

*Civil Justice Reform (Executive Order 12988)*

With respect to Executive Order 12988, the Office of the Solicitor has determined that this final rule will not unduly burden the judicial system, and meets the requirements of Sections 3(a) and 3(b)(2) of the Executive Order.

*Consultation with Indian tribes (E.O. 13175).*

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes because OCS operations do not take place on or near Indian lands.

*Paperwork Reduction Act (PRA) of 1995*

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The revisions to 30 CFR part 250 subpart A refer to, but do not change, information collection requirements in current regulations. OMB has approved the referenced information collection requirements under OMB control number 1010-0114, current expiration date of October 31, 2007. The final rule will impose no new paperwork requirements, and an OMB form 83-I submission to OMB under the PRA is not required.

*Clarity of This Regulation*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the rule clearly stated?
- (2) Does the rule contain technical language or jargon that interferes with its clarity?
- (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?
- (4) Is the description of the rule in the

**SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the rule? What else can we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

*National Environmental Policy Act (NEPA) of 1969*

MMS analyzed this rule using the criteria of the NEPA and 516 Departmental Manual, Chapter 2, and concluded that the preparation of an environmental analysis is not required.

*Energy Supply, Distribution, or Use (Executive Order 13211)*

This is not a significant rule and is not subject to review by OMB under Executive Order 13211. The final rule may potentially increase energy supplies, but given the uncertainty associated with the drilling of successful wells, the effect on energy supply, distribution, or use is not considered to be significant at this time. Thus, a Statement of Energy Effects is not required.

**List of Subjects in 30 CFR Part 250**

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: December 2, 2005.

**Chad Calvert,**

*Acting Assistant Secretary—Land and Minerals Management.*

■ For the reasons stated in the preamble, MMS amends 30 CFR part 250 as follows:

**PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF**

■ 1. The authority citation for Part 250 continues to read as follows:

**Authority:** 43 U.S.C. 1331, *et seq.*

■ 2. In § 250.175, add a new paragraph (c) to read as follows:

**§ 250.175 When may the Regional Supervisor grant an SOO?**

\* \* \* \* \*

(c) The Regional Supervisor may grant an SOO to conduct additional geological and geophysical data analysis that may lead to the drilling of a well below 25,000 feet true vertical depth below the datum at mean sea level (TVD SS) when all of the following conditions are met:

- (1) The lease was issued with a primary lease term of:
  - (i) 5 years; or
  - (ii) 8 years with a requirement to drill within 5 years.

(2) Before the end of the fifth year of the primary term, you or your predecessor in interest must have acquired and interpreted geophysical information that:

(i) Indicates that all or a portion of a potential hydrocarbon-bearing formation lies below 25,000 feet TVD SS; and

(ii) Includes full 3-D depth migration over the entire lease area.

(3) Before requesting the suspension, you have conducted or are conducting additional data processing or interpretation of the geophysical information with the objective of identifying a potential hydrocarbon-bearing geologic structure or stratigraphic trap lying below 25,000 feet TVD SS.

(4) You demonstrate that additional time is necessary to:

(i) Complete current processing or interpretation of existing geophysical data or information;

(ii) Acquire, process, or interpret new geophysical or geological data or information that would affect the decision to drill the same geologic structure or stratigraphic trap, as determined by the Regional Supervisor, identified in paragraphs (c)(2) and (c)(3) of this section; or

(iii) Drill a well below 25,000 feet TVD SS into the geologic structure or stratigraphic trap identified as a result of the activities conducted in paragraphs (c)(2), (c)(3), and (c)(4)(i) and (ii) of this section.

[FR Doc. 05-24109 Filed 12-15-05; 8:45 am]

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

[USCG-2004-19963]

RIN 1625-AA93

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

**AGENCY:** Coast Guard, Department of Homeland Security.

**ACTION:** Interim rule; request for comments.

**SUMMARY:** On August 18, 2004, the Coast Guard published a temporary rule entitled "Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission." 69 FR 51176. This temporary rule, which expires March 20, 2006, added ammonium

nitrate and ammonium nitrate based fertilizers, in bulk, and propylene oxide, alone or mixed with ethylene oxide, in bulk, to the list of Certain Dangerous Cargoes (CDCs) for which a notice of arrival (NOA) is required.

The Coast Guard is now permanently changing the definition of "certain dangerous cargo" to include (1) ammonium nitrate, in bulk; (2) ammonium nitrate based fertilizers, in bulk; and (3) propylene oxide, alone or mixed with ethylene oxide, in bulk. This rule also adds an option for vessels to submit notices of arrival electronically. These changes are necessary to promote maritime safety and security and to facilitate the uninterrupted flow of commerce by providing the Coast Guard with information on these cargoes.

**DATES:** This interim rule is effective January 17, 2006. Comments and related material must reach the Docket Management Facility on or before March 16, 2006. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before March 16, 2006.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2004-19963] to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: <http://dms.dot.gov>.

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001.

(3) Fax: 202-493-2251.

(4) Delivery: Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. This is not a toll free call.

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

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call ENS Joseph Azzata, Office of Port Security Planning and Readiness (G-MPP), Coast Guard, telephone 202-267-0069. If you are interested in creating your own application or modifying your existing business systems to submit Extensible Markup Language (XML) formatted data to the National Vessel Movement Center (NVMC), please

contact the NVMC by e-mail at [sans@nvmc.uscg.gov](mailto:sans@nvmc.uscg.gov) or by telephone at 1-800-708-9823 or 304-264-2502 for more information. If you have questions related to security plans, call LCDR Rob McLellan, Office of Port and Vessel Security (G-MPS), telephone (202) 267-4129. This is not a toll free call. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-493-0402. This is not a toll free call.

#### SUPPLEMENTARY INFORMATION:

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#### I. 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://dms.dot.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

**A. Submitting comments:** If you submit a comment, please include your name and address, identify the docket number for this rulemaking [USCG-2004-19963], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you

submit them by mail or 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. We may change this interim rule in view of them.

#### B. Viewing comments and documents:

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://dms.dot.gov> at any time and conduct a "simple search" using the last five digits of the docket number. You also may visit the Docket Management Facility in room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**C. Public meeting:** We do not now plan to hold a public meeting. However, 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 a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**D. Privacy Act:** Anyone can search the electronic form of all 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://dms.dot.gov>.

#### II. Acronyms

CDC Certain Dangerous Cargo  
 CFR Code of Federal Regulations  
 COI Collection of Information  
 CTAC Chemical Transportation Advisory Committee  
 DHS U.S. Department of Homeland Security  
 eNOAD Electronic Notice of Arrival and Departure  
 FR **Federal Register**  
 G-MPP USCG Office of Port Security Planning and Readiness  
 G-MPS USCG Office of Port and Vessel Security  
 IR Interim Rule  
 MTSA Maritime Transportation Security Act of 2002  
 NOA Notice of Arrival  
 NPRM Notice of Proposed Rulemaking  
 NVMC National Vessel Movement Center

OMB Office of Management and Budget  
 POX Propylene Oxide  
 PV Present Value  
 TSAC Towing Safety Advisory Committee  
 U.S.C. United States Code  
 USCG United States Coast Guard  
 XML Extensible Markup Language

### III. Background and Purpose

On August 18, 2004, the Coast Guard published a temporary rule entitled "Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission." 69 FR 51176. This temporary rule, which expires March 20, 2006, added ammonium nitrate and ammonium nitrate based fertilizers, in bulk, and propylene oxide, alone or mixed with ethylene oxide, in bulk, to the list of Certain Dangerous Cargoes (CDCs) for which a notice of arrival (NOA) is required under 33 CFR part 160.

CDCs are specifically defined in 33 CFR 160.204, but may generally be described as substances or materials that pose an unreasonable risk to health, safety, and property if improperly handled. The notice of arrival is the process in which a vessel submits required information—including data about the vessel, cargo, crew and others on board before the vessel arrives at a port or place in the United States. The required information contained in the notice of arrival allows the Coast Guard to properly screen the vessel for safety and security purposes.

The temporary rule was issued in large part because of information the Coast Guard had received from other federal agencies in late 2003 on the dangers of ammonium nitrate and ammonium nitrate based fertilizers, in bulk. While considering adding these cargoes to the CDC list, the Coast Guard requested comments from the Towing Safety Advisory Committee (TSAC) and the Chemical Transportation Advisory Committee (CTAC). Those committees were asked to advise the Coast Guard on the anticipated impact to their respective industries if solid ammonium nitrate and ammonium nitrate fertilizers, in bulk, were added to the CDC definition in 33 CFR part 160. The Coast Guard received recommendations from TSAC on September 10, 2003, and from CTAC on October 23, 2003. Neither committee specifically recommended adding forms of ammonium nitrate to the CDC list. Both committees acknowledged, however, the security hazards associated with forms of ammonium nitrate and agreed that additional security measures were warranted.

The temporary rule also added propylene oxide, alone or mixed with ethylene oxide, in bulk, to the list of CDCs for the following reasons—

- It is chemically similar to ethylene oxide, which is already on the list of CDCs;
- It is extremely reactive to acids, bases, oxidizers, peroxides, and many other chemicals;
- When exposed to heat, it polymerizes, or reacts with itself, and gives off large amounts of heat;
- It has a wide flammability range, meaning that it can mix with air to form an explosive mixture at low (2.3 percent) or high (37 percent) concentrations; and,
- It has a high vapor pressure, meaning that it generates large amounts of flammable and reactive vapor at room temperature.

The temporary rule also provided one new option, consisting of two separate formats, for electronically submitting an NOA to the Coast Guard's National Vessel Movement Center (NVMC). Finally, the temporary rule clarified that vessel security regulations in 33 CFR part 104 apply to the owner or operator of any (1) barge carrying CDC in bulk or (2) barge subject to 46 CFR chapter I, subchapter I, that is engaged on an international voyage.

### IV. Discussion of Comments to the Temporary Rule

The Coast Guard received four letters commenting on the temporary rule. The letters were from a national trade association, an advisory committee, a barge transportation company, and a science and technology company. All of the comments addressed issues relating to CDC generally. There were no comments addressing electronic submission of NOAs.

*A. Adding Propylene Oxide:* One commenter agreed with the addition of propylene oxide to the list of CDCs, stating "The addition of Propylene Oxide (POX) as a Certain Dangerous Cargo is an appropriate action, as it is a high risk cargo by any measurement."

*B. CDC Residue:* One comment discussed CDC liquid residue ("slops") remaining on a vessel after the CDC has been discharged from the vessel. The comment stated that vessels carrying only small quantities of CDC liquid residue are still subject to NOA reporting requirements until that material is discharged from the vessel. As an example, it stated that the Coast Guard classifies a vessel that has carried a liquid CDC as a CDC vessel until it is totally free from dangerous concentrations of flammable or toxic gases ("gas free"). It also stated, "as a

result, both the Coast Guard and industry are forced to utilize time, money, and resources to implement the additional requirements even when no particular hazard exists."

The Coast Guard disagrees with the commenter's assertion that residue from liquid CDCs present no particular hazard. The residue of bulk liquid and bulk liquefied gas CDCs continues to retain its physical properties of flammability and toxicity despite the reduction in quantity of the CDC, and these physical properties are what make certain cargoes CDCs. Therefore, this rule does not modify current requirements for bulk liquid and bulk liquefied gas CDCs, regardless of amount.

However, the Coast Guard agrees that some non-liquid residues should not be included in the definition of CDC. Coast Guard discussed with the Office of Naval Intelligence and the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the safety and security concerns related to the residue of ammonium nitrate and the residue of ammonium nitrate based fertilizers, in bulk. We conclude that it is not necessary to require an NOA when a vessel is carrying only residue of ammonium nitrate or residue of ammonium nitrate based fertilizers, in bulk, under certain circumstances. For example, a barge carrying dry bulk ammonium nitrate delivers to, and discharges its cargo at, a facility. Small quantities of residue may remain scattered around the edges and the rest of the floor area of the barge. In this instance, the Coast Guard agrees that it would be unnecessary for a company to clean all residue from the barge completely so that the Part 160 requirements no longer apply to that barge.

*C. Beyond the Scope of this Rulemaking:* All four commenters raised a number of issues that were outside the narrow scope of the temporary rule. Those issues generally relate to implementation of the vessel and facility security regulations in 33 CFR parts 104 and 105. The issues included concerns about segregation of barges carrying ammonium nitrate or ammonium nitrate fertilizers from other dry cargo barges at fleeting facilities—a commercial area for the making up, breaking down, or staging of barge tows; requests to make the Inland River Vessel Movement Center and NVMC reporting requirements the same; suggestions to allow vessel operators to "turn on" and "turn off" the vessel security plans of uninspected barges depending on whether they are carrying CDCs; and

storage of security plan documentation onboard dry cargo barges.

Because the only purpose of this rulemaking is to make permanent the changes from the temporary rule with minor modifications, the aforementioned issues are not within the narrow scope of this rulemaking and we do not address them in this rule. However, we have forwarded these comments to the appropriate program staff for further consideration and appropriate action.

In addition, these comments asked questions about when and how owners and operators with approved security plans or Alternative Security Plans should proceed with security plan changes relating to the new CDCs as well as questions about completing the required Declarations of Security. Such questions should be addressed to LCDR Rob McLellan, G-MPS, Coast Guard, 202-267-4129.

## V. Discussion of Rule

### A. Temporary Rule Changes Adopted

This interim rule makes permanent the changes to 33 CFR parts 104 and 160 introduced by the August 18, 2004 temporary rule. These permanent changes are necessary to promote maritime safety and security and to facilitate the uninterrupted flow of commerce. This rule permanently adds to the definition of CDC, in 33 CFR 160.204, ammonium nitrate and ammonium nitrate based fertilizers, in bulk, and propylene oxide, alone or mixed with ethylene oxide, in bulk.

This interim rule also makes permanent one new option, consisting of two separate formats, for electronically submitting a NOA to the Coast Guard's National Vessel Movement Center (NVMC). Finally, this rule adopts the change the temporary rule made to the applicability of vessel security regulations in 33 CFR part 104, which limited applicability to barges that are carrying CDC in bulk to those engaged on international voyages.

### B. Additional Changes

This interim rule also contains editorial revisions and clarifications to the NOA regulation that are not in the temporary rule. One of the changes is a revision to the definition of certain dangerous cargo which eliminates the reporting requirement for vessels that retain only a non-liquid residue of ammonium nitrate or ammonium nitrate based fertilizer, in bulk. The second change is that this rule adds an option for vessels to submit notices of arrival electronically. The third change is only an editorial clarification that has no

substantive effect, clarifying that U.S. recreational vessels are not subject to part 160 requirements.

This interim rule defines ammonium nitrate and ammonium nitrate based fertilizers, in bulk, to exclude non-liquid residue of ammonium nitrate and residue of ammonium nitrate based fertilizer after discharging saleable cargo. The definition for "Certain dangerous cargo residue (CDC residue)" in § 160.204 now excludes from the NOA reporting requirements ammonium nitrate, in bulk, and 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.

This interim rule updates the electronic submission options by adding the new eNOAD Microsoft InfoPath template as another electronic submission format. This rule also permanently adds an optional method, the Electronic Notice of Arrival and Departure (eNOAD) system, for electronically submitting a NOA to the Coast Guard's NVMC. On January 31, 2005, the Coast Guard replaced its electronic NOA (e-NOA) system with the newer eNOAD system. The new eNOAD has Microsoft InfoPath as a third optional electronic format for submittal. The Coast Guard has worked with the Bureau of Customs and Border Protection (CBP) in developing the eNOAD so that it may be used to meet both the Coast Guard's notice of arrival requirements and CBP's Sea Advance Passenger Information System (APIS) requirements. This will eliminate duplicative reporting. On April 7, 2005, CBP published a final rule concerning the use of eNOAD. 70 FR 17819.

The eNOAD system, available on the NVMC Web site at <http://www.nvmc.uscg.gov>, consists of the following three submission formats:

1. An online web format that can be used to submit NOA information directly to the NVMC;
2. Raw Extensible Markup Language (XML) formatted documents that conform to the eNOAD schema, provided for those interested in creating their own application. This format would allow offline data input and would allow users to draw information from their existing systems to submit, via web service, XML formatted data to comply with NOA requirements; and
3. A new Microsoft InfoPath template, designed for those wanting to input NOA data offline (when not connected to the Internet) for submission later via their Internet connection or as an e-mail attachment to the NVMC.

For more information on any of these formats, please contact the NVMC at [sans@nvmc.uscg.gov](mailto:sans@nvmc.uscg.gov) or by telephone at 1-800-708-9823 or 304-264-2502, or visit the NVMC Web site listed above and click on "FAQ" or "Downloads."

The rule clarifies that the notice of arrival provisions in part 160 do not apply to U.S. recreational vessels. Based on queries from industry and local USCG assets, we have revised the language to clearly state that part 160 does not apply to U.S. recreational vessels under 46 U.S.C 4301. However, this part does apply to foreign recreational vessels. This change does not substantively alter the scope of the applicability in part 160.

Finally, this interim rule also removes the temporary provisions that are in parts 104 and 105 that are no longer needed. The paragraphs being removed are § 104.115(d), § 104.410(g), § 105.115(c), and § 105.410(g).

## VI. Regulatory Analysis

### A. Administrative Procedure Act

Implementation of this rule as an interim rule is based upon the "good cause" exception found under the Administrative Procedure Act (APA) at 5 U.S.C. 553(b)(B). Delaying implementation of this rule to await public notice and comment is unnecessary and contrary to the public interest.

This interim rule adopts changes made by the temporary rule. There was a 90-day post-promulgation comment period for that temporary rule and the Coast Guard received only four comments. The Coast Guard considered those comments when drafting this interim rule and addressed them above.

In addition to adopting changes introduced by the temporary rule that were subject to notice and comment, this interim rule makes only three changes: one change relieves a burden, another clarifies that the rule does not apply to certain vessels, and the third offers an additional option for submitting a notice of arrival. These changes either have no effect on the public, or ease a public burden by relaxing the regulatory requirement or providing more options in the reporting requirement. For these reasons, the Coast Guard finds good cause to publish this interim rule without first publishing an NPRM.

Although we have good cause to publish this rule without prior notice and comment, we value public comments. As a result, we are soliciting public comments on this interim rule and may revise the final rule in response to those comments.

*B. Regulatory Evaluation*

Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This rule has been identified as significant under Executive Order 12866 and has been reviewed by OMB. A Regulatory Assessment is available in the docket as indicated under the "Public Participation and Request for Comments" section of this preamble. A summary of the analysis follows.

As in the temporary rule, the two cost elements in the interim rule are the NOA requirements and the vessel and facility security requirements associated with the Maritime Transportation Security Act of 2002 ("MTSA", Public

Law 107-295, 116 Stat. 2064). Vessels that transport CDC materials already are required to submit NOAs to the Coast Guard. 33 CFR 160.202 and 160.212. Vessels and facilities that carry and handle CDC materials are required to implement security measures to comply with MTSA regulations (Vessel Security Plans, 33 CFR part 104; Facility Security Plans, 33 CFR part 105).

For our analysis of the costs of this interim rule, we have retained the estimate from the Regulatory Assessment conducted for the August 2004 temporary rule of about 9,200 barges that can potentially transport ammonium nitrate and propylene oxide. In addition, we retained from the same Regulatory Assessment an estimate of 50 as the average number of fleeting facilities that can potentially receive these two cargoes and the estimate of approximately 11,400 port calls made by about 2,220 vessels that can potentially carry CDC materials.

The initial cost of the interim rule for the NOA and the security requirements is approximately \$6.8 million (non-discounted), which covers the preparation of NOAs, the security requirements for vessels and facilities, and the installation, operation and maintenance of equipment that may be required to upgrade facility security. The annual cost of the interim rule for the NOA and the security requirements is approximately \$4.9 million (non-discounted).

We estimate the discounted total cost of the interim rule to vessel owners and facilities to range from \$38.9 million to \$45.1 million (2005-2014, seven percent and three percent discount rates, respectively). We estimate that fleeting facilities will incur approximately 88 percent of the discounted total cost (\$34.3 to \$39.8 million). Table 1 presents the discounted total cost of the interim rule by element of compliance.

TABLE 1.—SUMMARY OF DISCOUNTED COSTS OF INTERIM RULE FOR NOA AND FACILITY AND VESSEL SECURITY REQUIREMENTS (2005–2014, THREE AND SEVEN PERCENT DISCOUNT RATES)  
[Cost by Element\* (\$ Millions)]

Increase	Vessels not previously in NOA submittals	Covered by NOA	Vessel security	Facility security	Total PV cost of IR
Seven Percent Discount Rate .....	\$0.062	\$0.35	\$4.1	\$34.3	\$38.9
Three Percent Discount Rate .....	0.072	0.41	4.8	39.8	45.1

\* Totals may not sum due to rounding.

As shown in Table 1, using the seven percent discount rate, we estimate the cost associated with the increase in NOA submittals for vessels that only carry ammonium nitrate or propylene oxide to be \$0.35 million of the total discounted cost of this interim rule. The cost associated with the vessel and facility security requirements is \$38.4 million at a seven percent discount rate (\$4.1 for vessel security + \$34.3 for facility security). Using three percent as the discount rate, we estimated the cost associated with an increase in NOA submittals for vessels that only carry ammonium nitrate or propylene oxide to be \$0.41 million, and the cost associated with the vessel and facility security requirements is \$44.6 million (\$4.8 for vessel security + \$39.8 for facility security).

The qualitative benefits in this interim rule are security-related. By adding ammonium nitrate and propylene oxide to the list of CDCs, society will benefit, as the whereabouts of these two dangerous cargoes are tracked and become known. Furthermore, the revision of the CDC

definition to include ammonium nitrate and propylene oxide, will provide relevant information about an applicable vessel's cargo and the threat that cargo may pose.

This interim rule will provide security standards for fleeting facilities that handle these two dangerous cargoes. These security standards will increase awareness, communication, and surveillance to reduce the likelihood of theft and unlawful access to fleeting facilities that handle these volatile and dangerous cargoes.

Lastly, this interim rule will allow the Coast Guard to provide greater flexibility for NOA submissions by allowing vessel owners and operators three additional electronic means of NOA submittal.

*C. 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. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impacts on small entities.

We expect that this interim rule may have an economic impact on some small entities, as defined by the Small Business Administration. Small entities affected by this rule fall into two groups: (1) Those small entities that currently carry or handle CDCs in addition to ammonium nitrate and ammonium nitrate based fertilizers, in bulk, and propylene oxide, alone or mixed with ethylene oxide, in bulk; and (2) those small entities that currently carry or handle only ammonium nitrate and ammonium nitrate based fertilizers in bulk, and propylene oxide, alone or mixed with ethylene oxide, in bulk.

Small entities in the first category currently submit NOAs and comply with the security measures and planning requirements. These entities will have to submit a greater number of NOAs for the newly covered cargoes. They may have to revise existing security plans and change security measures to cover these cargoes.

Small entities in the second category were affected for the first time by the temporary rule and will continue to comply with NOA requirements in 33 CFR part 160 for shipments of these cargoes and with the security measures and planning requirements in 33 CFR parts 104 and 105.

The Coast Guard is particularly interested in the impact of this rule on small entities. If you are a small entity, we specifically request comments regarding the economic impact of this rule on you.

#### *D. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If you think this interim rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult ENS Joseph Azzata, Office of Port Security Planning and Readiness (G–MPP), Coast Guard, telephone 202–267–0069. 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).

#### *E. Collection of Information*

This interim rule does not require a new collection of information (COI) or change to the two existing OMB-approved collections, 1625–0100 and 1625–0077. The current approval for 1625–0100 expires on March 31, 2008. The approval for 1625–0077 expires July 31, 2008.

#### *F. Executive Order 13132 (Federalism)*

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Coast Guard certifies that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### *G. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (UMRA) (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. UMRA does not require an assessment in the case of an interim rule issued without prior notice and comment. Nevertheless, the Coast Guard does not expect this interim rule to result in such an expenditure. We discuss this interim rule's effects elsewhere in this preamble.

#### *H. Taking of Private Property*

This interim 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.

#### *I. Civil Justice Reform*

This interim 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.

#### *J. Protection of Children*

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

#### *K. Indian Tribal Governments*

This interim 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.

#### *L. Energy Effects*

We have analyzed this interim 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. Although it is a "significant regulatory action" under Executive Order 12866, it 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.

#### *M. 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 interim rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### *N. Environment*

We have analyzed this interim rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraphs (34)(a) and (d), of the Instruction from further environmental documentation. An "Environmental Analysis Check List" and a "Categorical Exclusion Determination" is 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 amends 33 CFR parts 104, 105, and 160 as follows:

#### PART 104—MARITIME SECURITY: VESSELS

■ 1. The authority citation for part 104 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 104.105, remove temporary paragraph (a)(12); reinstate temporarily suspended paragraph (a)(9); and revise paragraph (a)(9) to read as follows:

##### § 104.105 Applicability.

(a) \* \* \*

(9) Barge carrying certain dangerous cargo in bulk or barge that is subject to 46 CFR Chapter I, subchapter I, that is engaged on an international voyage.

\* \* \* \* \*

##### § 104.115 [Amended]

■ 3. In § 104.115, remove temporary paragraph (d).

##### § 104.410 [Amended]

■ 4. In § 104.410, remove temporary paragraph (g).

#### PART 105—MARITIME SECURITY: FACILITIES

■ 5. The authority citation for part 105 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

##### § 105.115 [Amended]

■ 6. In § 105.115, remove temporary paragraph (c).

##### § 105.410 [Amended]

■ 7. In § 105.410, remove temporary paragraph (g).

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

■ 8. The authority citation for part 160 is revised 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.

■ 9. In § 160.202, revise paragraph (b) to read as follows:

##### § 160.202 Applicability.

\* \* \* \* \*

(b) This subpart does not apply to U.S. recreational vessels under 46 U.S.C. 4301 *et seq.*, but does apply to foreign recreational vessels.

\* \* \* \* \*

■ 10. In § 160.204, in the definition for “Certain dangerous cargo (CDC)”, remove temporary paragraphs (9) and (10); in the definition for “Certain dangerous cargo (CDC)”, add new paragraphs (8)(ix) and (9); and add a new definition for “Certain dangerous cargo residue (CDC residue)” in alphabetical order to read as follows:

##### § 160.204 Definitions.

\* \* \* \* \*

##### *Certain dangerous cargo (CDC)*

\* \* \* \* \*

(8) The following bulk liquids:

\* \* \* \* \*

(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 that is not certain dangerous cargo residue (CDC residue).

(ii) Ammonium nitrate based fertilizer listed as a Division 5.1 (oxidizing) material in 49 CFR 172.101 that is not CDC residue.

*Certain dangerous cargo residue (CDC residue)* means 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.

\* \* \* \* \*

■ 11. In § 160.210, remove temporary paragraph (e), reinstate temporarily suspended paragraph (a) and revise paragraph (a) to read as follows:

##### § 160.210 Methods for submitting an NOA.

(a) *Submission to the National Vessel Movement Center (NVMC)*. Except as

provided in paragraphs (b) and (c) of this section, vessels must submit NOA information required by § 160.206 (entries 1 through 9 in Table 160.206) to the NVMC, United States Coast Guard, 408 Coast Guard Drive, Kearneysville, WV 25430, by:

(1) Electronic submission via the electronic Notice of Arrival and Departure (eNOAD) and consisting of the following three formats:

(i) A Web site that can be used to submit NOA information directly to the NVMC, accessible from the NVMC web site at <http://www.nvmc.uscg.gov>;

(ii) Electronic submission of Extensible Markup Language (XML) formatted documents via web service;

(iii) Electronic submission via Microsoft InfoPath; contact the NVMC at [sans@nvmc.uscg.gov](mailto:sans@nvmc.uscg.gov) or by telephone at 1–800–708–9823 or 304–264–2502 for more information;

(2) E-mail at [sans@nvmc.uscg.gov](mailto:sans@nvmc.uscg.gov).

Workbook available at <http://www.nvmc.uscg.gov>;

(3) Fax at 1–800–547–8724 or 304–264–2684. Workbook available at <http://www.nvmc.uscg.gov>; or,

(4) Telephone at 1–800–708–9823 or 304–264–2502.

\* \* \* \* \*

Dated: December 8, 2005.

**Thomas H. Collins,**

*Admiral, U.S. Coast Guard, Commandant.*

[FR Doc. 05–24126 Filed 12–15–05; 8:45 am]

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#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

##### 33 CFR Parts 151 and 153

##### 46 CFR Part 4

[USCG–2000–6927]

**RIN 1625-AA04 (Formerly RIN 2115-AD98)**

##### Reporting Marine Casualties

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending its regulations governing marine casualty reporting requirements by adding “significant harm to the environment” as a reportable marine casualty, and by requiring certain foreign flag vessels, such as oil tankers, to report marine casualties that occur in waters subject to U.S. jurisdiction, but beyond U.S. navigable waters, when those casualties involve material damage affecting the seaworthiness or efficiency of the vessel, or significant