

Approved: February 11, 2009.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2008-0129]

RIN 1625-AA00

Safety Zone; Baltimore Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone in all navigable waters of the Captain of the Port Baltimore zone. The temporary safety zone restricts vessels from transiting the zone during the effective period, unless authorized by the Captain of the Port Baltimore, or his designated representative. This safety zone is necessary to protect mariners from the hazards associated with ice in the navigable waterway.

DATES: This rule is effective from January 17, 2009 until April 15, 2009. Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before March 30, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG-2008-0129 using any one of the following methods:

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

(2) *Fax:* 202-493-2251.

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

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

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the "Public Participation and Request for

Comments" portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary interim rule, call Ronald L. Houck, Waterways Management Division, at 410-576-2674 or 2693. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting comments:

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-0129), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-2008-0129" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

Viewing comments and documents:

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2008-0129 in the Docket ID box, press

Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Commander, U. S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Baltimore, Maryland, 21226-1791, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest. Immediate action is needed to mitigate the potential safety hazards associated with ice in the navigable waterway to life and property.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30

days after publication in the **Federal Register**. Due to the unexpected nature and growth of ice formation in the Upper Chesapeake Bay and its tributaries and the Chesapeake and Delaware (C & D) Canal, the safety zone is necessary to protect life and property. Therefore a 30-day notice is impracticable.

Background and Purpose

During a moderate or severe winter, frozen waterways present numerous hazards to vessels. Ice in a waterway may hamper a vessel's ability to maneuver, and could cause visual aids to navigation to be submerged, destroyed or moved off station. Ice abrasions and ice pressure could also compromise a vessel's watertight integrity, and non-steel hulled vessels would be exposed to a greater risk of hull breach.

When ice conditions develop to a point where vessel operations become unsafe, it becomes necessary to impose operating restrictions to ensure the safe navigation of vessels. A safety zone is a tool available to the Captain of the Port (COTP) to restrict and manage vessel movement when hazardous conditions exist. The COTP Baltimore is establishing a safety zone within all navigable waters of the COTP Baltimore zone that will restrict access to certain vessels meeting certain conditions specified. Those vessels prohibited from entering the safety zone will be notified via broadcast notice to mariners and marine safety information bulletins.

Ice generally begins to form in the Upper Chesapeake Bay and its tributaries, including the C & D Canal, in late December or early January. During a moderate or severe winter, ice in navigable waters can become a serious problem, requiring the use of federal, state and private ice breaking resources. The Commander, Coast Guard Sector Baltimore will use his COTP authority to promote vessel safety in ice-congested waters and the continuation of waterborne commerce throughout the cold weather months.

Ice fields in the Upper Chesapeake Bay and its tributaries move with prevailing winds and currents. Heavy ice buildups can occur in the C & D Canal, from Town Point Wharf to Reedy Point. Other areas that are commonly affected by high volumes of ice are, the Elk River, Susquehanna River, Patapsco River, Nanticoke River, Wicomico River, Tangier Sound, Pocomoke River and Sound, and the Potomac River. Once ice buildup begins it can affect the transit of large ocean-going vessels. This regulation is intended to mitigate the

threat ice in the COTP Baltimore zone poses to the maritime public.

Discussion of Rule

A safety zone is being established encompassing the COTP Baltimore Zone, as described in 33 CFR 3.25–15. The Captain of the PORT Baltimore anticipates only having to enforce certain parts of the regulated area at certain times. The purpose of this regulation is to promote maritime safety, and to protect mariners transiting the area from the potential hazards due to ice conditions that become a threat to navigation. The COTP will notify the maritime community, via marine broadcasts, of the location and thickness of the ice as well as the ability of vessels to transit through the safety zone depending on the prevailing ice conditions. Prevailing ice conditions will be categorized as Condition One, Condition Two, or Condition Three.

Ice Condition One is an emergency condition in which ice has largely covered the regulated area. Under these conditions, convoys may be required and restrictions based on shaft horsepower and vessel transit may be imposed by the COTP on certain vessels seeking to enter the safety zone.

Ice Condition Two is an alert condition in which at least 2 inches of ice begins to form in the regulated area. The COTP Baltimore may impose restrictions, including but not limited to, those based on shaft horsepower and hull type restrictions for certain vessels seeking to enter the safety zone.

Ice Condition Three is a readiness condition in which weather conditions are favorable for the formation of ice in the regulated area. Daily reports for the Coast Guard Stations and commercial vessels are monitored, and no limitations for vessels seeking to enter the zone based on vessel traffic, hull type or shaft horsepower are anticipated.

Regulatory Analyses

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

Regulatory Planning and Review

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

prevents traffic from transiting the COTP Baltimore Zone, the effect of this regulation will not be significant because there is little vessel traffic associated with recreational boating and commercial fishing during the effective period.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate, transit or anchor in the regulated area, from January 17, 2009 until April 15, 2009. This safety zone will not have a significant economic impact on a substantial number of small entities due to a lack of seasonal vessel traffic associated with recreational boating and commercial fishing during the effective period. Although the safety zone will apply to the entire COTP Baltimore Zone, the Captain of the PORT Baltimore anticipates only having to enforce certain parts of the regulated area at certain times. Traffic will be allowed to pass through the zone with the permission of the COTP Baltimore. Also, the COTP will notify the maritime community, via marine broadcasts, of the location and thickness of the ice, as well as the ability of vessels to transit through the safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction,

from further environmental documentation. This rule establishes a safety zone.

An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under

ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add a new temporary § 165.T05-0129 to read as follows:

§ 165.T05-0129 Safety zone; Baltimore Captain of the Port Zone.

(a) *Regulated Area.* The following area is a safety zone: The navigable waters of the Captain of the Port Baltimore Zone, as described in 33 CFR 3.25-15.

(b) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23(d) of this part.

(1) Vessels are prohibited from entering into or moving within the safety zone unless they meet the requirements set forth by the Captain of the Port (COTP) Baltimore for the prevailing ice conditions. Requirements for entry during periods when the safety zone is enforced will be described via Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 22A (157.1 MHz). Requirements may include, but are not limited to, the use of convoys, and restrictions on shaft horsepower, and hull type restrictions, and will depend on the prevailing conditions and vessel type.

(2) Persons desiring to transit in the safety zone not meeting the requirements established by the COTP Baltimore must contact the COTP Baltimore or his designated representative at telephone number 410-576-2693 or on VHF-FM channel 16 (156.8 MHz) to seek permission prior to transiting the area. If permission is granted, all persons and vessels shall comply with the instructions of the

COTP Baltimore or his designated representative.

(3) The Coast Guard vessels enforcing this safety zone can be contacted on VHF-FM marine band radio channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The COTP Baltimore and his designated representatives can be contacted at telephone number 410-576-2693.

(4) The COTP Baltimore or his designated representative will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF-FM marine band radio channel 22A (157.1 MHz).

(d) *Definitions.* As used in this section:

Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (b) of this section.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zones by Federal, State and local agencies.

(f) *Enforcement period.* This section will be enforced from January 17, 2009 until April 15, 2009.

Dated: January 17, 2009.

Austin J. Gould,

Commander, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland, Acting.

[FR Doc. E9-4067 Filed 2-25-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA-R04-OAR-2008-0605; FRL-8769-5]

Outer Continental Shelf Air Regulations Consistency Update for Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On December 31, 2008, EPA published a document finalizing the update of the Florida Outer Continental Shelf (OCS) Air Regulations. That document inadvertently listed the incorrect filing action date for petitions for judicial review. This document corrects that inadvertent error.

DATES: *Effective Date:* This rule is effective on February 26, 2009.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can also be reached via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is making a correction to the document published on December 31, 2008 (73 FR 78196), finalizing the update of the Florida OCS Air Regulations. EPA made an inadvertent error on page 78197, column 2, last full paragraph. This paragraph begins with the phrase, "Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 2008". This date does not correctly allow for the 60 day filing period. EPA is now correcting the date on page 78197, column 2, last full paragraph by replacing it with the following date: "March 1, 2009".

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 20, 2009.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. E9-4123 Filed 2-25-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2004-0083; FRL-8774-1]

RIN 2060-AM71

National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On December 1, 2008, EPA issued direct final amendments to the national emission standards for hazardous air pollutants (NESHAP) for Electric Arc Furnace Steelmaking Facilities. These amendments were issued as a direct final rule, along with a parallel proposal to be used as the basis for final action in the event EPA received any adverse comments on the direct final amendments. Because an

adverse comment was received, EPA is withdrawing the direct final rule.

DATES: As of February 26, 2009, EPA withdraws the direct final rule published at 73 FR 72727 on December 1, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2004-0083. All documents in the docket are listed in the Federal Docket Management System index at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Electric Arc Furnace Steelmaking Facilities Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Mulrine, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D243-02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-5289; fax number: (919) 541-3207; e-mail address: mulrine.phil@epa.gov.

SUPPLEMENTARY INFORMATION: On December 1, 2008, we published a direct final rule (73 FR 72727) and a parallel proposal (73 FR 72756) amending the NESHAP for Electric Arc Furnace Steelmaking Facilities (40 CFR part 63, subpart YYYYY). These amendments were issued as a direct final rule, along with a parallel proposal to be used as the basis for final action in the event EPA received any adverse comments on the direct final amendments. We stated in that direct final rule that if we received adverse comment by December 31, 2008, we would publish a timely withdrawal in the **Federal Register**. Because an adverse comment was received, EPA is withdrawing the direct final rule published at 73 FR 72727 on December 1, 2008 as of February 26, 2009. We will address the adverse comment in a subsequent final action