and enforcement.
- Sec. 5. Uniform vessel incidental discharge standards.
- Sec. 6. Treatment technology certification.
- Sec. 7. Exemptions.
- Sec. 8. Alternative compliance program.
- Sec. 9. Judicial review.
- Sec. 10. Effect on State authority.
- Sec. 11. Application with other statutes.

1 **SEC. 2. FINDINGS; PURPOSE.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) Beginning with enactment of the Act to
5 Prevent Pollution from Ships in 1980 (22 U.S.C.
6 1901 et seq.), the United States Coast Guard has
7 been the principal Federal authority charged with
8 administering, enforcing, and prescribing regulations
9 relating to the discharge of pollutants from vessels
10 engaged in maritime commerce and transportation.

11 (2) The Coast Guard estimates there are ap-
12 proximately 12,700,000 State-registered recreational
13 vessels, 78,000 commercial fishing vessels, and
14 57,000 freight and tank barges operating in United
15 States waters.

16 (3) From 1973 to 2005, certain discharges inci-
17 dental to the normal operation of a vessel were ex-
18 empted by regulation from otherwise applicable per-
19 mitting requirements.

20 (4) Over the 32 years during which this regu-
21 latory exemption was in effect, Congress enacted

1 statutes on a number of occasions dealing with the
2 regulation of discharges incidental to the normal op-
3 eration of a vessel, including—

4 (A) the Act to Prevent Pollution from
5 Ships (33 U.S.C. 1901 et seq.) in 1980;

6 (B) the Nonindigenous Aquatic Nuisance
7 Prevention and Control Act of 1990 (16 U.S.C.
8 4701 et seq.);

9 (C) the National Invasive Species Act of
10 1996 (110 Stat. 4073);

11 (D) section 415 of the Coast Guard Au-
12 thorization Act of 1998 (112 Stat. 3434) and
13 section 623 of the Coast Guard and Maritime
14 Transportation Act of 2004 (33 U.S.C. 1901
15 note), which established interim and permanent
16 requirements, respectively, for the regulation of
17 incidental vessel discharges of certain bulk
18 cargo residue;

19 (E) title XIV of division B of Appendix D
20 of the Consolidated Appropriations Act, 2001
21 (114 Stat. 2763), which prohibited or limited
22 certain vessel discharges in certain areas of
23 Alaska;

24 (F) section 204 of the Maritime Transpor-
25 tation Security Act of 2002 (33 U.S.C. 1902a),

1 which established requirements for the regula-
2 tion of incidental vessel discharges of agricul-
3 tural cargo residue material in the form of hold
4 washings; and

5 (G) title X of the Coast Guard Authoriza-
6 tion Act of 2010 (33 U.S.C. 3801 et seq.),
7 which provided for the implementation of the
8 International Convention on the Control of
9 Harmful Anti-Fouling Systems on Ships, 2001.

10 (b) PURPOSE.—The purpose of this Act is to provide
11 for the establishment of nationally uniform and environ-
12 mentally sound standards for discharges incidental to the
13 normal operation of a vessel in the navigable waters of
14 the United States.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) ADMINISTRATOR.—The term “Adminis-
18 trator” means the Administrator of the Environ-
19 mental Protection Agency.

20 (2) AQUATIC NUISANCE SPECIES.—The term
21 “aquatic nuisance species” means a nonindigenous
22 species (including a pathogen) that threatens the di-
23 versity or abundance of native species or the ecologi-
24 cal stability of navigable waters or commercial, agri-

1 cultural, aquacultural, or recreational activities de-
2 pendent on such waters.

3 (3) BALLAST WATER.—

4 (A) IN GENERAL.—The term “ballast
5 water” means any water, including any sedi-
6 ment suspended in such water, taken aboard a
7 vessel—

8 (i) to control trim, list, draught, sta-
9 bility, or stresses of the vessel; or

10 (ii) during the cleaning, maintenance,
11 or other operation of a ballast water treat-
12 ment technology of the vessel.

13 (B) EXCLUSIONS.—The term “ballast
14 water” does not include any pollutant that is
15 added to water described in subparagraph (A)
16 that is not directly related to the operation of
17 a properly functioning ballast water treatment
18 technology under this Act.

19 (4) BALLAST WATER PERFORMANCE STAND-
20 ARD.—The term “ballast water performance stand-
21 ard” means the numerical ballast water performance
22 standard set forth in Regulation D-2 of the Inter-
23 national Convention for the Control and Manage-
24 ment of Ships’ Ballast Water and Sediments, adopt-
25 ed on February 13, 2004, or a revised numerical

1 ballast water performance standard established
2 under section 5.

3 (5) BALLAST WATER TREATMENT TECHNOLOGY
4 OR TREATMENT TECHNOLOGY.—The term “ballast
5 water treatment technology” or “treatment tech-
6 nology” means any mechanical, physical, chemical,
7 or biological process used, alone or in combination,
8 to remove, render harmless, or avoid the uptake or
9 discharge of aquatic nuisance species within ballast
10 water.

11 (6) BIOCIDE.—The term “biocide” means a
12 substance or organism, including a virus or fungus,
13 that is introduced into or produced by a ballast
14 water treatment technology to reduce or eliminate
15 aquatic nuisance species as part of the process used
16 to comply with a ballast water performance standard
17 under this Act.

18 (7) DISCHARGE INCIDENTAL TO THE NORMAL
19 OPERATION OF A VESSEL.—

20 (A) IN GENERAL.—The term “discharge
21 incidental to the normal operation of a vessel”
22 means—

23 (i) a discharge into navigable waters
24 from a vessel of—

1 (I)(aa) ballast water, graywater,
2 bilge water, cooling water, oil water
3 separator effluent, anti-fouling hull
4 coating leachate, boiler or economizer
5 blowdown, byproducts from cathodic
6 protection, controllable pitch propeller
7 and thruster hydraulic fluid, distilla-
8 tion and reverse osmosis brine, eleva-
9 tor pit effluent, firemain system efflu-
10 ent, freshwater layup effluent, gas
11 turbine wash water, motor gasoline
12 and compensating effluent, refrigera-
13 tion and air condensate effluent, sea-
14 water pumping biofouling prevention
15 substances, boat engine wet exhaust,
16 sonar dome effluent, exhaust gas
17 scrubber washwater, or stern tube
18 packing gland effluent; or

19 (bb) any other pollutant associ-
20 ated with the operation of a marine
21 propulsion system, shipboard maneu-
22 vering system, habitability system, or
23 installed major equipment, or from a
24 protective, preservative, or absorptive
25 application to the hull of a vessel;

1 (II) weather deck runoff, deck
2 wash, aqueous film forming foam ef-
3 fluent, chain locker effluent, non-oily
4 machinery wastewater, underwater
5 ship husbandry effluent, welldeck ef-
6 fluent, or fish hold and fish hold
7 cleaning effluent; or

8 (III) any effluent from a properly
9 functioning marine engine; or

10 (ii) a discharge of a pollutant into
11 navigable waters in connection with the
12 testing, maintenance, or repair of a sys-
13 tem, equipment, or engine described in
14 subclause (I)(bb) or (III) of clause (i)
15 whenever the vessel is waterborne.

16 (B) EXCLUSIONS.—The term “discharge
17 incidental to the normal operation of a vessel”
18 does not include—

19 (i) a discharge into navigable waters
20 from a vessel of—

21 (I) rubbish, trash, garbage, incin-
22 erator ash, or other such material dis-
23 charged overboard;

24 (II) oil or a hazardous substance
25 as those terms are defined in section

1 311 of the Federal Water Pollution
2 Control Act (33 U.S.C. 1321);

3 (III) sewage as defined in section
4 312(a) of the Federal Water Pollution
5 Control Act (33 U.S.C. 1322(a)); or

6 (IV) graywater referred to in sec-
7 tion 312(a) of the Federal Water Pol-
8 lution Control Act (33 U.S.C.
9 1322(a));

10 (ii) an emission of an air pollutant re-
11 sulting from the operation onboard a vessel
12 of a vessel propulsion system, motor driven
13 equipment, or incinerator; or

14 (iii) a discharge into navigable waters
15 from a vessel when the vessel is operating
16 in a capacity other than as a means of
17 transportation on water.

18 (8) GEOGRAPHICALLY LIMITED AREA.—The
19 term “geographically limited area” means an area—

20 (A) with a physical limitation that prevents
21 a vessel from operating outside the area, as de-
22 termined by the Secretary; or

23 (B) that is ecologically homogeneous, as
24 determined by the Secretary, in consultation

1 with the heads of other Federal departments or
2 agencies as the Secretary considers appropriate.

3 (9) MANUFACTURER.—The term “manufac-
4 turer” means a person engaged in the manufacture,
5 assemblage, or importation of ballast water treat-
6 ment technology.

7 (10) SECRETARY.—The term “Secretary”
8 means the Secretary of the Department in which the
9 Coast Guard is operating.

10 (11) VESSEL.—The term “vessel” means every
11 description of watercraft or other artificial contriv-
12 ance used, or practically or otherwise capable of
13 being used, as a means of transportation on water.

14 **SEC. 4. REGULATION AND ENFORCEMENT.**

15 (a) IN GENERAL.—The Secretary, in consultation
16 with the Administrator, shall establish and implement en-
17 forceable uniform national standards for the regulation of
18 discharges incidental to the normal operation of a vessel.

19 The standards shall—

20 (1) be based upon the best available technology
21 economically achievable; and

22 (2) supersede any permitting requirement or
23 prohibition on discharges incidental to the normal
24 operation of a vessel under any other provision of
25 law.

1 (b) ADMINISTRATION AND ENFORCEMENT.—The
2 Secretary shall enforce the standards and requirements
3 under this Act. Each State may enforce the standards and
4 requirements under this Act.

5 **SEC. 5. UNIFORM VESSEL INCIDENTAL DISCHARGE STAND-**
6 **ARDS.**

7 (a) INITIAL VESSEL INCIDENTAL DISCHARGE
8 STANDARDS.—

9 (1) INITIAL BALLAST WATER PERFORMANCE
10 STANDARD.—

11 (A) IN GENERAL.—Not later than 180
12 days after the date of enactment of this Act,
13 the Secretary, in consultation with the Adminis-
14 trator, shall issue a final rule for the regulation
15 of ballast water discharges incidental to the
16 normal operation of a vessel.

17 (B) PROPOSED RULE.—For the purposes
18 of chapter 5 of title 5, United States Code, the
19 notice of proposed rulemaking published by the
20 Coast Guard pursuant to the requirements of
21 chapter 5 of title 5, United States Code, on Au-
22 gust 28, 2009 (74 Fed. Reg. 44632; relating to
23 standards for living organisms in ships' ballast
24 water discharged in U.S. waters), shall serve as

1 a proposed rule for the purpose of issuing the
2 final rule under subparagraph (A).

3 (C) INITIAL PERFORMANCE STANDARD
4 COMPLIANCE DEADLINES.—

5 (i) IN GENERAL.—An owner or oper-
6 ator shall comply with the performance
7 standard established under this subpara-
8 graph (A) on or before the deadline that
9 applies to the commercial vessel of the
10 owner or operator, as specified in clause
11 (ii).

12 (ii) DEADLINES.—The deadlines for
13 compliance with the performance standard
14 established under subparagraph (A) are as
15 follows:

16 (I) For an existing commercial
17 vessel with a ballast water capacity of
18 less than 1,500 cubic meters, the date
19 of the first drydocking of the vessel
20 after January 1, 2016.

21 (II) For an existing commercial
22 vessel with a ballast water capacity of
23 at least 1,500 cubic meters but not
24 more than 5,000 cubic meters, the

1 date of the first drydocking of the ves-
2 sel after January 1, 2014.

3 (III) For an existing commercial
4 vessel with a ballast water capacity of
5 greater than 5,000 cubic meters, the
6 date of the first drydocking of the ves-
7 sel after January 1, 2016.

8 (iii) PROCESSES FOR GRANTING EX-
9 TENSIONS.—In issuing regulations under
10 this paragraph, the Secretary shall estab-
11 lish a process for an owner or operator to
12 submit a petition to the Secretary for an
13 extension of a compliance deadline with re-
14 spect to the commercial vessel of the owner
15 or operator.

16 (iv) PERIOD OF EXTENSIONS.—An ex-
17 tension issued under clause (iii) shall—

18 (I) apply for a period of not to
19 exceed 18 months; and

20 (II) be renewable for an addi-
21 tional period of not to exceed 18
22 months.

23 (v) FACTORS.—In issuing a compli-
24 ance deadline or reviewing a petition under
25 this subparagraph, the Secretary shall con-

1 sider, with respect to the ability of an
2 owner or operator to meet a compliance
3 deadline, the following factors:

4 (I) Whether the treatment tech-
5 nology to be installed is available in
6 sufficient quantities to meet the com-
7 pliance deadline.

8 (II) Whether there is sufficient
9 shipyard or other installation facility
10 capacity.

11 (III) Whether there is sufficient
12 availability of engineering and design
13 resources.

14 (IV) Vessel characteristics, such
15 as engine room size, layout, or a lack
16 of installed piping.

17 (V) Electric power generating ca-
18 pacity aboard the vessel.

19 (VI) Safety of the vessel and
20 crew.

21 (vi) CONSIDERATION OF PETITIONS.—

22 (I) DETERMINATIONS.—The Sec-
23 retary shall approve or deny a petition
24 for an extension of a compliance dead-

1 line submitted by an owner or oper-
2 ator under this subparagraph.

3 (II) DEADLINE.—If the Sec-
4 retary does not approve or deny a pe-
5 tition referred to in subclause (I) on
6 or before the last day of the 90-day
7 period beginning on the date of sub-
8 mission of the petition, the petition
9 shall be deemed approved.

10 (vii) REGULATIONS.—In issuing regu-
11 lations under subparagraph (A), the Sec-
12 retary shall include—

13 (I) a compliance schedule that
14 sets forth the deadlines specified in
15 clause (ii); and

16 (II) the process for requesting an
17 extension of such deadlines.

18 (2) INITIAL STANDARD FOR DISCHARGES
19 OTHER THAN BALLAST WATER.—Not later than 2
20 years after the date of enactment of this Act, the
21 Secretary, in consultation with the Administrator,
22 shall issue a final rule establishing best management
23 practices for discharges incidental to the normal op-
24 eration of a vessel other than ballast water.

1 (b) REVISED BALLAST WATER PERFORMANCE
2 STANDARD; 8-YEAR REVIEW.—

3 (1) IN GENERAL.—Subject to the feasibility re-
4 view under paragraph (2), not later than January 1,
5 2020, the Secretary, in consultation with the Admin-
6 istrator, shall issue a final rule revising the ballast
7 water performance standard under subsection (a)(1)
8 so that a ballast water discharge incidental to the
9 normal operation of a vessel will contain—

10 (A) less than 1 living organism per 10
11 cubic meters that is 50 or more micrometers in
12 minimum dimension;

13 (B) less than 1 living organism per 10 mil-
14 liters that is less than 50 micrometers in min-
15 imum dimension and more than 10 micrometers
16 in minimum dimension;

17 (C) concentrations of indicator microbes
18 that are less than—

19 (i) 1 colony-forming unit of
20 toxicogenic *Vibrio cholera* (serotypes O1
21 and O139) per 100 milliliters or less than
22 1 colony-forming unit of that microbe per
23 gram of wet weight of zoological samples;

24 (ii) 126 colony-forming units of *esch-*
25 *erichia coli* per 100 milliliters; and

1 (iii) 33 colony-forming units of intes-
2 tinal enterococci per 100 milliliters; and

3 (D) concentrations of such additional indi-
4 cator microbes and of viruses as may be speci-
5 fied in regulations issued by the Secretary in
6 consultation with the Administrator and such
7 other Federal agencies as the Secretary and the
8 Administrator deem appropriate.

9 (2) FEASIBILITY REVIEW.—

10 (A) IN GENERAL.—Not less than 2 years
11 before January 1, 2020, the Secretary, in con-
12 sultation with the Administrator, shall complete
13 a review to determine the feasibility of achiev-
14 ing the revised ballast water performance stand-
15 ard under paragraph (1).

16 (B) CRITERIA FOR REVIEW OF BALLAST
17 WATER STANDARD.—In conducting a review
18 under subparagraph (A), the Secretary shall
19 consider whether revising the ballast water per-
20 formance standard will result in a scientifically
21 demonstrable and substantial reduction in the
22 risk of introduction or establishment of aquatic
23 nuisance species, taking into account—

24 (i) improvements in the scientific un-
25 derstanding of biological and ecological

1 processes that lead to the introduction or
2 establishment of aquatic nuisance species;

3 (ii) improvements in ballast water
4 treatment technology, including—

5 (I) the capability of such treat-
6 ment technology to achieve a revised
7 ballast water performance standard;

8 (II) the effectiveness and reli-
9 ability of such treatment technology in
10 the shipboard environment;

11 (III) the compatibility of such
12 treatment technology with the design
13 and operation of a vessel by class,
14 type, and size;

15 (IV) the commercial availability
16 of such treatment technology; and

17 (V) the safety of such treatment
18 technology;

19 (iii) improvements in the capabilities
20 to detect, quantify, and assess the viability
21 of aquatic nuisance species at the con-
22 centrations under consideration;

23 (iv) the impact of ballast water treat-
24 ment technology on water quality; and

1 (v) the costs, cost-effectiveness, and
2 impacts of—

3 (I) a revised ballast water per-
4 formance standard, including the po-
5 tential impacts on shipping, trade,
6 and other uses of the aquatic environ-
7 ment; and

8 (II) maintaining the existing bal-
9 last water performance standard, in-
10 cluding the potential impacts on
11 water-related infrastructure, recre-
12 ation, propagation of native fish,
13 shellfish, and wildlife, and other uses
14 of navigable waters.

15 (C) LOWER PERFORMANCE STANDARD.—

16 (i) IN GENERAL.—If the Secretary, in
17 consultation with the Administrator, deter-
18 mines on the basis of the feasibility review
19 and after an opportunity for a public hear-
20 ing that no ballast water treatment tech-
21 nology can be certified under section 6 to
22 comply with the revised ballast water per-
23 formance standard under paragraph (1),
24 the Secretary shall require the use of the
25 treatment technology that achieves the per-

1 formance levels of the best treatment tech-
2 nology available.

3 (ii) IMPLEMENTATION DEADLINE.—If
4 the Secretary, in consultation with the Ad-
5 ministrator, determines that the treatment
6 technology under clause (i) cannot be im-
7 plemented before the implementation dead-
8 line under paragraph (3) with respect to a
9 class of vessels, the Secretary shall extend
10 the implementation deadline for that class
11 of vessels for not more than 24 months.

12 (iii) COMPLIANCE.—If the implemen-
13 tation deadline under paragraph (3) is ex-
14 tended, the Secretary shall recommend ac-
15 tion to ensure compliance with the ex-
16 tended implementation deadline under
17 clause (ii).

18 (D) COMPLIANCE DEADLINES.—

19 (i) IN GENERAL.—The Secretary may
20 establish a compliance deadline for compli-
21 ance with a revised standard under this
22 subsection on the Secretary's own initiative
23 or in response to a petition submitted by
24 an owner or operator.

1 (ii) PROCESSES FOR GRANTING EX-
2 TENSIONS.—In issuing regulations under
3 this subsection, the Secretary shall estab-
4 lish—

5 (I) a process for the Secretary, in
6 consultation with the Administrator,
7 to issue a compliance deadline for a
8 commercial vessel (or class, type, or
9 size of vessel); and

10 (II) a process for an owner or op-
11 erator to submit a petition to the Sec-
12 retary for an extension of a compli-
13 ance deadline with respect to the com-
14 mercial vessel of the owner or oper-
15 ator.

16 (iii) PERIOD OF EXTENSIONS.—An ex-
17 tension issued under clause (ii)(II) shall—

18 (I) apply for a period of not to
19 exceed 18 months; and

20 (II) be renewable for an addi-
21 tional period of not to exceed 18
22 months.

23 (iv) FACTORS.—In issuing a compli-
24 ance deadline or reviewing a petition under
25 this subparagraph, the Secretary shall con-

1 sider, with respect to the ability of an
2 owner or operator to meet a compliance
3 deadline, the following factors:

4 (I) Whether the treatment tech-
5 nology to be installed is available in
6 sufficient quantities to meet the com-
7 pliance deadline.

8 (II) Whether there is sufficient
9 shipyard or other installation facility
10 capacity.

11 (III) Whether there is sufficient
12 availability of engineering and design
13 resources.

14 (IV) Vessel characteristics, such
15 as engine room size, layout, or a lack
16 of installed piping.

17 (V) Electric power generating ca-
18 pacity aboard the vessel.

19 (VI) Safety of the vessel and
20 crew.

21 (v) CONSIDERATION OF PETITIONS.—

22 (I) DETERMINATIONS.—The Sec-
23 retary shall approve or deny a petition
24 for an extension of a compliance dead-

1 line submitted by an owner or oper-
2 ator under this subparagraph.

3 (II) DEADLINE.—If the Sec-
4 retary does not approve or deny a pe-
5 tition referred to in subclause (I) on
6 or before the last day of the 90-day
7 period beginning on the date of sub-
8 mission of the petition, the petition
9 shall be deemed approved.

10 (3) IMPLEMENTATION.—The revised ballast
11 water performance standard under paragraph (1)
12 shall apply to a vessel beginning on the date of the
13 first drydocking of the vessel on or after January 1,
14 2020, but not later than December 31, 2022.

15 (c) FUTURE REVISIONS OF VESSEL INCIDENTAL
16 DISCHARGE STANDARDS; DECENNIAL REVIEWS.—

17 (1) REVISED BALLAST WATER PERFORMANCE
18 STANDARDS.—Not earlier than 10 years after the
19 issuance of a final rule under subsection (b) and
20 every 10 years thereafter, the Secretary, in consulta-
21 tion with the Administrator shall complete a review
22 to determine whether further revision of the ballast
23 water performance standard would result in a sci-
24 entifically demonstrable and substantial reduction in

1 the risk of the introduction or establishment of
2 aquatic nuisance species.

3 (2) REVISED STANDARDS FOR DISCHARGES
4 OTHER THAN BALLAST WATER.—The Secretary, in
5 consultation with the Administrator, may include in
6 the decennial review under this subsection national
7 standards for discharges covered by subsection
8 (a)(2). The Secretary shall initiate a rulemaking to
9 revise one or more national standards for such dis-
10 charges after a decennial review if the Secretary, in
11 consultation with the Administrator, determines that
12 revising one or more of such standards would sub-
13 stantially reduce the impacts on navigable waters of
14 discharges incidental to the normal operation of a
15 vessel other than ballast water.

16 (3) CONSIDERATIONS.—In conducting a review
17 under paragraph (1), the Secretary, the Adminis-
18 trator, and the heads of other appropriate Federal
19 agencies as determined by the Secretary, shall con-
20 sider the criteria under section 5(b)(2)(B).

21 (4) SPECIAL RULE.—The Administrator may
22 not issue a revised performance standard pursuant
23 to this subsection unless the revised performance
24 standard is at least 2 orders of magnitude more

1 stringent than the performance standard in effect on
2 the date that the review is completed.

3 **SEC. 6. TREATMENT TECHNOLOGY CERTIFICATION.**

4 (a) CERTIFICATION REQUIRED.—Beginning 60 days
5 after the date that the requirements for testing protocols
6 are issued under subsection (i), no manufacturer of a bal-
7 last water treatment technology shall sell, offer for sale,
8 or introduce or deliver for introduction into interstate
9 commerce, or import into the United States for sale or
10 resale, a ballast water treatment technology for a vessel
11 unless the treatment technology has been certified under
12 this section.

13 (b) CERTIFICATION PROCESS.—

14 (1) EVALUATION.—Upon application of a man-
15 ufacturer, the Secretary shall evaluate a ballast
16 water treatment technology with respect to—

17 (A) the effectiveness of the treatment tech-
18 nology in achieving the current ballast water
19 performance standard when installed on a ves-
20 sel (or a class, type, or size of vessel);

21 (B) the compatibility with vessel design
22 and operations;

23 (C) the effect of the treatment technology
24 on vessel safety;

25 (D) the impact on the environment;

1 (E) the cost effectiveness; and

2 (F) any other criteria the Secretary con-
3 siders appropriate.

4 (2) APPROVAL.—If after an evaluation under
5 paragraph (1) the Secretary determines that the
6 treatment technology meets the criteria, the Sec-
7 retary may certify the treatment technology for use
8 on a vessel (or a class, type, or size of vessel).

9 (3) SUSPENSION AND REVOCATION.—The Sec-
10 retary shall establish, by regulation, a process to
11 suspend or revoke a certification issued under this
12 section.

13 (c) CERTIFICATION CONDITIONS.—

14 (1) IMPOSITION OF CONDITIONS.—In certifying
15 a ballast water treatment technology under this sec-
16 tion, the Secretary, in consultation with the Admin-
17 istrator, may impose any condition on the subse-
18 quent installation, use, or maintenance of the treat-
19 ment technology onboard a vessel as is necessary
20 for—

21 (A) the safety of the vessel, the crew of the
22 vessel, and any passengers aboard the vessel;

23 (B) the protection of the environment; or

24 (C) the effective operation of the treatment
25 technology.

1 (2) FAILURE TO COMPLY.—The failure of an
2 owner or operator to comply with a condition im-
3 posed under paragraph (1) shall be considered a vio-
4 lation of this section.

5 (d) PERIOD FOR USE OF INSTALLED TREATMENT
6 EQUIPMENT.—Notwithstanding anything to the contrary
7 in this Act or any other provision of law, the Secretary
8 shall allow a vessel on which a system is installed and op-
9 erated to meet a ballast water performance standard
10 under this Act to continue to use that system, notwith-
11 standing any revision of a ballast water performance
12 standard occurring after the system is ordered or installed
13 until the expiration of the service life of the system, as
14 determined by the Secretary, so long as the system—

15 (1) is maintained in proper working condition;

16 and

17 (2) is maintained and used in accordance with
18 the manufacturer's specifications and any treatment
19 technology certification conditions imposed by the
20 Secretary under this section.

21 (e) CERTIFICATES OF TYPE APPROVAL FOR THE
22 TREATMENT TECHNOLOGY.—

23 (1) ISSUANCE.—If the Secretary approves a
24 ballast water treatment technology for certification
25 under subsection (b), the Secretary shall issue a cer-

1 tificate of type approval for the treatment technology
2 to the manufacturer in such form and manner as the
3 Secretary determines appropriate.

4 (2) CERTIFICATION CONDITIONS.—A certificate
5 of type approval issued under paragraph (1) shall
6 specify each condition imposed by the Secretary
7 under subsection (c).

8 (3) OWNERS AND OPERATORS.—A manufac-
9 turer that receives a certificate of type approval for
10 the treatment technology under this subsection shall
11 provide a copy of the certificate to each owner and
12 operator of a vessel on which the treatment tech-
13 nology is installed.

14 (f) INSPECTIONS.—An owner or operator who re-
15 ceives a copy of a certificate under subsection (e)(3) shall
16 retain a copy of the certificate onboard the vessel and
17 make the copy of the certificate available for inspection
18 at all times while the owner or operator is utilizing the
19 treatment technology.

20 (g) BIOCIDES.—The Secretary may not approve a
21 ballast water treatment technology under subsection (b)
22 if—

23 (1) it uses a biocide or generates a biocide that
24 is a pesticide, as defined in section 2 of the Federal
25 Insecticide, Fungicide, and Rodenticide Act (7

1 U.S.C. 136), unless the biocide is registered under
2 that Act or the Secretary, in consultation with Ad-
3 ministrator, has approved the use of the biocide in
4 such treatment technology; or

5 (2) it uses or generates a biocide the discharge
6 of which causes or contributes to a violation of a
7 water quality standard under section 303 of the
8 Federal Water Pollution Control Act (33 U.S.C.
9 1313).

10 (h) PROHIBITION.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the use of a ballast water treatment tech-
13 nology by an owner or operator of a vessel shall not
14 satisfy the requirements of this Act unless it has
15 been approved by the Secretary under subsection
16 (b).

17 (2) EXCEPTIONS.—

18 (A) COAST GUARD SHIPBOARD TECH-
19 NOLOGY EVALUATION PROGRAM.—An owner or
20 operator may use a ballast water treatment
21 technology that has not been certified by the
22 Secretary to comply with the requirements of
23 this section if the technology is being evaluated
24 under the Coast Guard Shipboard Technology
25 Evaluation Program.

1 (B) BALLAST WATER TREATMENT TECH-
2 NOLOGIES CERTIFIED BY FOREIGN ENTITIES.—

3 An owner or operator may use a ballast water
4 treatment technology that has not been certified
5 by the Secretary to comply with the require-
6 ments of this section if the technology has been
7 certified by a foreign entity and the certification
8 demonstrates performance and safety of the
9 treatment technology equivalent to the require-
10 ments of this section, as determined by the Sec-
11 retary.

12 (i) TESTING PROTOCOLS.—Not later than 180 days
13 after the date of enactment of this Act, the Administrator,
14 in consultation with the Secretary, shall issue require-
15 ments for land-based and shipboard testing protocols or
16 criteria for—

17 (1) certifying the performance of each ballast
18 water treatment technology under this section; and

19 (2) certifying laboratories to evaluate such
20 treatment technologies.

21 **SEC. 7. EXEMPTIONS.**

22 (a) IN GENERAL.—No permit shall be required or
23 prohibition enforced under any other provision of law for,
24 nor shall any vessel incidental discharge standards under
25 this Act apply to—

1 (1) a discharge incidental to the normal oper-
2 ation of a vessel if the vessel is less than 79 feet in
3 length and engaged in commercial service (as de-
4 fined in section 2101(5) of title 46, United States
5 Code);

6 (2) a discharge incidental to the normal oper-
7 ation of a vessel if the vessel is a fishing vessel (as
8 defined in section 2101 (11a) of title 46, United
9 States Code);

10 (3) a discharge incidental to the normal oper-
11 ation of a vessel if the vessel is a recreational vessel
12 (as defined in section 2101(25) of title 46, United
13 States Code);

14 (4) the placement, release, or discharge of
15 equipment, devices, or other material from a vessel
16 for the sole purpose of conducting research on the
17 aquatic environment or its natural resources in ac-
18 cordance with generally recognized scientific meth-
19 ods, principles, or techniques;

20 (5) any discharge into navigable waters from a
21 vessel authorized by an on-scene coordinator in ac-
22 cordance with part 300 of title 40, Code of Federal
23 Regulations, or part 153 of title 33, Code of Federal
24 Regulations;

1 (6) any discharge into navigable waters from a
2 vessel that is necessary to secure the safety of the
3 vessel or human life, or to suppress a fire onboard
4 the vessel or at a shoreside facility; or

5 (7) a vessel of the armed forces of a foreign na-
6 tion when engaged in noncommercial service.

7 (b) BALLAST WATER DISCHARGES.—No permit shall
8 be required or prohibition enforced under any other provi-
9 sion of law for, nor shall any ballast water performance
10 standards under this Act apply to—

11 (1) a ballast water discharge incidental to the
12 normal operation of a vessel determined by the Sec-
13 retary to—

14 (A) operate exclusively within a geographi-
15 cally limited area;

16 (B) take up and discharge ballast water
17 exclusively within 1 Captain of the Port Zone
18 established by the Coast Guard unless the Sec-
19 retary determines such discharge poses a sub-
20 stantial risk of introduction or establishment of
21 an aquatic nuisance species;

22 (C) operate pursuant to a geographic re-
23 striction issued as a condition under section
24 3309 of title 46, United States Code, or an

1 equivalent restriction issued by the country of
2 registration of the vessel; or

3 (D) continuously take on and discharge
4 ballast water in a flow-through system that
5 does not introduce aquatic nuisance species into
6 navigable waters;

7 (2) a ballast water discharge incidental to the
8 normal operation of a vessel consisting entirely of
9 water suitable for human consumption; or

10 (3) a ballast water discharge incidental to the
11 normal operation of a vessel in an alternative com-
12 pliance program established pursuant to section (8).

13 (c) VESSELS WITH PERMANENT BALLAST WATER.—
14 No permit shall be required or prohibition enforced under
15 any other provision of law for, nor shall any ballast water
16 performance standard under this Act apply to a vessel that
17 carries all of its permanent ballast water in sealed tanks
18 that are not subject to discharge.

19 (d) VESSELS OF THE ARMED FORCES.—Nothing in
20 this Act shall be interpreted to apply to a vessel of the
21 Armed Forces, as defined in section 101(a) of title 10,
22 United States Code.

23 **SEC. 8. ALTERNATIVE COMPLIANCE PROGRAM.**

24 (a) IN GENERAL.—The Secretary, in consultation
25 with the Administrator, may promulgate regulations es-

1 tablishing one or more compliance programs as an alter-
2 native to ballast water discharge regulations issued under
3 section 5 for a vessel that—

4 (1) has a maximum ballast water capacity of
5 less than 8 cubic meters;

6 (2) is less than 3 years from the end of the use-
7 ful life of the vessel, as determined by the Secretary;
8 or

9 (3) discharges ballast water into a facility for
10 the reception of ballast water that meets standards
11 promulgated by the Administrator, in consultation
12 with the Secretary.

13 (b) PROMULGATION OF FACILITY STANDARDS.—Not
14 later than 1 year after the date of enactment of this Act,
15 the Administrator, in consultation with the Secretary,
16 shall promulgate standards for—

17 (1) the reception of ballast water from a vessel
18 into a reception facility; and

19 (2) the disposal or treatment of the ballast
20 water under paragraph (1).

21 **SEC. 9. JUDICIAL REVIEW.**

22 (a) IN GENERAL.—An interested person may file a
23 petition for review of a final regulation promulgated under
24 this Act in the United States Court of Appeals for the
25 District of Columbia Circuit.

1 (b) DEADLINE.—A petition shall be filed not later
2 than 120 days after the date that notice of the promulga-
3 tion appears in the Federal Register.

4 (c) EXCEPTION.—Notwithstanding subsection (b), a
5 petition that is based solely on grounds that arise after
6 the deadline to file a petition under subsection (b) has
7 passed may be filed not later than 120 days after the date
8 that the grounds first arise.

9 **SEC. 10. EFFECT ON STATE AUTHORITY.**

10 No State or political subdivision thereof may adopt
11 or enforce any statute or regulation of the State or polit-
12 ical subdivision with respect to a discharge incidental to
13 the normal operation of a vessel after the date of enact-
14 ment of this Act.

15 **SEC. 11. APPLICATION WITH OTHER STATUTES.**

16 Notwithstanding any other provision of law, this Act
17 shall be the exclusive statutory authority for regulation by
18 the Federal Government of discharges incidental to the
19 normal operation of a vessel to which this Act applies. Any
20 regulation in effect on the date immediately preceding the
21 effective date of this Act which is repealed or superseded
22 by this Act shall be deemed to be a regulation issued pur-
23 suant to the authority of this Act and shall remain in full

1 force and effect unless or until superseded by new regula-
2 tions issued thereunder.

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