

reversals, assignments, authorizations, decisions, judgments, rulings, or other actions of the PSOB Office; and

(2) Consistent with subpart B, C, or D of this part, as applicable.

(e) OJP's General Counsel shall provide advice to the Hearing Officer as to all questions of law relating to any matter assigned pursuant to paragraph (b) of this section.

■ 18. Revise § 32.45 to read as follows:

**§ 32.45 Hearings.**

(a) Except with respect to a remand or referral, at the election of a claimant under subpart B or C of this part, the Hearing Officer shall hold a hearing, at a location agreeable to the claimant and the Officer (or, otherwise, at a location ruled by the Hearing Officer to be suitable), for the sole purposes of obtaining, consistent with § 32.5(c),

(1) Evidence from the claimant and his fact or expert witnesses; and

(2) Such other evidence as the Hearing Officer, at his discretion, may rule to be necessary or useful.

(b) Unless, for good cause shown, the Director extends the time for filing, no election under paragraph (a) of this section shall be honored if it is filed with the PSOB Office later than ninety days after service of the notice described in § 32.43(c).

(c) Not less than seven days prior to any hearing, the claimant shall file simultaneously with the PSOB Office and the Hearing Officer a list of all expected fact or expert witnesses and a brief summary of the evidence each witness is expected to provide.

(d) At any hearing, the Hearing Officer—

(1) May exclude any evidence whose probative value is substantially outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence; and

(2) Shall exclude witnesses (other than the claimant, or any person whose presence is shown by the claimant to be essential to the presentation of his claim), so that they cannot hear the testimony of other witnesses.

(e) Each hearing shall be recorded, and the original of the complete record or transcript thereof shall be made a part of the claim file.

(f) Unless, for good cause shown, the Director grants a waiver, a claimant's failure to appear at a hearing (in person or through a representative) shall constitute a withdrawal of his election under paragraph (a) of this section.

(g) Upon a claimant's failure to pursue in timely fashion his filed election under paragraph (a) of this section, the Director may, at his discretion, deem the

same to be abandoned. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

■ 19. Revise § 32.52 to read as follows:

**§ 32.52 Time for filing Director appeal.**

(a) Unless, for good cause shown, the Director extends the time for filing, no Director appeal shall be considered if it is filed with the PSOB Office later than thirty-three days after the service of notice of the denial (under subpart E of this part) of a claim.

(b) A claimant may file with his Director appeal such supporting documentary, electronic, video, or other nonphysical evidence and legal arguments as he may wish to provide.

■ 20. Revise § 32.54 to read as follows:

**§ 32.54 Director determination.**

(a) Upon the Director's approving or denying a claim, the PSOB Office shall serve notice of the same simultaneously upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer), and upon any Hearing Officer who made a determination with respect to the claim. In the event of a denial, such notice shall—

(1) Specify the factual findings and legal conclusions that support it; and

(2) Provide information as to judicial appeals (for the claimant or claimants).

(b) Upon a claimant's failure (without reasonable justification or excuse) to pursue in timely fashion the determination of his claim pursuant to his filed Director appeal, the Director may, at his discretion, deem the same to be abandoned, as though never filed. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

(c) With respect to any claim before him, the Director, as appropriate, may—

(1) Remand the same to the PSOB Office, or to a Hearing Officer;

(2) Vacate any related determination under this part; or

(3) Refer any related matters to a Hearing Officer (as a special master), to recommend factual findings and dispositions in connection therewith.

■ 21. Revise § 32.55 to read as follows:

**§ 32.55 Judicial appeal.**

(a) Consistent with § 32.8, any approval or denial described in § 32.54(a) shall constitute the final agency determination.

(b) A claimant seeking relief from the denial of his claim may appeal judicially pursuant to the Act, at 42 U.S.C. 3796c-2.

Dated: December 10, 2008.

**Jeffrey L. Sedgwick,**

*Assistant Attorney General.*

[FR Doc. E8-29703 Filed 12-16-08; 8:45 am]

BILLING CODE 4410-18-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG-2008-1001]

RIN 1625-AA87

**Security Zone; Potomac and Anacostia Rivers, Washington, DC, Arlington and Fairfax Counties, VA, and Prince George's County, MD**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone encompassing certain waters of the Potomac and Anacostia Rivers. This action is necessary to ensure the security of persons and property, and to prevent terrorist acts or incidents before, during, and after scheduled activities associated with the 2009 U.S. Presidential Inauguration. This rule prohibits vessels and persons from entering the security zone and requires vessels and persons in the security zone to depart the security zone during the effective time frame, and to immediately depart the security zone when requested to do so by government authorities.

**DATES:** This rule is effective from 4 a.m. on January 14, 2009, through 10 p.m. on January 25, 2009.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2008-1001 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2008-1001 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: 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 and the Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road,

Baltimore, Maryland 21226-1791, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Ronald L. Houck, Waterways Management Division, at 410-576-2674 or 2693. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On October 27, 2008, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Potomac and Anacostia Rivers, Washington, DC, Arlington and Fairfax Counties, VA, and Prince George's County, MD" in the *Federal Register* (73 FR 63663). We received one letter commenting on the proposed rule. No public meeting was requested, and none was held.

**Background and Purpose**

The Coast Guard has determined that the Coast Guard Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This proposed security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

The Captain of the Port Baltimore is proposing to establish a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against the large gatherings of high-ranking United States officials, the public at large, and surrounding waterfront areas and communities would have. The proposed security zone is necessary to safeguard life and property on the navigable waters before, during, and after scheduled activities associated with the 2009 U.S. Presidential Inauguration and will help the Coast Guard prevent vessels or persons from bypassing the security measures established on shore for the events and engaging in waterborne terrorist actions during the highly-publicized events.

**Discussion of Comments and Changes**

The Coast Guard received one comment in response to the NPRM. No public meeting was requested and none was held. What follows is a review of, and the Coast Guard's response to, the issues that were presented by the

commenter concerning the proposed regulations.

The commenter, who was anonymous, stated that although they agree a secure perimeter is needed for the U.S. Presidential Inauguration, they do not agree that certain details of the security zone, such as the enforcement period and boundaries, should be provided to the general public beforehand. The commenter believes such information could be used by an adversary to devise a plan to circumvent the government's security efforts.

The Administrative Procedures Act directs Federal agencies to ensure that adequate notice is provided to the public concerning actions that the Federal Government is considering for implementation. In addition, we do not feel that issuing the proposed rule adversely affects the patrol and enforcement of the security zone.

**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. There is no vessel traffic associated with recreational boating and commercial fishing during the effective period, and vessels may seek permission from the Captain of the Port Baltimore to enter and transit the zone.

**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 would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or transit on

(1) all waters of the Potomac River, from shoreline to shoreline, bounded on the north by the Francis Scott Key (U.S. Route 29) Bridge, downstream to and bounded on the south from a position at latitude 38°46'42" N, longitude 077°02'55" W on the Virginia shoreline to a position at latitude 38°46'42" N, longitude 077°01'33" W on the Maryland shoreline, including the waters of the Georgetown Channel Tidal Basin; and (2) all waters of the Anacostia River, from shoreline to shoreline, bounded on the north by the New York Avenue (U.S. Route 50) Bridge, downstream to and bounded on the south by its confluence with the Potomac River. This security zone would not have a significant economic impact on a substantial number of small entities because vessels with compelling interests that outweigh the port's security needs may be granted waivers from the requirements of the security zone.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), in the NPRM we offered to assist small entities in understanding the rule so that they could 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 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.

#### 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 5100.1 and Commandant Instruction M16475.ID, 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 under the Instruction 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. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule establishes a security zone.

An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under

#### ADDRESSES.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping 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.T05–1001 to read as follows:

#### § 165.T05–1001 Security Zone; Potomac and Anacostia Rivers, Washington, DC, Arlington and Fairfax Counties, VA, and Prince George’s County, MD.

(a) *Location.* The following area is a security zone: (1) All waters of the Potomac River, from shoreline to shoreline, bounded on the north by the Francis Scott Key (U.S. Route 29) Bridge, downstream to and bounded on the south from a position at latitude 38°46’42” N, longitude 077°02’55” W on the Virginia shoreline to a position at latitude 38°46’42” N, longitude 077°01’33” W on the Maryland shoreline, including the waters of the Georgetown Channel Tidal Basin; and

(2) All waters of the Anacostia River, from shoreline to shoreline, bounded on the north by the New York Avenue (U.S. Route 50) Bridge, downstream to and bounded on the south by its confluence with the Potomac River.

(b) *Definitions.* As used in this section:

*Captain of the Port Baltimore* means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the security zone described in paragraph (a) of this section.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones found in 33 CFR 165.33.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the security zone is implemented do not have to depart the security zone. All vessels underway within this security zone at the time it is implemented are to depart the zone. The Captain of the Port Baltimore may, in his discretion, grant waivers or exemptions to this rule, either on a case-by-case basis or categorically to a particular class of vessel that otherwise is subject to adequate control measures.

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port

Baltimore and his designated representatives can be contacted at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Enforcement period.* This section will be enforced from 4 a.m. on January 14, 2009, through 10 p.m. on January 25, 2009.

Dated: December 5, 2008.

**Austin J. Gould,**

*Commander, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland, Acting.*

[FR Doc. E8-29726 Filed 12-16-08; 8:45 am]

**BILLING CODE 4910-15-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 51**

[EPA-HQ-OAR-2004-0489; FRL-8749-5]

**RIN 2060-AN20**

**Air Emissions Reporting Requirements**

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

**ACTION:** Final rule.

**SUMMARY:** This action finalizes changes to EPA's emission inventory reporting requirements. This action consolidates, reduces, and simplifies the current requirements; adds limited new requirements; provides additional

flexibility to states in the ways they collect and report emissions data; and accelerates the reporting of emissions data to EPA by state and local agencies.

**DATES:** This final rule is effective on December 17, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2004-0489. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Emissions Reporting Requirements Docket, EPA/DC, EPA West Building, Room 3334, 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, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** For general questions, please contact Dennis Beauregard, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Mail Code C339-02, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5512; fax number: (919) 541-0684; e-mail address: [beauregard.dennis@epa.gov](mailto:beauregard.dennis@epa.gov). For legal questions, please contact Kristi Smith, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564-3068, e-mail at [smith.kristi@epa.gov](mailto:smith.kristi@epa.gov).

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**I. General Information**

*A. Does this action apply to me?*

Categories and entities potentially regulated by this action include:

Category	NAICS code <sup>a</sup>	Examples of regulated entities
State/local/tribal government.	92411	State, territorial, and local government air quality management programs. Tribal governments are not affected, unless they have sought and obtained treatment as state status under the Tribal Authority Rule and, on that basis, are authorized to implement and enforce the Air Emissions Reporting Requirements rule.

<sup>a</sup> North American Industry Classification System.