

Dated: April 25, 2010.

G.T. Blore,

Rear Admiral, U.S. Coast Guard Commander,
Thirteenth Coast Guard District.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2010-0333]

RIN 1625-AA00

Safety Zone; Marathon Oil Refinery Construction, Rouge River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Rouge River, Detroit, Michigan. This zone is intended to restrict vessels from a portion of the Rouge River during the Marathon Oil Refinery Construction project. This temporary safety zone is necessary to protect mariners and construction personnel from the hazards associated with moving large pieces of equipment in a high traffic maritime environment.

DATES: *Effective Date:* This rule is effective in the CFR from May 18, 2010 until 7 p.m. on November 30, 2010. This rule is effective with actual notice for purposes of enforcement beginning 7 a.m. on May 1, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0333 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0333 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail CDR Joseph Snowden, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568-9508, e-mail Joseph.H.Snowden@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because delaying this rule would be contrary to the public interest of ensuring the safety of vessels during the construction, and immediate action is necessary to prevent possible loss of life and property. The Coast Guard has not received any complaints or negative comments previously with regard to events of this type and duration.

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**. Delaying this rule would be contrary to the public interest of ensuring the safety of vessels during the construction, and immediate action is necessary to prevent possible loss of life and property.

Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels from hazards associated with construction projects. Based on accidents that have occurred in other Captain of the Port zones and the dangerous nature of large construction projects, the Captain of the Port Detroit has determined construction projects in close proximity to watercraft pose significant risk to public safety and property. The likely combination of large vessels, congested waterways, and movement of large pieces of equipment could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the construction project will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of mariners and construction personnel during the setup and offloading of equipment in conjunction with the Marathon Oil Refinery Construction project. The offloading of equipment will occur

between 7 a.m. on May 1, 2010, and 7 p.m. on November 30, 2010. Specifically, offloading operations will occur between 7 a.m. and 7 p.m. daily on multiple dates, to be determined, during the effective period of this regulation. The public will be notified of the specific enforcement dates as soon as practicable through the publication of a Notice of Enforcement and by Broadcast Notice to Mariners.

The temporary safety zone will encompass all waters of the Rouge River, Detroit, MI, from the Dix Ave. bridge to the north end of Fordson Island, bound by a line starting from a point on land on the south shore of the Rouge River at position 42°17.8' N; 083°9.1' W, continuing southeast to a point on land at position 42°17.7' N; 083°9.0' W, across to the north side of the river to a point on land at position 42°17.8' N; 083°8.9' W, along the shore northwest to a point on land at position 42°17.8' N; 083°9.0' W, continuing back southwest to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the Designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

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.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this regulation will restrict access to the area, the effect of the rule will not be significant because: The minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

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.

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 may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the Rouge River near Detroit, MI between 7 a.m. on May 1, 2010 and 7 p.m. on November 30, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced for 12 hours on each of the days during the effective dates of this temporary final rule. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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.

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).

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.

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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

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.

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.

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.

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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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 is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction because it involves the establishment of a temporary safety zone to protect the public from construction operations. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping 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, 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.T09–0333 to read as follows:

§ 165.T09–0333 Safety zone; Marathon Oil Refinery Construction, Rouge River, Detroit, MI

(a) *Location.* The following area is a temporary safety zone: all U.S. waters of the Rouge River, Detroit, MI, bound by a line starting from a point on land on the south shore of the Rouge River at position 42°17.8' N; 083° 9.1' W, continuing southeast to a point on land at position 42°17.7' N; 083° 9.0' W, across to the north side of the river to a point on land at position 42°17.8' N; 083°8.9' W, along the shore northwest to a point on land at position 42°17.8' N; 083°9.0' W, continuing back southwest to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83). This safety zone effectively covers all of the Rouge River from the Dix Ave. bridge to the north end of Fordson Island.

(b) *Effective Period.* This regulation is effective from 7 a.m. on May 1, 2010 to 7 p.m. on November 30, 2010. This rule will be enforced from 7 a.m. to 7 p.m. daily, on multiple dates to be determined during the effective period. The public will be notified of the specific enforcement dates as soon as practicable through the publication of a Notice of Enforcement and by Broadcast Notice to Mariners.

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

(3) The “on-scene representative” of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either

a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

(5) 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 or his on-scene representative.

Dated: April 30, 2010.

E.J. Marohn,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2003–0064; FRL–9150–5]

RIN 2060–AP80

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delay of effective date.

SUMMARY: EPA is delaying the effective date of the final rule titled “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation” under the authority of the Administrative Procedure Act (APA) section 705 until the proceeding for judicial review of this rule is completed or EPA completes the reconsideration of the rule. This final rule for “aggregation,” which EPA published in the **Federal Register** on January 15, 2009, is subject to a petition for review and has not become effective.

DATES: The effective date of FR Doc. E9–815, published in the **Federal Register** on January 15, 2009 (74 FR 2376), and delayed on February 13, 2009 (74 FR 7284) and May 14, 2009 (74 FR 22693), which was May 18, 2010, is further delayed until such time as the proceeding for judicial review of this document is completed. The EPA will publish a document in the **Federal Register** announcing the effective date once the delay is no longer necessary.

ADDRESSES: *Docket:* The final rule, the petition for reconsideration, and all other documents in the record for the rulemaking are in Docket ID. No. EPA–

HQ–OAR–2003–0064. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Svendsgaard, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–2380, fax number (919) 541–5509, e-mail address: svendsgaard.dave@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 15, 2009, the EPA (“we”) issued a final rule amending the PSD and nonattainment NSR regulations that implement the definition of “modification” in Clean Air Act section 111(a)(4). The amendments addressed when a source must combine (“aggregate”) nominally-separate physical changes and changes in the method of operation for the purpose of determining whether they are a single change under NSR and result in a significant emissions increase. The amendments retained the existing rule language for aggregation but interpreted that rule text to mean that sources and permitting authorities should combine emissions when activities are “substantially related.” It also adopted a rebuttable presumption that activities at a plant can be presumed not to be substantially related if they occur 3 or more years apart. Collectively, this rulemaking is known as the “NSR Aggregation Amendments.” For further information on the NSR Aggregation Amendments, see 74 FR 2376 (January 15, 2009).

The NSR Aggregation Amendments have had their effectiveness delayed by two actions published in the **Federal Register**. See 74 FR 7284 (February 13, 2009) and 74 FR 22693 (May 14, 2009).