

after due notice, any person who engages in misconduct at a hearing.

(c) The refusal of a witness at any such hearing to answer any question which has been ruled to be proper shall, in the discretion of the administrative law judge or hearing officer, be grounds for striking all testimony previously given by such witness on related matters.

(d) Misconduct by an attorney or other representative at any stage of any Agency proceeding, including but not limited to misconduct at a hearing, shall be grounds for discipline. Such misconduct of an aggravated character shall be grounds for suspension and/or disbarment from practice before the Agency and/or other sanctions.

(e) All allegations of misconduct pursuant to paragraph (d) of this section, except for those involving the conduct of Agency employees, shall be handled in accordance with the following procedures:

(1) Allegations that an attorney or party representative has engaged in misconduct may be brought to the attention of the Investigating Officer by any person. The Investigating Officer, for purposes of this paragraph, shall be the Associate General Counsel, Division of Operations-Management, or his/her designee.

(2) The Investigating Officer or his/her designee shall conduct such investigation as he/she deems appropriate and shall have the usual powers of investigation provided in Section 11 of the Act. Following the investigation, the Investigating Officer shall make a recommendation to the General Counsel, who shall make the determination whether to institute disciplinary proceedings against the attorney or party representative. The General Counsel's authority to make this determination shall not be delegable to the Regional Director or other personnel in the Regional Office. If the General Counsel determines not to institute disciplinary proceedings, all interested persons shall be notified of the determination, which shall be final.

(3) If the General Counsel decides to institute disciplinary proceedings against the attorney or party representative, the General Counsel or his/her designee shall serve the Respondent with a complaint which shall include: a statement of the acts which are claimed to constitute misconduct including the approximate date and place of such acts together with a statement of the discipline recommended; notification of the right to a hearing before an administrative law judge with respect to any material issues of fact or mitigation; and an

explanation of the method by which a hearing may be requested. Such a complaint shall not be issued until the Respondent has been notified of the allegations in writing and has been afforded a reasonable opportunity to respond.

(4) Within 14 days of service of the disciplinary complaint, the respondent shall file an answer admitting or denying the allegations, and may request a hearing. If no answer is filed or no material issue of fact or relevant to mitigation warranting a hearing is raised, the matter may be submitted directly to the Board. If no answer is filed, then the allegations shall be deemed admitted.

(5) Sections 102.24 through 102.51, rules applicable to unfair labor practice proceedings, shall be applicable to disciplinary proceedings under this section to the extent that they are not contrary to the provisions of this section.

(6) The hearing shall be conducted at a reasonable time, date, and place. In setting the hearing date, the administrative law judge shall give due regard to the respondent's need for time to prepare an adequate defense and the need of the Agency and the respondent for an expeditious resolution of the allegations.

(7) The hearing shall be public unless otherwise ordered by the Board or the administrative law judge.

(8) Any person bringing allegations of misconduct or filing a petition for disciplinary proceedings against an attorney or party representative shall be given notice of the scheduled hearing. Any such person shall not be a party to the disciplinary proceeding, however, and shall not be afforded the rights of a party to call, examine or cross-examine witnesses and introduce evidence at the hearing, to file exceptions to the administrative law judge's decision, or to appeal the Board's decision.

(9) The respondent will, upon request, be provided with an opportunity to read the transcript or listen to a recording of the hearing.

(10) The General Counsel must establish the alleged misconduct by a preponderance of the evidence.

(11) At any stage of the proceeding prior to hearing, the respondent may submit a settlement proposal to the General Counsel, who may approve the settlement or elect to continue with the proceedings. Any formal settlement reached between the General Counsel and the respondent, providing for entry of a Board order reprimanding, suspending, disbaring or taking other disciplinary action against the

respondent, shall be subject to final approval by the Board. In the event any settlement, formal or informal, is reached after opening of the hearing, such settlement must be submitted to the administrative law judge for approval. In the event the administrative law judge rejects the settlement, either the General Counsel or the respondent may appeal such ruling to the Board as provided in § 102.26.

(12) If it is found that the respondent has engaged in misconduct in violation of paragraph (d) of this section, the Board may issue a final order imposing such disciplinary sanctions as it deems appropriate, including, where the misconduct is of an aggravated character, suspension and/or disbarment from practice before the Agency, and/or other sanctions.

(f) Any person found to have engaged in misconduct warranting disciplinary sanctions under paragraph (d) of this section may seek judicial review of the administrative determination.

Dated, Washington, D.C., December 9, 1996.

By direction of the Board:

John J. Toner,

*Executive Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 100

[CGD07-96-067]

RIN 2115-AE46

#### Special Local Regulations; Continental Airlines Boat Parade; Fort Lauderdale, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Special Local Regulations are being adopted for the Continental Airlines Boat Parade. The event will be held on December 14, 1996, from 5:20 p.m. EST (Eastern Standard Time) until 9:30 p.m. EST. These regulations are needed for the safety of life on navigable waters during the event.

**EFFECTIVE DATE:** These regulations will become effective at 5 p.m. EST and terminate at 10 p.m. EST, on December 14, 1996.

**FOR FURTHER INFORMATION CONTACT:** LTJG J. Delgado, Project officer, Coast Guard Group Miami, Florida at (305) 535-4461.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable as there was insufficient time to publish a proposed rule in advance of the event or to provide for a delayed effective date. The information regarding this event was received less than three weeks before the date of the event leaving insufficient time to follow normal rulemaking procedures.

#### Discussion of Regulations

Special Local Regulations are being established for the Continental Airlines Boat Parade. The Continental Airlines Boat Parade is a nighttime parade with approximately 110 pleasure and fishing boats ranging in length from 20 feet to 200 feet decorated with holiday lights. There will be approximately 1000 spectator craft. This concentration of spectator and event participating vessels associated with the Continental Airlines Boat Parade poses a safety concern which is addressed in these regulations. Therefore, these regulations are necessary for the safety of life on navigable waters during the boat parade. The event will be held on December 14, 1996, from 5:20 p.m. EST until 9:30 p.m. EST.

The parade will form in the staging area at the Port Everglades turning basin then proceed north up the Intracoastal Waterway (ICW) to Lake Santa Barbara where the parade will disband. These regulations establish a moving regulated area of 1000 feet ahead and 1000 feet astern of the string of parade vessels. The regulated area also includes an area 50 feet east and west along the north-south axis of the regulated area as the participating vessels navigate north in the Intercoastal Waterway (ICW). The regulated area also includes the assembly area which is that portion of the Intracoastal Waterway extending from the 17th Street Causeway to the Dania Cut-Off Canal. The regulations also establish no anchorage areas in the vicinity of the viewing area which extends from the New River Sound Day Beacon 7 (LLNR42620) to New River Sound Day Beacon 11 (LLNR42630) to the east of the ICW.

#### Regulatory Evaluation

This regulation 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 the 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, because entry into the regulated area is prohibited for only 5 hours on the day of the event.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking will have a significant 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).

The Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities, because the regulated area will be in effect for only 5 hours on the day of the event.

#### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with Section 2.B.2. of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994). In accordance with that instruction section 2.B.4.g., this action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An environmental assessment and finding of no significant impact have been prepared and are available for inspection and copying from LTJG J. Delgado, Coast Guard Group Miami, Florida, (305) 535-4461. As a condition to the permit, the applicant is required to educate the operators of spectator craft and parade participants regarding the possible presence of manatees and the appropriate precautions to take if the animals are sighted.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

#### Temporary Regulations

For reasons set out in the preamble, the Coast Guard amends part 100 of Title 33, Code of Federal Regulations, as follows:

#### **PART 100—[AMENDED]**

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35T-07-067 is added to read as follows:

#### **§ 100.35T-07-067 Continental Airlines Boat Parade; City of Fort Lauderdale, FL.**

(a) *Regulated area.* A moving regulated area is established surrounding the parade participants as they transit the parade route. Nonparticipating vessels will be prohibited from entering an area encompassing 50 feet on either side of the north-south axis of the parade. The axis extends from 1000 feet ahead of the lead vessel in the parade to 1000 feet astern of the last participating vessel in the parade as the parade transits north in the Intracoastal Waterway (ICW) from Port Everglades turning basin, the staging area of the parade, to Lake Santa Barbara, where the parade will disband. A regulated area is established in the viewing area which is located to the east of the Intracoastal Waterway from New River Sound Day Beacon 7 (LLNR 42620) to the New River Sound Day Beacon 11 (LLNR 42630). A regulated area is established in the assembly area which is that portion of the Intracoastal Waterway extending from the 17th Street Causeway to the Dania Cut-Off Canal.

(b) *Special local regulations.* (1) Entry into the moving regulated area is prohibited unless authorized by the Patrol Commander. Anchoring in the viewing area is prohibited unless authorized by the Patrol Commander. Entry or anchoring in the staging area is prohibited, unless authorized by the Patrol Commander. After the passage of the parade participants, all vessels may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective date.* These regulations become effective on December 14, 1996, from 5 p.m. EST and terminate at 10 p.m. that day.

Dated: November 15, 1996.

J.D. Hull,

*Captain, U.S. Coast Guard, Acting  
Commander, Seventh Coast Guard District.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[AD-FRL-5664-6]

RIN 2060-AE04

### National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule; extension of compliance dates.

**SUMMARY:** This action amends the national emission standards for hazardous air pollutants (NESHAP) for secondary lead smelting by extending by six months the compliance date of the rule and the dates on which existing smelters must submit standard operating procedures (SOP) manuals. This action also sets the deadline for requests for extension of compliance at June 23, 1997. The current rule requires existing smelters to submit SOP manuals for baghouses and fugitive dust control by December 23, 1996, and to achieve compliance with the rule by June 23, 1997. The EPA is currently planning to revise portions of the final rule to address comments received in petitions for reconsideration. These revisions, which are scheduled to be published in February 1997, will materially effect the content of the SOP manuals and the air pollution controls needed to comply with the rule. Today's action is being taken to allow affected facilities adequate time to incorporate the revised requirements into their SOP manuals and to have sufficient time to comply with the emission standards in the rule. This revised compliance date remains within the three year period for compliance allowed by section 112 (i)(3)(A) of the Clean Air Act.

**DATE(S):** *Effective date:* This final action will be effective on December 12, 1996 unless EPA receives adverse public comment on this document by January 13, 1997. In the event that EPA receives adverse public comment, the Agency will withdraw this rule and issue a

proposal to extend the effective date to comply with the rule and to submit SOP manuals.

**Judicial Review.** Under section 307(b)(1) of the Act, judicial review of a NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

**ADDRESSES:** *Docket.* Docket No. A-92-43, containing information considered by the EPA in development of the promulgated standards, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC-6102), 401 M Street, SW, Washington, DC 20460; telephone (202) 260-7548. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Cavender, Metals Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541-2364.

**SUPPLEMENTARY INFORMATION:** The information presented in this preamble is organized as follows:

- I. Background
- II. Need for this Action
- III. Rationale for Direct Final Rule and Immediate Effective Date
- IV. Administrative
  - A. *Executive Order 12866*
  - B. *Unfunded Mandates Act*
  - C. *Paperwork Reduction Act*
  - D. *Regulatory Flexibility Act*
  - E. *Submission to Congress and the General Accounting Office*

#### I. Background

The NESHAP for secondary lead smelting (40 CFR part 63, subpart X) was proposed in the Federal Register on June 9, 1994 (59 FR 29750). The EPA received 31 letters commenting on the proposed rule and proposed area source listing. After considering fully the comments received, the EPA promulgated this NESHAP in the Federal Register on June 23, 1995 (60 FR 32587).

The final rule establishes emission limits for lead, as a surrogate for all metallic Hazardous Air Pollutants

(HAP), from smelting furnaces, refining kettles, agglomerating furnaces, dryers, and fugitive dust sources at secondary lead smelters. The final rule also establishes emission limits for Total Hydrocarbons (THC), as a surrogate for HAP organics, from smelting furnaces. Work practice standards (ie. minimum hood face velocities, and building enclosures) are specified for the capture and control of process fugitive sources including furnace charging equipment and tapping locations, refining kettles, driers, and agglomerating furnace vents and taps. The final rule also requires smelters to develop site specific SOP manuals for fugitive dust control and baghouse operation and maintenance. Minimum SOP requirements are specified in the rule.

The final rule requires existing facilities to submit SOP manuals for baghouses and fugitive dust control within 18 months of publication (that is, by December 23, 1996), and to achieve compliance with the rule within 2 years of publication (namely, by June 23, 1997). The June, 1997 ultimate compliance date is one year earlier than the maximum amount of time—3 years—allowed for compliance with MACT standards. See CAA section 112(i)(3)(A).

The EPA received three petitions for reconsideration pursuant to section 307(d)(7)(B) of the Act from two secondary lead owners/operators, and the Association of Battery Recyclers. The petitioners objected to the introduction of bag leak detection (§ 63.548(e)) and the minimum baghouse SOP requirements (§ 63.548(c)) stating they were not logical extensions of the proposal. In addition, the petitioners requested that EPA reconsider requirements in the final rule dealing with the THC limit for collocated blast and reverberatory furnaces (§ 64.543(c)).

The EPA has determined that several of the objections contained in the petitions are properly founded and is considering amending the rule accordingly, and is planning to publish amendments to the NESHAP in February 1997.

#### II. Need for This Action

As stated above, the current rule requires existing owners and operators of secondary lead smelters to submit the required SOP manuals for baghouses and fugitive dust control by December 23, 1996, and to achieve compliance with the rule no later than June 23, 1997. In addition, 40 CFR 63.6(i) sets the deadline for requests for extension of compliance to one year prior to the