

Commission proposes to add the above-described provision in order to equalize the incentive available to parole-eligible prisoners with the new incentive for completion of substance abuse treatment programs that will be available for federal prisoners serving no-parole sentences, under 18 U.S.C. 3621(e)(2).

DATES: Comments must be received by June 26, 1995.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: In the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322 (September 13, 1994), Congress amended 18 U.S.C. 3621 to authorize the Bureau of Prisons to reduce the period a prisoner convicted of a non-violent offense remains in custody after he or she has successfully completed a residential substance abuse treatment program. This new authority is intended by Congress to serve as an incentive for prisoners' successful completion of residential substance abuse treatment programs. This authority is applicable, however, only to offenses committed after November 1, 1987. (See Section 235(a)(1) of Public Law 98-473.)

Prisoners convicted of offenses that were committed prior to November 1, 1987, and who were sentenced to parole-eligible terms, must look to the U.S. Parole Commission for early release from prison as an incentive to completion of treatment programs. Under 28 C.F.R. 2.60, such prisoners are entitled to be considered by the Parole Commission for early release, pursuant to a schedule of permissible advancements of a presumptive release date for "Superior Program Achievement." 28 C.F.R. 2.60(e). However, the opportunity for early release is not equal to that authorized by 18 U.S.C. 3621(e)(2)(B), because an advancement of up to twelve months is permissible under § 2.60 only if the presumptive release date established by the Parole Commission (pursuant to the parole guidelines at 28 C.F.R. 2.20) requires eighty-five months or more of imprisonment. In contrast, the Bureau of Prisons is authorized under Section 3621(e)(2)(B) to grant a reduction of not more than one year for any prisoner who successfully completes a substance abuse treatment program.

Accordingly, the Parole Commission has decided to amend 28 C.F.R. 2.60 so as to authorize a twelve-month

advancement for any parole-eligible prisoner who meets all the criteria for a reduction of custody under 18 U.S.C. 3621(e). The prisoner would have to be a non-violent offender who is found to have a recognized substance abuse problem (not merely a past history of drug or alcohol abuse). Admittance to a residential substance abuse program would be the decision of the Bureau of Prisons. The Parole Commission would consider the prisoner for a full twelve-month advancement of the prisoner's previously established presumptive release date only upon notification by the Bureau of Prisons of successful program completion. However, the Commission would retain authority to withhold any reduction that would result in a miscarriage of justice, such as the early release of a major drug kingpin or an offender with a high risk of recidivism.

Implementation

Upon adoption as a final rule, the proposed amendments to 28 C.F.R. 2.60 would be applied at any statutory interim hearing under 28 C.F.R. 2.14 that was held on or after the effective date of the amended regulation. The Commission does not propose to reopen cases for prisoners who have a release date with no further hearing scheduled. For prisoners who would be considered for the special advancement, completion of a residential substance abuse treatment program may have occurred prior to the effective date of the amended regulation.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this proposed rule is not a significant rule within the meaning of Executive Order 12866, and the proposed rule has, accordingly, not been reviewed by the Office of Management and Budget. The proposed rule, if adopted, will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Proposed Amendment

Accordingly, the U.S. Parole Commission proposes the following amendment to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.60 is proposed to be amended by adding new paragraphs (g) and (h), to read as follows:

§ 2.60 Superior program achievement.

* * * * *

(g) Upon notification from the Bureau of Prisons that a parolable prisoner who has no history of violent criminal conduct, and who has a recognized problem of substance abuse and dependence, has successfully completed residential substance abuse treatment in conformity with the criteria set forth for non-parolable prisoners in 18 U.S.C. 3621(e), the Commission will consider such prisoner for a special advancement, by up to twelve months, of the presumptive release date previously set. Such advancement shall be without regard to the Schedule of Permissible Reductions set forth in paragraph (e) of this section. It is the Commission's intent to award not less than twelve months in addition to any other advancement granted under this section, unless:

(1) The prisoner has already received an advancement or extra good time credits for participation in a substance abuse treatment program; or

(2) There is insufficient time remaining to permit the full advancement; or

(3) There are unusual circumstances that compel a finding that an early parole would be inconsistent with 18 U.S.C. 4206 (e.g., a major narcotics trafficker whose substance abuse was clearly not a dominant factor in his criminal behavior).

(h) Any advancement under this section for superior program achievement (including a special advancement for completion of residential substance abuse treatment) is subject to forfeiture, in whole or in part, whenever a presumptive parole date is rescinded pursuant to § 2.34. In the case of a special advancement under paragraph (g) of this section, the entire advancement shall be forfeited if the Commission finds that the prisoner has engaged in usage, possession, or distribution of any illegal drugs subsequent to program completion.

Dated: May 9, 1995.

Edward F. Reilly, Jr.

Chairman, U.S. Parole Commission.

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DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 165**

[CGD02-95-003]

RIN 2115-AE84

Regulated Navigation Area; Ohio River Mile 466.0 to 473.0

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard proposes to establish a regulated navigation area on the Ohio River in the Cincinnati, OH area. The regulation is needed to control vessel traffic while transiting downbound at night during high water conditions in the regulated area. The regulation will restrict commercial navigation in the regulated area for the safety of vessel traffic and the protection of life and property along the river.

DATES: Comments must be submitted on or before July 17, 1995.

ADDRESSES: Comments may be mailed to Commanding Officer, U.S. Coast Guard Marine Safety Office, 600 Martin Luther King Place, Room 360, Louisville, KY 40202-2230. The comments and other materials referenced in this notice will be available for inspection at this address. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

The Commanding Officer, U.S. Coast Guard Marine Safety Office, Louisville, KY, maintains the public docket for this rulemaking. Comments will become part of this docket.

FOR FURTHER INFORMATION CONTACT: Lieutenant Kelly S. Roberts, Project Officer, U.S. Coast Guard Marine Safety Office, Louisville, Kentucky at (502) 582-5194, or Lieutenant S. Moody, Project Attorney, Second Coast Guard District Legal Office, St. Louis, MO (314) 539-3812.

SUPPLEMENTARY INFORMATION:**Requests for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Docket Clerk at the address under **ADDRESSES**. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Kelly S. Roberts, Project Officer for the Captain of the Port, Louisville, Kentucky (502) 582-5194 and Lieutenant S. Moody, Project Attorney, Second Coast Guard District Legal Office, St. Louis, MO (314) 539-3812.

Background and Purpose

The situation requiring this regulation is periodic high water conditions on the Ohio River in the vicinity of Cincinnati, Ohio. The Ohio River in the Cincinnati area is hazardous to transit under the best conditions. To transit the area, mariners must navigate through several sweeping turns and seven bridges. When the water level in the Ohio River reaches 45 feet on the Cincinnati gauge, river current increase and become very unpredictable, making it difficult for downbound vessels to maintain steerageway. During hours of darkness the background lights of the city of Cincinnati hamper mariners' ability to maintain sight of the front of their tow. This rule is intended to protect the public and the environment, at night during the periods of high water, from a potential hazard of large downbound tows carrying hazardous material through the regulated area.

In the past, the Captain of the Port, Louisville, Kentucky has responded to this hazard by issuing a Temporary Final Rule to establish a Safety Zone in the area when warranted by high water conditions. This proposed rule is intended to establish a permanent Regulated Navigable Area in which restrictions are activated and deactivated as a function of river level. A permanent Regulated Navigable Area will permit vessels and commerce using the Ohio River to plan and schedule their tow traffic accordingly.

Discussion of Proposed Regulations

This proposed rule would establish a Regulated Navigation Area on the Ohio River in the Cincinnati, Ohio area. The restrictions for the Regulated Navigation Area would only be in effect from one-

half hour before sunset to one-half hour after sunrise whenever the river level is at or above 45 on the Cincinnati gauge. The regulations would prohibit downbound tows containing cargoes regulated by Title 46 Code of Federal Regulations Subchapter D and O with a tow length exceeding 600 feet in length not including the tow boat; require all commercial vessels in the regulated navigation area to monitor VHF-FM radiotelephone Channel 13; require all downbound commercial vessels to attempt to contact other vessels in the regulated navigation area shortly after entering the area; and prohibit vessels from loitering in the navigation channel.

Since the water level of the Ohio River is seasonal and not predictable, establishing fixed calendar dates for the regulation is not practical. The regulation is structured to permit the Captain of the Port, Louisville, Kentucky to activate or deactivate the regulated navigable area by issuing the proper notices. Broadcast Notice to Mariners will be issued in anticipation of high water, then again when the river reaches 45 feet, and then a termination broadcast will be issued when the river falls below 45 feet. These regulations are needed due to the hazardous conditions that exist for all vessels transiting the Cincinnati area when the Ohio River is at high water during hours of darkness.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

The Coast Guard has analyzed this proposal in accordance with the principles and criteria of Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, as revised by 59 FR 38654; July 29, 1994, this proposal is categorically excluded from further environmental documentation as an action required to protect the public and the environment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Records and recordkeeping, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, The Coast Guard proposes to amend Subpart F of Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.205 is added to read as follows:

§ 165.205 Ohio River at Cincinnati, OH; regulated navigation area.

(a) *Location.* The following is a regulated navigation area (RNA): The waters of the Ohio River between mile 466.0 and mile 473.0.

(b) *Activation.* The restrictions in paragraphs (c) (1) through (4) of this section are in effect from one-half hour before sunset to one-half hour after sunrise when the Cincinnati, Ohio, Ohio River Gauge is at or above the 45 foot level. The Captain of the Port, Louisville, Kentucky will publish a notice in the Local Notice to Mariners and will make announcements by Coast Guard Marine Information Broadcasts

whenever the river level measured at the gauge activates or terminates the navigation restrictions in this section.

(c) *Regulations.* (1) Transit through the RNA by all downbound vessels towing cargoes regulated by Title 46 Code of Federal Regulations Subchapters D and O with a tow length exceeding 600 feet excluding the tow boat is prohibited.

(2) No vessel shall loiter, anchor, stop, remain or drift without power at anytime within the navigation channel of the RNA.

(3) All commercial vessels shall continually monitor VHF-FM channel 13 on their radiotelephone while in or approaching the RNA.

(4) Between Ohio River miles 466.0 and 467.0, downbound vessels shall make a broadcast in the blind, on VHF-FM channel 13 announcing their presence in the RNA.

Dated: April 14, 1995.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District, St. Louis, MO.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD-FRL-5206-3]

Clean Air Act Proposed Interim Approval of the Operating Permits Program; Monterey Bay Unified Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by the Monterey Bay Unified Air Pollution Control District (Monterey or District) for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by June 15, 1995.

ADDRESSES: Comments should be addressed to Regina Spindler, Mail Code A-5-2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District submittal and other supporting information used in developing the proposed interim approval are available for inspection

during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Regina Spindler (telephone: 415/744-1251), Mail Code A-5-2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act (Act) as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 CFR part 70 (part 70). Title V requires states to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit title V programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

The analysis contained in this notice focuses on specific elements of Monterey's title V operating permits program that must be corrected to meet the minimum requirements of 40 CFR part 70. The full program submittal, the Technical Support Document (TSD), which contains a detailed analysis of the submittal, and other relevant materials are available for inspection as part of the public docket. The docket may be viewed during regular business hours at the address listed above.