Issued in Renton, Washington, on August 7, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 168

[Docket No. USCG–2006–23556, Formerly CGD91–202a]

RIN 1625–AA10, Formerly RIN 2115–AE56

Escort Vessels in Certain U.S. Waters

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Coast Guard is withdrawing its proposed rule concerning the extension of escort vessel requirements in place for single hulled oil tankers in Prince William Sound, Alaska, and Puget Sound, Washington, to other U.S. waters and to other types of vessels. The Coast Guard has concluded that a rulemaking of national scope, such as this, is neither necessary nor advisable given the existence of more locally oriented options for considering escort vessel requirements.

DATES: The proposed rule is withdrawn on August 18, 2009.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room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,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2006–23556 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call Lieutenant Bryson Spangler at (202) 372–1357. If you have questions on viewing material in the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

The Coast Guard has broad authority under the Ports and Waterways Safety Act (PWSA, 33 U.S.C. 1221 *et seq.*) to control vessel traffic in navigable waters of the United States. In addition, section 4116(c) of the Oil Pollution Act of 1990 (OPA 90, Pub. L. 101–380) required the Coast Guard to initiate a rulemaking ''to define those areas [including Prince William Sound, Alaska and Puget Sound, Washington] on which single hulled tankers over 5,000 gross tons transporting oil in bulk shall be escorted by at least two towing vessels * * * or other vessels considered appropriate by the Secretary.'' The present rulemaking was opened in response to the OPA 90 § 4116(c) requirement and also in order to consider escort vessel requirements under PWSA.

This rulemaking was split off from another rulemaking in 1993; for the history of the parent rulemaking see its final rule (70 FR 55728, Sep. 23, 2005). For this rulemaking, we previously published an advance notice of proposed rulemaking (ANPRM; 58 FR 25766, Apr. 27, 1993), a notice of meeting and request for comments (59 FR 65741, Dec. 21, 1994), and a notice of withdrawal and request for comments (73 FR 20232, Apr. 15, 2008). Further background information appears in the April 2008 notice.

The April 2008 notice proposed the withdrawal of this rulemaking, based on our tentative conclusion that nationwide Coast Guard action to extend statutory escort vessel requirements is not advisable, and that escort vessel requirements for waters other than Puget and Prince William Sounds, or for vessels other than single hulled oil tankers, should be imposed only after local level Coast Guard consideration of specific local needs, conditions, and available alternatives. We asked for public comment on the proposed withdrawal.

Discussion of Comments

In response to our April 2008 notice, we received 17 letters containing 55 comments. We thank those who commented for their interest.

Twelve comments concerned the need for specific action in Cook Inlet, Alaska, or other local waters. We acknowledge these comments, but restate our position that the need for escort vessels or other protective measures in specific waters should be assessed under PWSA. Therefore, requests for protective measures in specific waters should be addressed to the local Coast Guard sector commander. A list of Coast Guard sectors appears, as part of a comprehensive list of Coast Guard units, at *http://www.uscg.mil/top/units/.*

Five comments asserted that we have not satisfied our obligations under § 4116(c) of OPA 90, or that withdrawal of the rulemaking at this stage would violate OPA 90. We do not agree that further action is required under OPA 90 or that withdrawal of this rulemaking would violate that act. In 2000, the United States Court of Appeals for the District of Columbia Circuit stated that ''it is not at all obvious whether § 4116(c) actually forces the Coast Guard itself to come up with the names of, and instigate rulemaking regarding possible 'other waters,'" and held that that section ''does not create a sufficiently clear duty regarding 'other waters' to merit mandamus relief.'' *In re Bluewater Network,* 234 F.3d 1305 at 1306 (DC Cir. 2000). Nevertheless, the Coast Guard sought to comply with any possible requirement for regulatory action under § 4116(c) by initiating this rulemaking. After considering public comment on our 1993 ANPRM, we concluded in 1994 that ''there is no need to prescribe an absolute minimum of two escort vessels'' in other waters, and that ''designating any other U.S. waters for escorting requirements will be accomplished using the Coast Guard's authority under * * * PWSA, which allows greater flexibility concerning the ships to be escorted and the number of escort vessels to be required.'' 59 FR at 65743. The Coast Guard stands by its conclusion that § 4116(c) of OPA 90 requires no further consideration under this rulemaking.

Nine comments criticized our proposed reliance on local assessments under PWSA. These comments pointed to alleged flaws in the local assessment process or argued for national standards and timelines to guide local assessments, and most stated that PWSA is not an adequate substitute for continuing this rulemaking under OPA 90. Later in this document, we discuss the Coast Guard PWSA assessment process and provide links to additional information. The PWSA assessment process provides a uniform methodology that can be applied across the nation, and we are always open to considering specific ideas for improving it.

To address two specific concerns that critics of the PWSA process raised: First, the process generally allows for more public input than some commenters realize. It provides a structured way to make sure all significant local stakeholders are represented and participate. Assessment workshops are locally publicized, open to the public, and allow for public

comment. Second, it is true that PWSA assessments may not lead to immediate action, because the implementation of assessment recommendations may carry its own procedural requirements. However, those additional procedural requirements serve public purposes of their own, and compliance with those requirements within the focused context of a specific body of water may take less time than compliance on a national basis. For example, it could be quicker and easier to prepare National Environmental Policy Act documentation for a specific bay or inlet than it would be to do so for all U.S. bays or inlets. For these reasons, we conclude that the PWSA process is an adequate substitute for analysis under OPA 90.

Two comments disagreed with our notice's tentative conclusion that national scope rulemaking is neither appropriate nor beneficial, and suggested that established OPA 90 performance standards, and operational requirements under 33 CFR 168.50, provide a suitable framework for national action. We do not agree. OPA 90 mandated escort vessel protection for Puget Sound and Prince William Sound, and 33 CFR 168.40 makes 33 CFR 168.50 applicable only to those waters. As previously discussed, we determined in 1994 that there was no need to extend those requirements to other waters. In 1994, we also noted several limitations or potential problems with applying OPA 90 standards to other waters, where those standards ''may significantly increase costs without any commensurate increase in environmental protection'' and could even be counterproductive. 59 FR at 65742.

Two comments cited 46 U.S.C. 3703(a)(5) as requiring the Coast Guard to regulate vessel maneuvering and stopping ability, and other features that reduce the possibility of marine casualties, and contended that this statute clearly contemplates a nationwide rule regarding the use of escort vessels. The cited statute does not require the use of escort vessels, and is implemented in pertinent part by Coast Guard navigation safety regulations in 33 CFR Part 164.

Five comments took issue with our notice's reference to 33 CFR 1.05–20, which provides for citizen petitions for Coast Guard rulemaking. These comments said that Congress gave the Coast Guard responsibility for investigating escort vessel needs, and that it is inappropriate for the Coast Guard to shift that responsibility to the public. We do not mean to imply that 33 CFR 1.05–20 transfers any responsibilities from the Coast Guard to the public. However, it does provide a way for people to direct the Coast Guard's attention to specific issues and to hear from us on how we intend to respond. If we agree that the petition merits regulatory action, we will initiate that action, and if we do not agree, we will inform the petitioner and maintain the response in a public file open for inspection.

Three comments criticized our notice for implying that the proposed withdrawal reflects Coast Guard resource constraints, suggesting that we approach Congress for additional resources or draw on Oil Spill Liability Trust Fund money to overcome those constraints. Our notice stated that a ''nationwide risk assessment program may be a good idea but it would be very expensive and time-consuming to implement.'' However, our reasons for not pursuing such a program were broader than its expense or difficulty. Rather, we noted that a nationwide risk assessment program ''would be hard to validate, making its usefulness questionable,'' and that it would be a ''conceptual exercise'' relative to assessments of the need for ''specific resources in specific waters.'' These statements were in line with our 1994 conclusion that there was no need to continue national assessments under OPA 90 and that PWSA would be the basis for any further Coast Guard assessment of protective measures in specific waters.

Seven comments requested that, if we proceed with withdrawal, we expressly state that this action would not preempt States from imposing their own escort vessel requirements. The Coast Guard's position is that States are preempted from imposing their own escort vessel requirements in certain waters where we have either established or declined to establish special navigation or other requirements based on our assessment of the conditions in those waters. However, the withdrawal of this rulemaking, in and of itself, is not intended to have a preemptive or non-preemptive effect, one way or the other, on any particular State escort requirement, as it is not an assessment of the conditions of any specific waters.

One comment offered numerous criteria that could guide local Coast Guard units in determining which waters should have escort vessel requirements, and numerous suggestions for how local assessments should be conducted. As we discuss later in this document, our current PWSA assessment methodology has been professionally developed, tested, and refined, and provides a satisfactory uniform tool for assessing local needs and safety control measures.

Two comments called for extending escort vessel requirements to other cargos, or based on specific factors, which were discussed in those comments. These comments do not affect our conclusion that this particular rulemaking should be withdrawn, but they could have relevance in any future assessment of the needs of specific waters. If you think certain cargos or factors need to be addressed with protective measures for a specific waterway, please contact your local Coast Guard sector commander. A list of Coast Guard sectors appears, as part of a comprehensive list of Coast Guard units, at *http://www.uscg.mil/top/units/*.

One comment urged us to give shippers an early indication that further escort vessel requirements are contemplated, so that they can design multipurpose escort vessels to meet multiple regulatory requirements. As part of the rulemaking process the Coast Guard evaluates and solicits comments on the most efficient manner of implementation and would do the same with any new vessel escort requirements.

One comment criticized the proposed withdrawal as part of a disturbing Coast Guard trend to leave rulemakings unfinished and environmental and safety objectives unmet. The Coast Guard does not agree with this characterization. We will not impose new regulations without adequate evidence that they are warranted, especially if they have a national scope. In this case, we have concluded that this rulemaking should be withdrawn, and that the needs of specific waters should be assessed under PWSA. Environmental protection of local waters and the overall marine safety of those waters are best placed in the hands of local Coast Guard officials, who can best provide oversight and vigilance in these matters.

Two comments requested additional documentation of the rationale for our April 2008 notice, and one of these requested an extension of that notice's public comment period in order to provide time to review the additional documentation. There is no additional documentation of any relevance. The rationale for withdrawal of this rulemaking is fully provided in the April 2008 notice and in previous notices published under this rulemaking, and we do not think an extension of the public comment period would provide any public benefit.

One comment asked for a response to a 1995 rulemaking petition regarding

the expansion of escort vessel requirements in the western region of the Strait of Juan de Fuca, and asked for the response to take into account all relevant studies conducted since 1995. We have been unable to locate any documentation of such a petition, but will entertain a new petition submitted under 33 CFR 1.05–20. Petitions should be addressed to the Executive Secretary, Marine Safety and Security Council (CG–0943), U.S. Coast Guard, 2100 Second St., SW., Stop 7121, Washington, DC 20593–7121.

One comment from the Makah Tribal Council, an Indian Tribe, requested government-to-government consultation with the Coast Guard prior to withdrawal. That consultation took place on April 23, 2009, and is documented as Document ID USCG–2006–23556–0050.1 in the docket for this rulemaking.

One comment expressed support for our proposed withdrawal.

PWSA Assessments

Under PWSA, the principal Coast Guard tool for assessing and controlling risks in local waterways is the Ports and Waterways Safety Assessment (PAWSA). Since 1998, the Coast Guard has conducted almost 40 PAWSAs for waterways around the country, and in a typical year there is funding for three additional PAWSAs, with priority given to waterways likely to be at greatest risk.

PAWSAs employ a uniform methodology that was developed by academic experts and refined through four years of workshops involving stakeholders from industry, port authorities, and the environmental community among others. The goal, throughout, was to develop a process that could evaluate risk and work toward long term solutions, tailored to local circumstances, that is both cost effective and meets the needs of waterway users and stakeholders.

The PAWSA methodology provides a formal structure for identifying risk factors and evaluating potential mitigation measures through expert inputs. Each PAWSA is conducted in a public workshop setting that brings together local waterway users, environmentalists, public safety figures, economic experts, and other local stakeholders. The methodology supplies a weighting tool to take into account the relative expertise of each workshop participant. During the workshop, participants discuss and assign numerical ratings to the local waterway's safety risks in the following areas:

- Quality of local vessels and crews;
- Number of vessels and their interaction with each other;
- Winds, currents, and weather;
- Physical properties affecting vessel maneuverability;
- Likely immediate impacts of a waterway accident, such as a collision or hazardous material spill; and
- Possible long term vessel traffic, economic, or environmental consequences of a waterway accident.

Security risks are not included in the PAWSA risk analysis because they are analyzed separately by the Coast Guard through port vulnerability and security assessments. PAWSA workshop participants also discuss and assign numerical ratings to navigational systems, emergency response capabilities, and other measures currently in place, or that could be adopted, to control each risk.

PAWSA computer software uses input from the workshop participants to generate risk assessments in several categories, and to assess the effectiveness of current or potential control measures. Workshop participants then review the computer-generated results, and can revise their input if they feel their initial ratings produced a false picture of local conditions.

You can get more information about PAWSAs, including contact information for the Coast Guard's Office of Waterways Management PAWSA Project Officer, at *http://www.navcen.uscg.gov/mwv/projects/pawsa/PAWSA_home.htm,* or read reports on any of the PAWSAs conducted to date at *http://www.navcen.uscg.gov/mwv/projects/pawsa/PAWSA_FinalReports.htm.* If you have comments or suggestions about PAWSAs generally, contact the Project Officer. If you think a specific waterway should be the focus of a future PAWSA, contact the Project Officer, or contact the relevant Coast Guard sector commander. In your recommendation, you should address the bulleted local waterway safety risks cited earlier in this discussion, as fully and specifically as possible. A list of Coast Guard sectors, as part of a comprehensive list of Coast Guard units, can be found at *http://www.uscg.mil/top/units/.*

Withdrawal

The Coast Guard withdraws this rulemaking, which concerns the extension, to other U.S. waters and to other types of vessels, of those escort vessel requirements that apply to single hulled oil tankers in Prince William Sound, Alaska, and Puget Sound, Washington. We have concluded that a rulemaking of national scope under the authority of OPA 90 is neither necessary nor advisable given the availability of PWSA assessments of the needs, in specific local waters, for escort vessels or other protective measures.

Authority

We issue this notice of withdrawal under the authority of the Ports and Waterways Safety Act, 33 U.S.C. 1221 *et seq.,* and section 4116(c) of the Oil Pollution Act of 1990, Public Law 101–380.

Dated: August 11, 2009.

F. J. Sturm,

Acting Director, Commercial Regulations and Standards, U.S. Coast Guard.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0294; FRL–8944–8]

Approval of Implementation Plans of Michigan: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Michigan abbreviated State Implementation Plan (SIP) submitted on July 16, 2007 and on June 10, 2009. Together, the revisions address the requirements for an abbreviated Clean Air Interstate Rule (CAIR) SIP. EPA is also providing notice that the December 20, 2007 conditional approval of the July 16, 2007 submittal automatically converted to a disapproval.

DATES: Comments must be received on or before September 17, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0294, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Deliveries are only