

not intended, particularly in cases in which the excess losses would have been properly used to offset income in a closed year and the use of such losses in the closed year would make losses that were used in the closed year available to offset income in an open year. Accordingly, one commentator has asked that relief from the deemed waiver rule be afforded in these cases. These temporary regulations provide that relief by making the application of the deemed waiver rule optional. This relief is applicable on and after August 18, 2004. In addition, groups may apply this relief before August 18, 2004, and on and after March 7, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. These temporary regulations are necessary to provide taxpayers with immediate guidance regarding the treatment of certain subsidiary losses. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(3). For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Sean McKeever, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1502–32T is amended by revising paragraph (b)(4)(v)(A) and (C).

§ 1.1502–32T Investment adjustments (temporary).

* * * * *

(b) * * *

(4) * * *

(v) *Special rule for loss carryovers of a subsidiary acquired in a transaction for which an election under § 1.1502–20T(i)(2) is made—*(A) *Expired losses.* Notwithstanding § 1.1502–32(b)(4)(iv), unless a group otherwise chooses, to the extent that S's loss carryovers are increased by reason of an election under § 1.1502–20T(i)(2) and such loss carryovers expire or would have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv) and at all times thereafter, the group will be deemed to have made an election under § 1.1502–32(b)(4) to treat all of such loss carryovers as expiring for all Federal income tax purposes immediately before S became a member of the consolidated group. A group may choose not to apply the rule of the previous sentence to all of such loss carryovers of S by taking a position on an original or amended tax return for each relevant taxable year that is consistent with having made such choice.

* * * * *

(C) *Effective date.* Paragraph (b)(4)(v)(A) of this section is applicable on and after August 18, 2004. Groups, however, may apply paragraph (b)(4)(v)(A) of this section before August 18, 2004, and on and after March 7, 2002. Otherwise, see paragraph (b)(4)(v)(A) of § 1.1502–32. Paragraph (b)(4)(v)(B) of this section is applicable on and after March 7, 2002.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: July 29, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–18789 Filed 8–17–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 104, 105, and 160

[USCG–2003–16688]

RIN 1625–AA82

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

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is changing the definition of certain dangerous cargo to include ammonium nitrate and certain ammonium nitrate based fertilizers, in bulk, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk. This change is necessary to promote maritime safety and security and facilitate the uninterrupted flow of commerce by increasing the Coast Guard's ability to maintain awareness of these cargoes. We are also adding two options for vessels to submit electronically notices of arrival.

DATES: This temporary final rule is effective from September 17, 2004, through March 20, 2006.

Comments and related material must reach the Docket Management Facility on or before November 16, 2004. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before November 16, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2003–16688 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.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Junior Grade Kimberly Andersen, G–MPP, Coast Guard, telephone 202–267–2562. If you have

questions about submitting notices of arrival in extensible markup language format, please contact Lieutenant Thomas Philbrick of the Coast Guard's National Vessel Movement Center by electronic mail at Tom.Philbrick@uscg.dhs.gov. If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202-366-0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

Although we did not publish a notice of proposed rulemaking, we encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to the public docket for this rulemaking.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG-2003-16688), 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 rule in view of them.

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 select "simple search" using the last five digits of the docket number (16688). You may also 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.

Privacy Act: Anyone can search 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>.

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rulemaking. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would delay the implementation of this regulation, risking public safety and security.

The Coast Guard has participated in briefings with the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Office of Naval Intelligence, and the Department of Transportation that provided new information about the explosive properties of ammonium nitrate and ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101. The Coast Guard has also collected more information regarding the quantities of propylene oxide shipped on the nation's inland waterways. This new, more accurate information raises additional concerns about the dangers associated with handling and transportation of these chemicals.

Background and Purpose

The U.S. Coast Guard published the final rule for notification of arrival (NOA) in U.S. ports on February 28, 2003 (68 FR 9537). That final rule made permanent the requirement to submit NOAs 96 hours in advance of arrival to a centralized location, the National Vessel Movement Center (NVMC). In addition, it required specific crew and passenger information and incorporated changes to the CDC definition in 33 CFR 160.204. Since publication of the February 2003 final rule, we have developed additional concerns about potential security hazards of bulk ammonium nitrate and propylene oxide cargoes transported on U.S. waters.

The Coast Guard formally requested input from the Towing Safety Advisory Committee (TSAC) on September 10, 2003, and from the Chemical Transportation Advisory Committee (CTAC) on October 23, 2003. CTAC and TSAC were asked to advise the Coast Guard on the anticipated impact to their respective industries if bulk, solid ammonium nitrate and ammonium nitrate fertilizers that are classified as 5.1 oxidizers were added to our CDC definition. CTAC and TSAC formed a joint working group on this issue. Although both committees accepted the working group minutes, the advisory committees submitted separate written reports to the Coast Guard on January 28, 2004. Both committees

acknowledged the security hazards associated with forms of ammonium nitrate and agreed that additional security measures were warranted. The Coast Guard will continue to work closely with both of these committees on cargo security issues.

In response to these concerns, we are adding ammonium nitrate and ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, to the list of CDCs for which a notice of arrival is required.

Also, since the February 2003 final rule was published, the Coast Guard has developed two new means for electronic submittal of NOAs to the Coast Guard's NVMC. We are making these options available to vessel owners and operators in this rule.

Discussion of Rule

Notification of Arrival for CDC: The Coast Guard is imposing NOA requirements in 33 CFR part 160 for shipments of two additional types of cargo added to the definition of CDC. The first is ammonium nitrate and ammonium nitrate based fertilizers, in bulk, listed as Division 5.1 materials in 49 CFR 172.101. The second is propylene oxide, alone or mixed with ethylene oxide, in bulk.

These cargoes have been added to the definition of CDC in § 160.204. This change will require vessels carrying these cargoes to provide all required NOA information to the U.S. Coast Guard. This change will increase maritime security and safety and enable the Coast Guard to reduce the risk of a transportation security incident.

Because 33 CFR parts 104 and 105 rely on the definition of CDC in part 160, the change to the definition of CDC will cause some vessels and facilities to become subject to the security planning requirements of 33 CFR parts 104 and 105 for the first time. This rule conforms the vessel applicability section in part 104 to include these cargoes and provides these vessels and facilities with a delay in complying with the requirements of parts 104 and 105. After the effective date of this rule, these vessels and facilities will have 3 months to submit security plans to the U.S. Coast Guard and 6 months for full compliance.

Electronic Submittal of NOA: We have added to 33 CFR 160.210 two new methods to electronically submit an NOA to the U.S. Coast Guard's NVMC. All required information can be entered via Electronic Notice of Arrival (e-NOA)

available on the NVMC Web site:
<http://www.nvmc.uscg.gov>.

Alternatively, the NVMC can also accept raw XML (eXtensible Markup Language) formatted documents that conform to the e-NOA schema. If you are interested in creating your own application or modifying your existing business systems to submit XML formatted data to the NVMC, please contact Lieutenant Thomas Philbrick of the NVMC, at Tom.Philbrick@uscg.dhs.gov for more information.

Regulatory Evaluation

The Department of Homeland Security considers this rule to be a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Department, however, concludes that this regulatory action is not economically significant under section 3(f)(1). It is also, therefore, “significant” under the regulatory policies and procedures of the Department of Homeland Security. Accordingly, this regulation has been reviewed by the Office of Management and Budget (OMB). A final assessment is available in the docket as indicated under the “Public Participation and Request for Comments” section of this preamble. A summary of the assessment follows: The purpose of this regulatory assessment (RA) is to estimate the costs of this temporary rule, which will change the definition of CDC to include ammonium nitrate and ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR

172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk. This change will promote maritime safety and security and facilitate the uninterrupted flow of commerce by increasing the Coast Guard’s ability to maintain awareness of these cargoes. Moreover, this rule provides vessel owners and operators optional methods (online or via e-mail) to submit NOAs. For the purposes of this analysis, we will use a period of January 2004 to June 2005 to show the cost.

In our review of the affected population, we have determined that there are approximately 9,213 barges that can potentially transport ammonium nitrate and ammonium nitrate based fertilizers, in bulk, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, and approximately 40–50 fleeting facilities that can potentially receive these cargoes and, therefore, could be impacted by this rule. However, based on our available data, we note that there are only approximately 600 movements of these cargoes a year. Therefore, the actual number of barges used to transport these cargoes would be only a fraction of the barge population that may potentially transport ammonium nitrate or propylene oxide. Since the industry may want to retain the flexibility to use any of these 9,213 barges to carry these cargoes, we have based our cost estimate on this larger population. For fleeting facilities, we used 50 fleeting areas to estimate our cost.

There are two elements of cost associated with this rulemaking. The first cost stems from the NOA requirements, and the second cost is from the Maritime Transportation Security Act of 2002 (MTSA) regulations. Currently, vessels that transport CDC cargoes are required to prepare and submit NOAs to the Coast Guard. In addition, vessels and facilities that handle CDC cargoes are required to implement security measures, to be in compliance with the MTSA requirements in 33 CFR parts 104 and 105.

The Coast Guard is temporarily changing the NOA and the MTSA regulations in 33 CFR parts 104 and 105 by adding ammonium nitrate and ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, to the list of CDCs. Vessels that transport such cargoes will now be required to prepare and submit NOAs. Furthermore, vessels and facilities that handle ammonium nitrate and ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, will now have to implement security measures. Security measures can include preparing security plans and assessments; hiring and training security personnel; and installing security equipment.

The total 18-month cost discounted to its present value (PV) at 7 percent is presented below.

TOTAL RULEMAKING COST (JANUARY 2004—JUNE 2005)

Affected entity	Year 2004	Year 2005	PV for 2005	Total PV cost
NOA requirements:				
Increase in NOA submittals	\$8,209	\$4,105	\$3,836	\$12,046
Previously not covered by NOA	46,614	23,307	21,782	68,396
Total cost	54,824	27,412	25,619	80,442
MTSA—Vessel Security:				
Company-level cost	89,200	43,000	40,187	129,387
Vessel-level cost	460,650	230,325	215,257	675,907
Total cost	549,850	273,325	255,444	805,294
MTSA—Facility Security:				
First Group facility	3,395,500	1,151,850	1,203,598	4,599,098
Second Group facility	2,769,000	874,200	817,009	3,586,009
Total cost	6,164,500	2,026,050	2,020,607	8,185,107
Total Cost				9,070,843

Detail may not calculate to total due to independent rounding.

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 impact on small entities.

We expect that this rule may have an economic impact on some small entities, as defined by the Small Business Administration (SBA). 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 listed as Division 5.1 materials in 49 CFR 171.101 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 listed as Division 5.1 materials in 49 CFR 171.101 and propylene oxide, alone or mixed with ethylene oxide, in bulk.

Small entities in the first category currently submit NOA reports and comply with the security measures and planning requirements of the MTSA regulations. These entities will have to submit a greater number of NOA reports 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 will, for the first time, have to comply with NOA requirements in 33 CFR part 160 for shipments of these cargoes and comply with the security measures and planning requirements of the MTSA regulations 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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Junior Grade Kimberly Andersen, G-

MPP, Coast Guard, telephone 202-267-2562.

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 businesses. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This temporary final rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This temporary final rule modifies two existing OMB-approved collections 1625-0077 (formerly 2115-0622) and 1625-0100 (formerly 2115-0557). The request for approval of this Collection of Information is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. Summaries of the revised collections follow.

Title: Security Plans for Ports, Vessels, Facilities, and Outer Continental Shelf Facilities and Other Security-Related Requirements.

OMB Control Number: 1625-0077.

Summary of the Collection of Information: The Coast Guard requires security assessments and plans for vessels and facilities. This temporary final rule provides a framework to ensure adequate security planning, drilling, and communication procedures by requiring vessels to develop and submit for approval Vessel Security Assessments (VSA) and Vessel Security Plans (VSP), and by requiring facilities to develop and submit Facility Security Assessments (FSA) and Facility Security Plans (FSP).

Need for Information: The primary need for information is to identify the

adequate security mitigating measures that will be implemented when needed.

Proposed Use of Information: The information will be used to identify and communicate the security mitigating measures to the Coast Guard and necessary personnel.

Description of the Respondents: The Company Security Officer, or another designated person, for owners and operators of the affected vessels and facilities is responsible for developing the VSA and VSP for vessels, or the FSA and FSP for facilities.

Number of Respondents: The existing OMB-approved number of respondents is 16,855. This rule would increase that number by 52. The total number of respondents is 16,907.

Frequency of Response: The existing OMB-approved number of responses (as adjusted on February 18, 2004) is 81,118. This rule will increase that number by 9,263. The total number of responses is 90,381.

Burden of Response: The development burden for the VSAs and VSPs for vessels, and the FSAs and FSPs for facilities, is estimated to be approximately 80 hours depending on the size of the company and the number and types of vessels or facilities the company owns. Updating the assessments and plans is estimated to be approximately one to four hours depending on the size of the company and the number and types of vessels or facilities the company owns.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden is 1,873,458 hours. This rule will increase that number by 9,999 hours. The estimated total annual burden is 1,883,457 hours.

Title: Advance Notice of Vessel Arrival.

OMB Control Number: 1625-0100.

Summary of the Collection of Information: The Coast Guard requires pre-arrival notices from certain vessels entering a port or place in the United States. This temporary final rule adds the requirement to vessels carrying ammonium nitrate and ammonium nitrate based fertilizers that are listed as Division 5.1 materials in 49 CFR 172.101, in bulk, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk.

Need for Information: The primary need for information is to identify the adequate security mitigating measures that will be implemented when needed.

Proposed Use of Information: The information will be used to identify and communicate the security mitigating measures to the Coast Guard and necessary personnel.

Description of the Respondents: Respondents are the owner, agent, master, operator, or person in charge of a vessel that arrives at or departs from a port or place in the United States.

Number of Respondents: The existing OMB-approved number of respondents is 10,367. This rule would increase that number by 111. The total number of respondents is 10,478.

Frequency of Response: The existing OMB-approved number of responses is 68,289. This rule will increase that number by 2,288. The total number of responses is 70,577.

Burden of Response: The existing OMB-approved burden of response is approximately 2.5 hours. This rule will increase that number by 0.25 hours. The estimated burden of response is 2.75 hours.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden is 173,904 hours. This rule will increase that number by 1,621 hours. The estimated total annual burden is 175,525 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this temporary final rule to the Office of Management and Budget (OMB) for its review of the collection of information. Due to the circumstances surrounding this temporary rule, we asked for "emergency processing" of our request. We received OMB approval for these collections of information on July 29, 2004.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. We received OMB approval for these collections of information on 29 July 2004.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if the rule 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 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.

Taking of Private Property

This 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.

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.

Environment

We have analyzed this 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. This rule changes the requirements in the notification of arrival regulations. They are procedural in nature and therefore, are categorically excluded, under figure 2–1, paragraphs (34)(a) and (d), of the Instruction from further environmental documentation. 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

Facilities, 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 temporarily 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, temporarily suspend paragraph (a)(9) and add a new paragraph (a)(12) to read as follows:

§ 104.105 Applicability.

(a) * * *

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

* * * * *

■ 3. In § 104.115, temporarily add a new paragraph (d) to read as follows:

§ 104.115 Compliance dates.

* * * * *

(d) Owners or operators of vessels that carry ammonium nitrate or ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, as listed in the definition of certain dangerous cargo (CDC) in § 160.204 of this title, must:

(1) Submit vessel security plans to the U.S. Coast Guard in accordance with subpart D of this part not later than December 16, 2004.

(2) Be operating in full compliance with the requirements of this part not later than March 16, 2005.

■ 4. In § 104.410, temporarily add a new paragraph (g) to read as follows:

§ 104.410 Submission and approval.

* * * * *

(g) Owners or operators of vessels that carry ammonium nitrate or ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, as listed in the definition of certain dangerous cargo (CDC) in § 160.204 of this title, must submit vessel security plans to the U.S. Coast Guard in accordance with subpart D of this part not later than December 16, 2004.

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.

■ 6. In § 105.115, temporarily add a new paragraph (c) to read as follows:

§ 105.115 Compliance dates.

* * * * *

(c) Owners or operators of facilities that receive vessels carrying ammonium nitrate and ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in

bulk, as listed in the definition of certain dangerous cargo (CDC) in § 160.204 of this title, and are not otherwise required to comply with this part must:

(1) Submit facility security plans to the U.S. Coast Guard in accordance with subpart D of this part not later than December 16, 2004.

(2) Be operating in full compliance with the requirements of this part not later than March 16, 2005.

■ 7. In § 105.410, temporarily add a new paragraph (g) to read as follows:

§ 105.410 Submission and approval.

* * * * *

(g) Owners or operators of facilities that receive vessels carrying ammonium nitrate and ammonium nitrate based fertilizers, in bulk, that are listed as Division 5.1 materials in 49 CFR 172.101, as well as propylene oxide, alone or mixed with ethylene oxide, in bulk, as listed in the definition of certain dangerous cargo (CDC) in § 160.204 of this title, and are not otherwise required to comply with this part, must submit facility security plans to the U.S. Coast Guard in accordance with subpart D of this part not later than December 16, 2004.

PART 160—PORTS AND WATERWAYS SAFETY-GENERAL

■ 8. The authority citation for part 160 continues 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 D is also issued under the authority of 33 U.S.C. 125 and 46 U.S.C. 3715.

■ 9. In § 160.204, in the definition for “Certain dangerous cargo (CDC)”, add new temporary paragraphs (9) and (10) to read as follows:

§ 160.204 Definitions.

* * * * *

Certain Dangerous Cargo (CDC)

* * * * *

(9) Ammonium nitrate and ammonium nitrate based fertilizers, in bulk, listed as a Division 5.1 material in 49 CFR 172.101.

(10) Propylene oxide, alone or mixed with ethylene oxide, in bulk.

* * * * *

■ 10. In § 160.210, temporarily suspend paragraph (a), and temporarily add a new paragraph (e) to read as follows:

§ 160.210 Methods for submitting an NOA.

* * * * *

(e) *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 1–9 to Table 160.206) to the NVMC, United States Coast Guard, 408 Coast Guard Drive, Kearneysville, WV 25430, by:

(1) Electronic submission via the electronic NOA (e-NOA) available on the NVMC web site at <http://www.nvmc.uscg.gov>;

(2) Electronic submission via web service of formatted XML (eXtensible Markup Language) documents. E-mail sans@nvmc.uscg.gov to ask for the XML schema details;

(3) E-mail at sans@nvmc.uscg.gov. Workbook available at <http://www.nvmc.uscg.gov>;

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

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

Dated: August 9, 2004.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 04–18899 Filed 8–17–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[R05–OAR–2004–MN–0001; FRL–7794–5]

Approval and Promulgation of Implementation Plans; Minnesota; Sulfur Dioxide; United Defense

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to Minnesota’s State Implementation Plan (SIP) for Sulfur Dioxide (SO₂) for the United Defense, LP facility located in Anoka County at 4800 East River Road, Fridley, Minnesota. This revision replaces the Administrative Order, originally issued to the facility on May 27, 1992, with a Title V permit containing non-expiring Title I SIP conditions, issued on November 25, 2002. The Minnesota Pollution Control Agency (MPCA) submitted this SIP revision on December 19, 2002.

DATES: This “direct final” rule is effective on October 18, 2004, unless EPA receives adverse written comments by September 17, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.