



Considerations and New Policy Guidance Related to Extensions to the Implementation Schedule for Ballast Water Management Systems

New Development

On September 25, 2013, the U.S. Coast Guard published CG-OES Policy Letter No. 13-01 (“Policy Letter No. 13-01”) providing guidance on how to submit a request for an extension of the ballast water management (“BWM”) implementation schedule. For vessel owners and operators considering requesting extensions, time is of the essence as any extension requests, with certain limited exceptions, must be submitted no later than 12 months before the vessel’s compliance date. Policy Letter No. 13-01 is available at http://www.eagle.org/eagleExternalPortalWEB/ShowProperty/BEA%20Repository/References/Regulatory/2013/USCG_BWM.

Background

On June 21, 2012, the U.S. Coast Guard’s Ballast Water Discharge Standard Final Rule (“BWM Rule”) went into effect, creating new compliance requirements for U.S.-flag and foreign-flag vessels equipped with ballast tanks operating in U.S.

waters. The BWM Rule is available at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-23/pdf/2012-6579.pdf>.

In order to discharge ballast water into the waters of the United States, subject vessels are required to utilize an approved ballast water management method by the compliance date specified for the vessels in the BWM Rule based on their ballast water capacity and date of construction.

Vessels have five ballast water management options to comply with the BWM Rule, including: (1) installing a Coast Guard approved ballast water management system (“BWMS”); (2) installing an Alternative Management System (“AMS”); (3) using only ballast water from the U.S. public water system; (4) using reception facilities either at port or at floating discharge systems; or (5) retaining all ballast water in U.S. waters. Alternatively, vessel owners and operators may request an extension to the implementation schedule if certain conditions are met.

Implementation Schedule for Approved Ballast Water Management Methods

	Vessels’s Ballast Water Capacity	Date Constructed	Vessel’s Compliance Date
New Vessels	All	On or after Dec. 1, 2013	On Delivery
Existing Vessels	Less than 1,500 m ³	Before Dec. 1, 2013	First Scheduled Drydocking after Jan. 1, 2016
	1,500 – 5,000 m ³	Before Dec. 1, 2013	First Scheduled Drydocking after Jan. 1, 2014
	Greater than 5,000 m ³	Before Dec. 1, 2013	First Scheduled Drydocking after Jan. 1, 2016

Current Situation

From a practical standpoint, only two of these options are feasible for many vessels engaged in commercial operations. For many vessels, using the U.S. public water system, reception facilities, and retaining all ballast water may be impracticable due to the availability of facilities or capacity of the vessel. In addition, the Coast Guard has yet to approve any BWMS. As a result, the remaining two viable options under the regulations are to either install an AMS or apply for an extension to the BWM implementation schedule.

For those vessels that intend to install an AMS before their respective implementation date, Policy Letter No. 13-01 confirms that those vessels will be deemed to be in compliance with the BWM Rule for up to five years and are not required to seek an extension. Although an AMS is a treatment system that has been approved by a foreign administration in accordance with the BWM Convention, there is a risk, as acknowledged by the Coast Guard, that the AMS may ultimately not comply with the BWM Rule. This would mean that once the five-year time period has passed, the vessel would have to replace the AMS with a Coast Guard Approved BWMS, likely at a significant cost.

The Extension Option

The BWM Rule allows the Coast Guard to grant extensions to the BWM compliance implementation schedule. 33 C.F.R. §151.1513; 33 C.F.R. §151.2036. Policy Letter No. 13-01 provides guidance to the industry on submitting these requests and specifies the information that should be included in such a request. The Coast Guard requests that, among other things, the following information be provided to aid the Coast Guard in making a decision:

- Documentation from shipyards indicating a lack of capability or capacity to install a BWMS on the vessel to comply with the implementation schedule.
- Documentation of non-availability of suitable onshore facilities to receive untreated ballast water.
- Documentation of non-availability of water from a U.S. public water system that can be used as ballast water.
- Documentation attesting that Coast Guard Approved BWMSs suitable for specific vessels of a particular design are not yet available.
- A plan that indicates how the vessel will manage ballast water discharges that take place in U.S. waters.
- Estimate as to when the vessel will be able to implement an approved BWM method and what interim measures it will take during the extension period.
- Information on ballast water exchange if applicable.

If approved, the extension would exempt the vessel from the BWM requirements for up to five years from the vessel's scheduled implementation date. This five-year period is intended as a maximum, and the Coast Guard has noted that extensions should not be granted beyond the minimum time needed for the vessel to comply with the BWM requirements. If additional time is needed, however, due to unanticipated delays or changes in circumstances, the Coast Guard may approve a supplemental extension upon good cause demonstrated by the vessel owner or operator and, if upon re-application, compliance with the BWM requirements is still not practicable.

Crucial to compliance with the BWM Rule is understanding the timing of the extension requests. Applications for an extension of the BWM implementation schedule must be made at least 12 months before the vessel's scheduled implementation date and supplemental applications for extensions must be made at least 90 days prior to the end of the extension period. In certain limited circumstances, the Coast Guard may waive the 12-month application requirement, in which case the extension request should be submitted as early as possible and contain a detailed explanation why the vessel owner or operator was unable to comply with the 12-month application requirement.

It is important to note that, in addition to the BWM Rule, the U.S. Environmental Protection Agency ("EPA") also has its own ballast water management requirements as set forth in its Vessel General Permit ("VGP"). While extensions granted by the Coast Guard for the requirements under the BWM Rule will be considered by the EPA, the Coast Guard's determinations are not binding upon EPA for purposes of the VGP.

Conclusion and Recommendations

In view of the delays associated with the Coast Guard approval process for BWMSs and the uncertainty related to the ultimate approval of an AMS, shipyards and vessel owners and operators are advised to closely review the various options available and determine which option makes the most sense for their operations. Factors guiding that decision include the approaching compliance dates, the cost to install an AMS, the likelihood of the AMS ultimately being approved by the Coast Guard, and the requirement, with certain exceptions, to seek an extension from the implementation schedule at least 12 months in advance of the applicable compliance date.

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