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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-1099]

RIN 1625-AA00

Safety Zone; Bridge Demolition Project; Indiana Harbor Canal, East Chicago, IN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Indiana Harbor Canal in East Chicago, Indiana. This safety zone is intended to restrict vessels from a portion of the Indiana Harbor Canal due to the demolition Project on the Cline Avenue Bridge. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the demolition project.

DATES: This rule is effective from 12:00 p.m. on January 1, 2013 until 12:00 a.m. on February 1, 2013. The Captain of the Port, Sector Lake Michigan, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcasts.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-1099 and are available online by going to www.regulations.gov, inserting USCG-2012-1099 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, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414-747-7148 or Joseph.P.McCollum@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 Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and 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 doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect vessels from the hazards associated with the demolition project on the Cline Avenue Bridge, which are discussed further below.

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**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 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; Public Law 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

During the month of January, 2013 Walsh Construction Company will be conducting demolition on the West span of the Cline Avenue Bridge in East Chicago, IN. The Captain of the Port, Sector Lake Michigan, has determined

that this demolition project will pose a significant risk to public safety and property. Such hazards include loss of life and property in the proximity of explosives, and collisions among vessels and contractors involved in the demolition project.

The Coast Guard established the same safety zone for October 27 and November 10, for November 3 and 10, for December 2 and 8, and once again for December 23, 2012. In November of 2012, the discovery of steel beams within the area of the bridge to be demolished caused a change of schedule in the demolition. On December 2, 2012 the Construction Company conducted demolition on the East span of the bridge as scheduled. However, during this demolition, the East span fell into an unexpected position which required unscheduled clean up and presented a potential danger to passing vessel traffic. On December 23, 2012, high winds halted demolition of the West Span. The U.S. Coast Guard considered the history of unexpected delays associated with this demolition project and the delicate nature of explosive work on a transportation structure.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port, Sector Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of persons and vessels during the demolition project on the Cline Avenue Bridge. This rule is effective from 12:00 p.m. on January 1, 2013 until 12:00 a.m. on February 1, 2013. The Captain of the Port, Sector Lake Michigan, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcasts. The safety zone will encompass all waters of the Indiana Harbor Canal in the vicinity of the Cline Avenue Bridge at approximate position 41°39'4.3" N and 87°27'54.3" W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. 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.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be small and enforced for only 24 hours. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Indiana Harbor Canal during the month of January, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be effective, and thus subject to enforcement, for only a 24 hour period. The U.S. Coast Guard has been in close contact with major waterway users during the entire phase of this project and continues to keep stakeholders informed of waterway conditions and projected operational plans for this demolition project. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the enforcement of the zone, the Captain of the Port or his Representative will issue local Broadcast Notice to Mariners. The Captain of the Port, at his discretion,

may suspend enforcement of the safety zone prior to the end of the enforcement period. Notice of this change will be provided to the public.

3. 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. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. Energy Effects

This action is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

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

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and,

therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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

■ 2. Add § 165.T09–1099 to read as follows:

§ 165.T09–1099 Safety Zone; Bridge Demolition Project, Indiana Harbor Canal, East Chicago, Indiana.

(a) *Location.* The safety zone will encompass all waters of the Indiana Harbor Canal in the vicinity of the Cline Avenue Bridge at approximate position 41°39'4.3" N and 87°27'54.3" W (NAD 83).

(b) *Effective and Enforcement Period.* This rule is effective from 12:00 p.m. on January 1, 2013 until 12:00 a.m. on February 1, 2013. The Captain of the Port, Sector Lake Michigan, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcasts.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

(3) The “on-scene representative” of the Captain of the Port, Sector Lake Michigan is any Coast Guard

commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his on-scene representative.

Dated: December 28, 2012.

J.W. Davenport,

Commander, U.S. Coast Guard, Acting Captain of the Port, Sector Lake Michigan.

[FR Doc. 2013–00514 Filed 1–11–13; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 84

[Docket No. CDC–2012–0009; NIOSH–258]

RIN 0920–AA38

Self-Contained Breathing Apparatus Remaining Service-Life Indicator Performance Requirements

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Final rule.

SUMMARY: On June 25, 2012, the Department of Health and Human Services (HHS) published a notice of proposed rulemaking proposing to update respirator approval standards in response to a petition to amend our regulations, current requirements for self-contained breathing apparatus (SCBA) remaining service-life indicators or warning devices. These indicators are built into a respirator to alert the user that the breathing air provided by the respirator is close to depletion. In this final rule, HHS responds to public comment on the proposed rule and revises the current standard, employed by the National Institute for Occupational Safety and Health (NIOSH) located within the Centers for Disease Control and Prevention (CDC), to allow greater flexibility in the setting of the indicator alarm to ensure that the alarm more effectively meets the different worker protection needs of different work operations. This final rule sets a minimum alarm point at 25 percent of the rated service time and

allows the manufacturer to offer remaining service life set point at a higher value or values appropriate to the purchaser’s use scenario.

DATES: This final rule is effective February 13, 2013.

FOR FURTHER INFORMATION CONTACT:

Jonathan Szalajda, NIOSH National Personal Protective Technology Laboratory (NPPTL), P.O. Box 18070, 626 Cochran Mill Road, Pittsburgh, PA 15236, (412) 386–5200 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The preamble to this final rule is organized as follows:

- I. Public Participation
- II. Background
- III. Summary of Final Rule and Response to Public Comments
- IV. Regulatory Assessment Requirements
 - A. Executive Orders 12866 and 13563
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act
 - D. Small Business Regulatory Enforcement Fairness Act
 - E. Unfunded Mandates Reform Act of 1995
 - F. Executive Order 12988 (Civil Justice)
 - G. Executive Order 13132 (Federalism)
 - H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)
 - I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)
 - J. Plain Writing Act of 2010
- V. Final Rule

I. Public Participation

Interested persons or organizations were invited to participate in this rulemaking by submitting written views, arguments, recommendations, and data. Comments were invited on any topic related to this proposal, but comments were specifically solicited regarding whether: (1) 25 percent of the rated service time of the respirator is an appropriate default setting for the indicator to alarm; (2) the rule should specify an upper limit that would require that the indicator be set to alarm no earlier than a set amount, such as 50 percent of rated service time; and (3) there are possible emergency or rescue scenarios for which one would want an indicator to alarm at 50 percent or more of the rated service time?

HHS received 8 submissions from the public in response to this rulemaking. Commenters represented local fire departments, manufacturers of self-contained breathing apparatus (SCBA) used in the fire service, and a firefighters’ union. A summary of comments and the HHS response are found in Section III, below.