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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[USCG-2013-0760]

RIN 1625-AA11

#### Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District; Extension of Stay (Suspension)

**AGENCY:** Coast Guard, DHS.  
**ACTION:** Temporary final rule.

**SUMMARY:** The Commander, Eighth Coast Guard District is extending the previously published stay (suspension) of reporting requirements under the Regulated Navigation Area (RNA) established by 33 CFR 165.830 for barges loaded with certain dangerous cargoes (CDC barges) in the inland rivers of the Eighth Coast Guard District. This extension is necessary because the Coast Guard continues to analyze future reporting needs and evaluate possible changes in CDC reporting requirements. This extension of the suspension of the CDC reporting requirements in no way relieves towing vessel operators and fleeting area managers responsible for CDC barges in the RNA from their dangerous cargo or vessel arrival and movement reporting obligations currently in effect under other regulations or placed into effect under appropriate Coast Guard authority.

**DATES:** Effective midnight September 30, 2013, 33 CFR 165.830(d), (f), (g), and (h) are stayed until midnight December 31, 2015.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2013-0760. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this temporary rule, call or email LT Jason Doherty, Coast Guard; telephone 504-671-2266, email: [Jason.C.Doherty@uscg.mil](mailto:Jason.C.Doherty@uscg.mil). If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

CDC Certain Dangerous Cargo  
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)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable, unnecessary, and contrary to the public interest.

The contract for the CDC barge reporting system at the Inland River Vessel Movement Center (IRVMC) expired in January 2011. Due to the expiration of this contract, the Coast Guard is not able to receive and process reports. Therefore in late December 2010, the Coast Guard decided to suspend the IRVMC reporting requirements for a two-year period. This suspension was published in the **Federal Register** at 76 FR 1360 (January 10, 2011), and was due to expire on January 15, 2013. On January 2, 2013, the Coast Guard extended this suspension until midnight, September 30, 2013 (78 FR 25).

At this time, there is no plan to renew the contract for the CDC barge reporting system, and the Coast Guard is still considering whether to enter into a new contract and lift the suspension, modify the reporting requirements in the RNA, or repeal the RNA completely. Additionally, the Coast Guard has proposed a rule that would require vessels in this area to install and carry Automatic Identification Systems (AIS). See Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System notice of proposed rulemaking (73 FR 76295, December 16, 2008). These requirements, if imposed,

may provide a suitable alternative to the stayed reporting requirements of 33 CFR 165.830. Therefore, an additional extension of the stay is necessary while the Coast Guard continues to evaluate these options.

We believe prior notice and comment is unnecessary because we expect the affected public will have no objection to the extension of the temporary suspension of regulatory requirements. This suspension has been in place since January 2011, and the Coast Guard has received no public comment or objection regarding the suspension. Prior notice and comment is also contrary to the public interest because there is no public purpose served by continuing to require reports when there is no mechanism for receiving or processing those reports.

Under 5 U.S.C. 553(d)(1), a substantive rule that relieves a restriction may be made effective less than 30 days after publication. This temporary final rule, suspending the reporting requirements and thereby relieving the regulatory restriction on towing vessel operators and fleeting area managers provided by 33 CFR 165.830, takes effect at midnight on September 30, 2013, less than 30 days after publication.

##### B. Basis and Purpose

The legal basis for this rulemaking is the Coast Guard's authority to establish regulated navigation areas, under 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Public Law 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1. An RNA is a water area within a defined boundary for which regulations for vessels navigating within the area have been established, to control vessel traffic in a place determined to have hazardous conditions. See 33 CFR 165.10; Commandant Instruction Manual M16704.3A, 1-6.

The purpose of this temporary final rule is to extend the previously published suspension of the reporting requirements for CDC barges imposed by the RNA created in 33 CFR 165.830. This temporary rule relieves the towing vessel operators and fleeting area managers responsible for CDC barges from the reporting requirements for an additional 2-year period.

##### C. Discussion of the Final Rule

During the extended period for the suspension of reporting requirements, towing vessel operators and fleeting area managers responsible for CDC barges will be relieved of their obligation to

report their CDCs under 33 CFR 165.830(d), (f), (g), and (h). This suspension in no way relieves towing vessel operators and fleeting area managers responsible for CDC barges from their dangerous cargo or vessel arrival and movement reporting obligations currently in effect under other regulations or placed into effect under appropriate Coast Guard authority. This stay is extended until December 31, 2015.

#### D. Regulatory Analyses

We developed this temporary final rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 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 that Order. This rule is temporary and limited in nature by extending the previously published suspension of CDC barge reporting requirements for an additional 2-year period, creating no undue delay to vessel traffic in the regulated area.

##### 2. 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 term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some which may be small entities: Owners or operators of CDC barges intending to transit the Inland Rivers in the Eighth Coast Guard District during this two-year period. This rule will not have a significant economic impact on those entities or a substantial number of any small entities because this rule suspends reporting requirements for two years.

##### 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**, 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 calls for no 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 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.

##### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

##### 7. Unfunded Mandates Reform Act

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

aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

##### 8. 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.

##### 9. 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.

##### 10. 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.

##### 11. 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.

##### 12. 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.

##### 13. Technical Standards

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

##### 14. 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 which do not

individually or cumulatively have a significant effect on the human environment. This rule involves a 2-year extension of a previously published suspension of reporting requirements established for CDC barges transiting the inland rivers of the Eighth Coast Guard District. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. Under figure 2–1, paragraph (34)(g), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

#### § 165.830 [Amended]

■ 2. Amend 33 CFR 165.830 by staying paragraphs (d), (f), (g), and (h) from midnight September 30, 2013 to midnight December 31, 2015.

Dated: September 17, 2013.

**Kevin S. Cook,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

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#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2013–0196]

RIN 1625–AA00

#### Safety Zone; Old Mormon Slough, Stockton, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone at: McCormick & Baxter superfund site, Old Mormon Slough, Stockton, CA. This safety zone

supports ongoing efforts by the Environmental Protection Agency (EPA) to decontaminate soil, groundwater, and sediment in Old Mormon Slough and the surrounding basin. This safety zone restricts vessels from entering Old Mormon Slough and disturbing the existing sediment cap needed for site decontamination. This safety zone reduces human health and environmental risks associated with clean up efforts at McCormick & Baxter superfund site.

**DATES:** This rule is effective October 31, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2013–0196]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Junior Grade Blake Morris, Waterways Management Division, U.S. Coast Guard; telephone 510–437–3801, email [Blake.J.Morris@uscg.mil](mailto:Blake.J.Morris@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

##### A. Regulatory History and Information

On July 17, 2013, we published a Notice of Proposed Rulemaking (NPRM) entitled Safety Zones: Old Mormon Slough, Stockton, CA, in the **Federal Register** (76 FR 17102). We received no comments on the NPRM, or a request for public meeting. A public meeting was not held.

##### B. Basis and Purpose

The Coast Guard is conducting this rulemaking under the authority of 33 U.S.C. 1231.

The purpose of this rule is to establish a safety zone in Old Mormon Slough to further the efforts of the EPA to rehabilitate soil, sediment, and ground water from contaminates of the McCormick & Baxter Creosoting Company. The McCormick & Baxter Creosoting Co. site is a 29-acre former wood-preserving facility located in an

industrial area near the Port of Stockton. Old Mormon Slough, which is connected to the Stockton Deepwater Channel, borders the site on the north. Except for an 8-acre portion of the site owned by Southern Pacific Railroad Company, McCormick & Baxter owns the entire property. From 1942 to 1990, McCormick & Baxter treated utility poles and railroad ties with creosote, pentachlorophenol (PCP), and compounds of arsenic, chromium and copper. Wood treating chemicals were stored in tanks, and oily waste generated by the wood-treatment process was stored in unlined ponds and concrete tanks on the site. The site came to the attention of state agencies in 1977 when a fish kill in New Mormon Slough and the Stockton Deepwater Channel was attributed to a release of PCP-contaminated storm water runoff from the McCormick & Baxter facility. In 1978, McCormick & Baxter constructed a perimeter dike to prevent storm water runoff from the site and installed two storm water collection ponds. The unlined oily waste ponds were closed in 1981. Sampling has shown that soils throughout the site and groundwater in the shallow aquifer beneath the site are contaminated with PCP, various constituents of creosote, dioxin (a contaminant in industrial-grade PCP) and metals. Soil contamination extends to greater than 40 feet below ground surface (BGS) in the central processing area of the site. Site investigations indicate that the shallow aquifer (0–200 ft BGS) is connected with the deeper aquifer, which is a drinking water source. However, no drinking water supplies are currently threatened by site-related contamination. Approximately 105,000 people live and work within 4 miles of the site. Sediment in Old Mormon Slough adjacent to the site is also contaminated, primarily with polycyclic aromatic hydrocarbons (PAHs) and dioxin. Site-related contaminants have been detected in fish caught in the vicinity of the site. People fish in the Stockton Channel and in Old Mormon Slough, although the McCormick & Baxter site is fenced and posted with warning signs.

Previous testing conducted by the EPA found soils and groundwater were contaminated with PCP, dioxin, PAHs, which are constituents of creosote, arsenic, chromium, and copper. In addition, non-aqueous phase liquids (NAPLs) are widespread beneath the site. Sediment in Old Mormon Slough adjacent to the site is also contaminated, primarily with PAHs and dioxin. Individuals who accidentally ingest or