

### 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 State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Although 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 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 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 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 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. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

### 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 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. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A new temporary § 165.T07–112 is added to read as follows:

### § 165.T07–112 Safety Zone Cape Canaveral, FL.

(a) *Location.* The Coast Guard is establishing a temporary safety zone in the Atlantic Ocean—Port Canaveral Channel. The safety zone includes all those waters shoreward of a boundary that originates on the beach in position 28° 21′ 24″ N 080° 36′ 12″ W; and extends east to 28° 21′ 24″ N 080° 30′ 18″ W; then north to 28° 24′ 48″ N 080° 30′ 18″ W; then west to the beach where the zone will terminate at position 28° 24′ 48″ N 080° 35′ 00″ W. Anchoring, mooring, or transiting within this zone is prohibited, unless authorized by the Captain of the Port, Jacksonville, FL.

(b) *Regulations.* The general regulations governing safety zones as contained in 33 CFR 165.23 apply. Vessels with a draft of 22 feet or less may transit within this safety zone. Vessels with a draft greater than 22 feet may not operate within this safety zone without prior approval from the Captain of the Port, Jacksonville, FL. The Captain of the Port may be contacted on a 24 hour basis by calling Lieutenant Patrick Eiland at (321) 784–6781.

(c) *Dates.* This rule is effective from 10 a.m. on September 10, 2004, through 10 a.m. on December 10, 2004.

Dated: September 10, 2004.

**David. L. Lersch,**

*Captain, U.S. Coast Guard, Captain of the Port Jacksonville.*

[FR Doc. 04–22141 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[CGD01–04–117]

RIN 1625–AA87

### Security Zone; Queen Mary II Visit, Portland, ME, Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a moving and fixed security zone around the Queen Mary II while in the Portland, Maine, Captain of the Port zone. This security zone is necessary to ensure public safety and prevent potential sabotage or terrorist acts against the vessel. Persons and vessels will be prohibited from entering this security zone without the permission of the Captain of the Port, Portland, Maine during the specified closure period.

**DATES:** This rule is effective from 12:01 a.m. EDT on September 27, 2004, through 12:01 a.m. EDT on October 10, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket CGD01-04-117 and are available for inspection or copying at Marine Safety Office Portland, 27 Pearl Street, Portland, ME 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ensign J. B. Bleacher, Port Operations Department, Marine Safety Office Portland at (207) 780-3251.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the warnings given by national security and intelligence officials that there is an increased risk that further subversive or terrorist activity may be launched against the United States, a heightened level of security has been established around the Queen Mary II while in the Portland, Maine, Captain of the Port zone. This security zone is needed to protect the passenger vessel, persons aboard the passenger vessel, the public, waterways, ports and adjacent facilities from potential sabotage or other subversive acts, accidents, or other events of a similar nature taken upon the Queen Mary II while in the Portland, Maine, Captain of the Port zone. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It is necessary and prudent to enact this temporary security zone in order to properly protect the vessel, passengers, crew and others in the maritime community from possible terrorist actions. Any delay in the effective date of this rule is impractical and contrary to the public interest.

**Background and Purpose**

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing operations in the Middle East have made it prudent for U.S. ports to be on a higher state of alert because the Al-Qaeda organization and other

similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. The Captain of the Port, Portland, Maine, will notify the maritime community of the periods during which the security zone will be enforced. Broadcast notifications will also advise the maritime community of the boundaries of the zone.

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a security zone must obey any direction or order of the Captain of the Port or the designated Coast Guard on-scene representative. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. Any violation of any security zone described herein, is punishable by, among others, civil penalties (not to exceed \$32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine of not more than \$250,000 for an individual and \$500,000 for an organization), in rem liability against the offending vessel, and license sanctions. This regulation is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Due to these concerns, a temporary security zone around the Queen Mary II is necessary to ensure the safety and protection of the passengers aboard. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. Moreover, the Coast Guard has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) (the "Magnuson Act"), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

**Discussion of Rule**

This rule establishes a security zone around the Queen Mary II while the

vessel is underway, anchored, moored, or in the process of mooring in the Captain of the Port, Portland, Maine zone between September 27, 2004, and October 10, 2004. This temporary security zone is necessary to ensure public safety and prevent potential sabotage or terrorist acts against the vessel and the surrounding area.

**Regulatory Evaluation**

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. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of the DHS is unnecessary.

This rule is not significant for the following reasons: the impact on navigation will be for a minimal amount of time, and delays, if any, will be short in length as vessels will have ample space to navigate around the zone. Moreover, broadcast notifications will be made to the maritime community advising them of the boundaries of the zone and Coast Guard and other law enforcement assets will be on-scene to direct vessels away from the zone. These law enforcement assets will be recognizable by law enforcement insignia, markings, and warning lights.

**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.

For reasons enumerated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the zone during the specified closure period. However, this rule will not have a significant economic impact on a

substantial number of small entities due to the minimal time that vessels will be restricted from the area of the zone, and the vessels' ability to navigate safely around the zone.

#### Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), 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. If this rule would affect your small business, organization or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ensign Jarrett B. Bleacher at Marine Safety Office Portland, (207) 780–3251.

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 (1–888–734–3427). 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 would 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 would not create an environmental risk to health or risk to safety that might 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 system 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 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. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation, since implementation of this action will not result in any: (1) Significant cumulative impacts on the human environment; (2) Substantial controversy or substantial change to existing environmental conditions; (3) Impacts on properties protected under the National Historic Preservation Act or (4) Inconsistencies with any Federal, State or local laws or administrative determinations relating to the environment. A final “Environmental Analysis Checklist” and a final “Categorical Exclusion Determination” are available in the docket where indicated under **ADDRESSES**.

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

Harbors, Marine safety, Navigation (water), Reporting and 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. 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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.T01–117 to read as follows:

**§ 165.T01–117 Security Zone; Queen Mary II Visit, Portland, Maine, Captain of the Port Zone.**

(a) *Location.* The following area is a security zone:

All navigable waters within the Portland, Maine, Captain of the Port Zone, extending from the surface to the sea floor, within a 300-yard radius of the Queen Mary II while it is underway, anchored, moored, or in the process of mooring.

(b) *Effective period.* This section is effective from 12:01 a.m. EDT on September 27, 2004, through 12:01 a.m. EDT on October 10, 2004.

(c) *Regulations.* (1) In accordance with the general regulations contained in § 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Coast Guard Captain of the Port (COTP), Portland, Maine or his designated representative.

(2) All persons and vessels must comply with the instructions of the COTP, or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state and federal law enforcement vessels.

(3) The Captain of the Port, Portland Maine or his designated representative will notify the maritime community of periods during which these zones will be enforced. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative.

(d) *Enforcement.* The COTP will enforce this zone and may enlist the aid and cooperation of any Federal, state, county, municipal, or private agency to assist in the enforcement of the regulation.

Dated: September 23, 2004.

**Stephen P. Garrity,**

*Captain, U. S. Coast Guard, Captain of the Port, Portland, Maine.*

[FR Doc. 04–22138 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–15–U

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63**

[FRL–7812–8]

**National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production**

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

**ACTION:** Interpretative rule.

**SUMMARY:** This interpretative rule concerns the applicability of the NESHAP for secondary aluminum producers, 40 CFR part 63, subpart RRR, to a specific type of facility which thermally delaminates aluminum foil from paper and plastic and then mechanically granulates the recovered metal. We decided to reconsider this matter after reviewing two applicability determinations which were issued by EPA regional offices for facilities of this type operated by the U.S. Granules Corporation in Plymouth, IN, and Henrietta, MO. We concluded that these applicability determinations reflected conflicting constructions of subpart RRR, and that the determinations should be vacated while we undertook a review to develop a uniform national construction of the rule.

In today's interpretative rule, we conclude that a delamination chamber of the type operated by the U.S. Granules facilities is a "scrap dryer/delacquering kiln/decoating kiln" as that term is defined in 40 CFR 63.1503. Accordingly, we believe that the facilities operated by U.S. Granules in Plymouth and Henrietta, and any other facilities which may engage in similar operations, are subject to the emission control requirements of subpart RRR.

**EFFECTIVE DATE:** This interpretative rule will take effect on November 1, 2004. After that date, this interpretative rule will govern all decisions concerning the applicability of 40 CFR part 63, subpart RRR, to affected facilities by EPA and by State and local permitting authorities.

**FOR FURTHER INFORMATION CONTACT:** For specific questions concerning the interpretation of 40 CFR part 63, subpart RRR, adopted in this notice, contact Scott Throwe at EPA by telephone at: (202) 564–7013, or by e-mail at: [throwe.scott@epa.gov](mailto:throwe.scott@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* This interpretative rule concerns applicability of 40 CFR part 63, subpart RRR, to specific facilities that thermally delaminate aluminum foil from paper and plastic and then mechanically granulate the recovered metal. This interpretative rule determines that these facilities are secondary aluminum production facilities as defined by subpart RRR, and that such facilities are therefore subject to regulation under that subpart. This interpretative rule does not govern determinations regarding the applicability of subpart RRR to other types of activities or operations, although the rationale for the

conclusions in this interpretative rule may be relevant in other contexts.

*Judicial Review.* This interpretative rule is based on a determination of nationwide scope and effect. Under section 307(b)(1) of the CAA, judicial review of this interpretative rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by November 30, 2004. Moreover, under section 307(b)(2) of the CAA, any judicial review of this interpretative rule must be obtained pursuant to section 307(b)(1) and this interpretation may not be subjected to separate judicial review in any civil or criminal proceedings for enforcement.

**I. Background for This Interpretative Rule**

This interpretative rule is the outcome of a review by EPA of the applicability of the NESHAP for secondary aluminum producers, 40 CFR part 63, subpart RRR, to a specific type of facility which thermally delaminates aluminum foil from paper and plastic and then mechanically granulates the recovered metal. This review was undertaken following the decision of EPA to vacate two applicability determinations which were previously made by the EPA regional offices concerning facilities of this type owned and operated by the U.S. Granules Corporation.

One of these applicability determinations concerned the U.S. Granules facility in Plymouth, Indiana and was made by the EPA Region 5 Air Enforcement and Compliance Assurance Branch on August 21, 2002, in response to a request for such a determination by U.S. Granules dated August 14, 2002. Notice of this applicability determination (Control No. M020112) was published in the **Federal Register** on February 13, 2003. 68 FR 7373. EPA Region 5 based its conclusions in this determination on a phrase in the definition in subpart RRR of a "scrap dryer/delacquering kiln/decoating kiln" which states that such units are used to remove contaminants from aluminum scrap "prior to melting." EPA Region 5 concluded that the delamination chamber at the Plymouth facility does not fit within this definition because all processing of the recovered aluminum at the Plymouth facility is entirely mechanical and the recovered aluminum is never melted.

The other applicability determination concerned the U.S. Granules facility in Henrietta, Missouri, and was made by the EPA Region 7 Air Permitting and Compliance Branch on October 22, 2002, in response to a request for such a determination by U.S. Granules dated