

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Parts 104, 105, and 160**

[Docket No. USCG–2004–19963]

RIN 1625–AA93

**Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes**

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is adopting, with changes, an interim rule published December 16, 2005, regarding certain dangerous cargo (CDC) and notice of arrival requirements. The interim rule defined certain dangerous cargo residue (CDC residue) as limited to certain dry cargo and made other changes to regulations in 33 CFR parts 104, 105, and 160. After reviewing comments on the interim rule, the Coast Guard issued a notice of proposed rulemaking in 2009 that proposed to change the CDC residue definition to include certain bulk liquids and liquefied gases in residue quantities, revise the definition of CDC to reflect the proposed change in the CDC residue definition, and adopt other changes introduced by the 2005 interim rule. This final rule will relieve an unnecessary burden on industry by including more lower-risk cargoes in the CDC residue category and thereby reducing the number of notice of arrival submissions required based on the cargo a vessel is carrying.

**DATES:** This final rule is effective October 28, 2010.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are a part of docket USCG–2004–19963 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG–2004–19963 in the “Keyword” box, and then clicking “Search.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Lieutenant Sharmine Jones, Office of Vessel Activities, Coast Guard; telephone 202–372–1234, e-mail [Sharmine.N.Jones@uscg.mil](mailto:Sharmine.N.Jones@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager,

Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:****Table of Contents for Preamble**

- I. Abbreviations
- II. Regulatory History
- III. Basis and Purpose
- IV. Background
- V. Discussion of Comments and Changes
- VI. Regulatory Analyses
  - A. Regulatory Planning and Review
  - B. Small Entities
  - C. Assistance for Small Entities
  - D. Collection of Information
  - E. Federalism
  - F. Unfunded Mandates Reform Act
  - G. Taking of Private Property
  - H. Civil Justice Reform
  - I. Protection of Children
  - J. Indian Tribal Governments
  - K. Energy Effects
  - L. Technical Standards
  - M. Environment

**I. Abbreviations**

CDC Certain dangerous cargo  
 CDC residue Certain dangerous cargo residue  
 CFR Code of Federal Regulations  
 CTAC Chemical Transportation Advisory Committee  
 DHS Department of Homeland Security  
 FR **Federal Register**  
 NOA Notice of arrival  
 NPRM Notice of proposed rulemaking  
 OMB Office of Management and Budget  
 TSAC Towing Safety Advisory Committee  
 U.S.C. United States Code

**II. Regulatory History**

The Coast Guard published an interim rule on December 16, 2005, titled “Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission” (70 FR 74663). That interim rule adopted the definition of certain dangerous cargo (CDC), which a 2004 temporary final rule (69 FR 51176, August 18, 2004) introduced. By revising § 104.105 in Title 33 of the Code of Federal Regulations (33 CFR), the interim rule also made permanent the application of vessel security requirements in 33 CFR part 104 to barges carrying CDC. The interim rule, however, removed the remainder of the temporary changes made to 33 CFR parts 104 and 105 because they involved past submission and compliance deadlines and were no longer necessary. The interim rule also introduced changes that were not included in the 2004 temporary final rule, including—

- Adding another optional method, via Microsoft InfoPath, for electronic submission of notices of arrival (NOAs).
- Clarifying that Coast Guard NOA regulations in 33 CFR part 160, subpart C, do not apply to U.S. recreational vessels.

- Adding a definition of “CDC residue” that identified certain dry cargo in bulk that, at or below specified quantities, did not trigger NOA requirements. The 2005 definition of CDC residue only included residue quantities of bulk ammonium nitrate or ammonium nitrate fertilizer that remained onboard after the vessel discharges all saleable cargo; no other cargo residues fell within the interim rule definition of CDC residue.

In response to the 2005 interim rule, the Coast Guard received a comment from the Chemical Transportation Advisory Committee (CTAC) suggesting that the Coast Guard revise the definition of CDC residue to include some bulk liquids and liquefied gases. The Coast Guard requested CTAC’s Hazardous Cargoes Transportation Security Subcommittee to assist in our rulemaking. They reviewed the current requirement that a CDC vessel remain a CDC vessel until the removal of all bulk liquid and liquefied gas CDC cargoes, including residue quantities of such cargoes, from the vessel. The Committee completed its recommendation on August 24, 2006, and submitted it to the Coast Guard for review and consideration. (See the CTAC Recommendations Related to Residues of CDC Cargoes, August 24, 2006, which is available in the docket for this rulemaking.) The Coast Guard concurred with CTAC’s recommendations to—

- Keep cargoes of Anhydrous Ammonia, Chlorine, Ethane, Ethylene Oxide, Methane (LNG), Methyl Bromide, Sulfur Dioxide, and Vinyl Chloride as CDC at all times, even when only residue quantities remain onboard.

- Allow other cargoes that would be considered CDC in larger quantities to be defined as CDC residue if the amount that remains onboard in a cargo system after discharge is not accessible through normal transfer procedures.

The Coast Guard took steps to implement these recommendations. On December 23, 2009, we published a notice of proposed rulemaking (NPRM) titled “Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes” (74 FR 68208). In it, the Coast Guard proposed to amend the definitions of CDC and CDC residue in accordance with CTAC’s recommendation. With the exception of the revision of these two definitions, the NPRM proposed to adopt the current regulations introduced by the interim rule in 2005 as final.

We received two comments on the proposed rule. No public meeting was requested and none was held.

### III. Basis and Purpose

Under authority of the Ports and Waterways Safety Act (see, specifically, 33 U.S.C. 1223 and 1231) and the Maritime Transportation Security Act (46 U.S.C. Chapter 701), as delegated by Department of Homeland Security Delegation No. 0170.1, the Coast Guard is adopting, with changes, the interim rule published on December 16, 2005 (70 FR 74663) regarding CDC and NOA requirements. This final rule reflects the adoptions and changes as proposed in the Coast Guard's 2009 NPRM (74 FR 68208). This rule will also relieve an unnecessary burden on industry by including more lower-risk cargoes in the CDC residue category and reducing the number of NOA submissions required based on the cargo a vessel is carrying. Additionally, it will complete this rulemaking, which has already introduced existing requirements into 33 CFR parts 104, 105, and 160.

### IV. Background

NOA regulations require the submission of information about certain vessels and their voyages, including cargoes, crews, and other persons onboard to the Coast Guard's National Vessel Movement Center before those vessels arrive at a port or place in the United States. The Coast Guard uses the information contained in the NOA to implement appropriate safety and security measures, including security screening and escorts into port.

In 2003, the Coast Guard became concerned about the potential security hazards of bulk ammonium nitrate and propylene oxide cargoes transported on U.S. waters. After consultation with CTAC and the Towing Safety Advisory Committee (TSAC), (see, e.g., TSAC Report on Task 03-03, Recommendation 124, which is available in the docket for this rulemaking), the Coast Guard determined that these substances should be considered CDC (69 FR 51176, 51177, August 18, 2004) and, as noted, published a temporary final rule in 2004 (69 FR 51176), followed by an interim rule in 2005 (70 FR 74663). The Coast Guard's definition of CDC appears in 33 CFR 160.204. CDC includes substances or materials that have been determined to pose an unreasonable risk to health, safety, and property if improperly handled. Existing regulations require most vessels carrying CDC to submit NOAs.

### V. Discussion of Comments and Changes

The Coast Guard received one letter containing two comments on the proposal to change the definition of

CDC so that residue quantities of some chemicals are not classified as CDC. This commenter commended the Coast Guard for working with CTAC to develop "this more sophisticated and nuanced approach to security requirements for CDCs in residue form."

First, the commenter concurred with the Coast Guard's proposal that eight CDCs—anehydrous ammonia, chlorine, ethane, ethylene oxide, methane (LNG), methyl bromide, sulfur dioxide, and vinyl chloride—should maintain their CDC classification when in residue form. Regardless of how small the quantities of these eight substances that remain onboard in a cargo system after discharge are, they will still be defined as CDC. Second, as manifested in our revised definition of CDC residue, the commenter also believed that in the case of all other CDCs, industry practices are sufficiently effective in diluting CDC residues, that it is prudent for the Coast Guard to develop a different set of security requirements for vessels with these types of residues onboard.

The Coast Guard agrees with the assessment to change the definition of CDC residue and to exclude certain CDCs from that definition. Because of this change, fewer vessels carrying only lower-risk cargoes will trigger NOA or other security requirements that apply to vessels carrying CDC.

This commenter also noted that while standing by her recommendation, she does not want her "endorsement of the revised definition of CDC residue [to] be seen as an endorsement of the current process for submitting NOAs generally." The commenter encourages the Coast Guard to use these two parallel rulemakings "to seriously evaluate the impractical process requiring operators to submit NOAs to \* \* \* the National Vessel Movement Center and the Inland River Vessel Movement Center[,], depending on a vessel's position on the inland river system."

The NOA CDC NPRM focused on changing the definition of CDC residue. Revising where vessels should report based on requirements in both 33 CFR parts 160 and 165 is beyond the scope of this rulemaking. The Coast Guard will address this comment about the National Vessel Movement Center and the Inland River Vessel Movement Center in its broader, "Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System" (RIN 1625-AA99) rulemaking.

The Coast Guard did not make any changes from the NOA CDC proposed rule based on these comments. This final rule remains the same as proposed in the NPRM.

### VI. 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.

#### A. 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. Accordingly, OMB has not reviewed it under that Order.

In the NPRM, published on December 23, 2009 (74 FR 68208, 68212), we estimated that there are on average 2,800 vessels currently carrying CDCs that make approximately 25,000 port arrivals a year. With this rule, some of these vessels will no longer be required to submit NOAs when transporting residue quantities of certain CDCs. As detailed in the NPRM, we estimate a 5 percent annual reduction in the number of NOAs submitted as a result of this final rule, which is equivalent to a \$22,000 decrease in cost burden for vessel operators that transport certain CDCs in residue status.

We received no public comments or additional information that would alter our assessment of the impacts presented in the NPRM.

#### B. Small Entities

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

In the NPRM, we certified that under 5 U.S.C. 605(b) the proposed rule would not have a significant economic impact on a substantial number of small entities. We received no public comments or additional information that would alter our certification of the rule.

This rule will not increase the NOA reporting costs to vessel operators shipping CDC. We estimate that this rule will reduce the burden to vessel operators shipping residue quantities of certain CDCs. Therefore, the Coast Guard certifies that under 5 U.S.C. 605(b) this final rule will not have a significant economic impact on a substantial number of small entities.

### C. Assistance for Small Entities

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

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).

### D. 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). In our NPRM, however, we noted it would modify an existing collection under OMB Control Number 1625–0100, Advance Notice of Vessel Arrival, by reducing the number of responses. We received no public comments or additional information that would alter our estimates in the NPRM of the burden imposed by this rule through the ANOVA collection of information.

As required by 44 U.S.C. 3507(d), we submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information. We received no comments from either OMB or the public on the collection of information portion of our NPRM, and we have made no changes to the final rule from what we proposed in the NPRM.

On January 29, 2010, OMB approved collection 1625–0100 until January 31, 2012, without change. You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

### E. Federalism

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

### F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) 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.

### G. Taking of Private Property

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

### H. Civil Justice Reform

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

### I. Protection of Children

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

### J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

### K. Energy Effects

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

require a Statement of Energy Effects under Executive Order 13211.

### L. Technical Standards

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

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

### M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which does not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) and (d) of the Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

### ADDRESSES.

#### List of Subjects

##### 33 CFR Part 104

Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels.

##### 33 CFR Part 105

Maritime security, Reporting and recordkeeping requirements, Security measures.

##### 33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard adopts the

amendments to 33 CFR parts 104, 105, and 160 introduced by the interim rule published at 70 FR 74669 on December 16, 2005, as final with the following changes:

#### **PART 160—PORTS AND WATERWAYS SAFETY—GENERAL**

■ 1. The authority citation for part 160 continues to read as follows:

**Authority:** 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

■ 2. In § 160.204, revise paragraphs (7) through (9) of the definition for “Certain dangerous cargo (CDC)” and the entire definition of “Certain dangerous cargo residue (CDC residue)” to read as follows:

#### **§ 160.204 Definitions.**

\* \* \* \* \*  
*Certain dangerous cargo (CDC)* \* \* \*  
 \* \* \* \* \*

(7) All bulk liquefied gas cargo carried under 46 CFR 151.50–31 or listed in 46 CFR 154.7 that is flammable and/or toxic and that is not carried as certain dangerous cargo residue (CDC residue).

(8) The following bulk liquids except when carried as CDC residue:

- (i) Acetone cyanohydrin;
- (ii) Allyl alcohol;
- (iii) Chlorosulfonic acid;
- (iv) Crotonaldehyde;
- (v) Ethylene chlorohydrin;
- (vi) Ethylene dibromide;
- (vii) Methacrylonitrile;
- (viii) Oleum (fuming sulfuric acid);

and

(ix) Propylene oxide, alone or mixed with ethylene oxide.

(9) The following bulk solids:

(i) Ammonium nitrate listed as a Division 5.1 (oxidizing) material in 49 CFR 172.101 except when carried as CDC residue; and

(ii) Ammonium nitrate based fertilizer listed as a Division 5.1 (oxidizing) material in 49 CFR 172.101 except when carried as CDC residue.

*Certain dangerous cargo residue (CDC residue)* includes any of the following:

(1) Ammonium nitrate in bulk or ammonium nitrate based fertilizer in bulk remaining after all saleable cargo is discharged, not exceeding 1,000 pounds in total and not individually accumulated in quantities exceeding two cubic feet.

(2) For bulk liquids and liquefied gases, the cargo that remains onboard in a cargo system after discharge that is not accessible through normal transfer procedures, with the exception of the following bulk liquefied gas cargoes

carried under 46 CFR 151.50–31 or listed in 46 CFR 154.7:

- (i) Ammonia, anhydrous;
- (ii) Chlorine;
- (iii) Ethane;
- (iv) Ethylene oxide;
- (v) Methane (LNG);
- (vi) Methyl bromide;
- (vii) Sulfur dioxide; and
- (viii) Vinyl chloride.

\* \* \* \* \*

Dated: September 20, 2010.

**Kevin S. Cook,**

*Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.*

[FR Doc. 2010–24221 Filed 9–27–10; 8:45 am]

**BILLING CODE 9110–04–P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

[Docket No. USCG–2010–0872]

**RIN 1625–AA00**

#### **Natchez Fireworks Safety Zone; Lower Mississippi River, Mile Marker 365.5 to Mile Marker 363, Natchez, MS**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River from mile marker 365.5 to 363 extending the entire width of the river. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with a fireworks display. Entry into this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port (COTP) Lower Mississippi River or a designated representative. The COTP Lower Mississippi River or a designated representative must authorize vessels that desire to operate in this zone.

**DATES:** This rule is effective from 8 p.m. through 8:30 p.m. on September 28, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0872 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0872 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey

Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Lieutenant Junior Grade Jason Erickson, Coast Guard; telephone 901–521–4753, e-mail [Jason.A.Erickson@uscg.mil](mailto:Jason.A.Erickson@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **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 immediate action is needed to protect the participants in the fireworks display, spectators, and mariners from the safety hazards associated with a fireworks display taking place on a confined waterway.

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**. This is because immediate action is needed to protect the participants in the fireworks display, spectators, and mariners from the safety hazards associated with a fireworks display taking place on a confined waterway.

##### **Basis and Purpose**

On September 13, 2010, the Coast Guard received an Application for Approval of Marine Event for a fireworks display on the Lower Mississippi River. This safety zone is needed to protect participants, spectators, and other mariners from the possible hazards associated with a fireworks show taking place on the Lower Mississippi River. The fallout zone extends into the navigable channel of the river.

##### **Discussion of Rule**

The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi from mile marker 365.5 to 363 extending the entire width