

(school night and weekend), Drinking of alcoholic beverages, Driving, Smoking, Computer/Internet/E-Mail)

## References:

Dated: December 16, 2009.

**Stanley S. Colvin,**

*Deputy Assistant Secretary for Private Sector Exchanges, Bureau of Educational and Cultural Affairs, U.S. Department of State.*

[FR Doc. E9-30274 Filed 12-22-09; 8:45 am]

**BILLING CODE 4710-05-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 31

[REG-139255-08]

RIN 1545-BI51

#### Information Reporting for Payments Made in Settlement of Payment Card and Third Party Network Transactions; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to a notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking (REG-139255-08) that were published in the *Federal Register* on Tuesday, November 24, 2009 (74 FR 61294) relating to information reporting requirements, information reporting penalties, and backup withholding requirements for payment card and third party network transactions.

**FOR FURTHER INFORMATION CONTACT:** Barbara Pettoni, (202) 622-4910 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

A notice of proposed rulemaking (REG-139255-08) that is the subject of this document is under sections 3406, 6041, 6050W, and 6051 of the Internal Revenue Code.

##### Need for Correction

As published, a notice of proposed rulemaking (REG-139255-08) contains errors that may prove to be misleading and are in need of clarification.

##### Correction of Publication

Accordingly, the publication of a notice of proposed rulemaking (REG-139255-08), which was the subject of FR Doc. E9-28076, is corrected as follows:

#### **§ 1.6050W-1 [Corrected]**

1. On page 61302, column 3, paragraph (e) *Example 3.*, lines 1

through 3, the language “*Example 3. Automated clearinghouse network.* A operates an automated clearinghouse (“ACH”) network that merely” is corrected to read “*Example 3. Automated clearing house network.* A operates an automated clearing house (“ACH”) network that merely”.

#### **§ 31.3406-0 [Corrected]**

2. On page 61304, column 2, in the instructional paragraphs, first entry of Paragraph 5, the language “1. Entries for § 31.3406(b)(3)-5(a) and (b) are added.” is corrected to read “1. Entries for § 31.3406(b)(3)-5(a), (b) and (c) are added.”.

#### **§ 31.3406(b)(3)-5 [Corrected]**

3. On page 61304, column 2, at the bottom of the column, paragraph (c) “Effective/applicability date.” is added.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E9-30551 Filed 12-22-09; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Parts 104, 105, 160

[USCG-2004-19963]

RIN 1625-AA93

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

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** On December 16, 2005, the Coast Guard published an interim rule that defined “certain dangerous cargo residue” (CDC residue). After reviewing comments on the interim rule, the Coast Guard proposes to change that definition to include certain bulk liquids and liquefied gases in residue quantities. Based on changes to the CDC residue definition, the Coast Guard also proposes to revise the definition of “certain dangerous cargo.” Additionally, the Coast Guard intends to adopt changes made to 33 CFR part 104 and 105 by the 2005 interim rule.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before February 22, 2010 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on

collection of information must reach OMB on or before February 22, 2010.

**ADDRESSES:** You may submit comments identified by docket number USCG-2004-19963 using any one of the following methods:

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

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below.

*Collection of Information Comments:* If you have comments on the collection of information discussed in section VI.D. of this notice of proposed rulemaking (NPRM), you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by e-mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) (include the docket number and “Attention: Desk Officer for Coast Guard, DHS” in the subject line of the e-mail) or fax at 202-395-6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Lieutenant Sharmine Jones, Office of Vessel Activities, U.S. Coast Guard Headquarters, telephone 202-372-1234. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents for Preamble

- I. Public Participation and Request for Comments
  - A. Submitting Comments
  - B. Viewing Comments and Documents
  - C. Privacy Act
  - D. Public Meeting
- II. Abbreviations

- III. Background and Purpose
  - A. History of This Rulemaking
  - B. Parallel Rulemaking Affecting This Rulemaking
- IV. Discussion of Comments on the Interim Rule
  - A. CDC Residue
  - B. NOAs and Port Scheduling
  - C. Definition of Charterer
  - D. Foreign Recreational Vessels
- V. Discussion of Proposed Rule
  - A. Proposed Changes to Definitions of CDC and CDC Residue
  - B. Interim Rule Changes To Be Adopted
  - C. Interim Rule Changes Affected by Parallel Rulemaking
- VI. Regulatory Analysis
  - A. Regulatory Planning and Review
  - B. Small Entities
  - C. Assistance for Small Entities
  - D. Collection of Information
  - E. Federalism
  - F. Unfunded Mandates Reform Act
  - G. Taking of Private Property
  - H. Civil Justice Reform
  - I. Protection of Children
  - J. Indian Tribal Governments
  - K. Energy Effects
  - L. Technical Standards
  - M. Environment

### I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

#### A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2004–19963), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://regulations.gov>, insert “USCG–2004–19963” in the “Keyword” box, and click “Search”; then click on the balloon shape in the “Actions” column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know they have reached the Facility,

please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. We may change this proposed rule based on your comments.

#### B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, insert “USCG–2004–19963” in the “Keyword” box, and click “Search.” Click the “Open Docket Folder” in the “Actions” column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### C. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

#### D. Public Meeting

We do not now plan to hold a public meeting. But, you may submit a request for a public meeting to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### II. Abbreviations

AIS Automatic identification system  
 CDC Certain dangerous cargo  
 CFR Code of Federal Regulations  
 COI Collection of information  
 CTAC Chemical Transportation Advisory Committee  
 DHS Department of Homeland Security  
 FR **Federal Register**  
 NOA Notice of arrival  
 NOAD AIS Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System  
 NPRM Notice of proposed rulemaking  
 OMB Office of Management and Budget

U.S.C. United States Code

### III. Background and Purpose

#### A. History of This Rulemaking

The notice of arrival (NOA) is a process by which a vessel submits required information—including data about the vessel, cargo and crew—before the vessel arrives at a port or place in the United States. The information contained in the NOA allows the Coast Guard to implement appropriate safety and security measures, including security screening and escort into port.

In 2003, the Coast Guard became concerned about the potential security hazards of bulk Ammonium nitrate and propylene oxide cargoes transported on U.S. waters. After consultation with the Chemical Transportation Advisory Committee (CTAC) and Towing Safety Advisory Committee, the Coast Guard determined that these substances should be considered “certain dangerous cargoes” (CDCs). Regulations at 33 CFR 160.204 specifically define CDCs, but, in general terms, CDCs are substances or materials that pose an unreasonable risk to health, safety, and property if improperly handled. Existing regulations require most vessels carrying CDCs to submit NOAs.

The Coast Guard published a temporary final rule on August 18, 2004, titled “Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission” (69 FR 51176). That temporary final rule changed the definition of “certain dangerous cargo (CDC)” to include: ammonium nitrate, in bulk; ammonium nitrate based fertilizers, in bulk; and propylene oxide, alone or mixed with ethylene oxide, in bulk. The temporary final rule also updated 33 CFR parts 104 and 105 on vessel and facility security to include these new CDCs. In addition, the temporary final rule implemented two new optional formats for electronic submittal of NOAs.

The Coast Guard published an interim rule on December 16, 2005, titled “Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission” (70 FR 74663). That interim rule made permanent the definition of CDC as implemented in the 2004 temporary final rule. The interim rule also made permanent the application of vessel security requirements at 33 CFR part 104 to barges carrying CDCs. However, the interim rule removed the remainder of the temporary changes made to 33 CFR parts 104 and 105 because they were no longer necessary.

The interim rule also added changes that had not been included in the 2004

temporary final rule. First, the interim rule added another optional method for electronic submittal of NOAs. Second, the interim rule clarified that 33 CFR part 160 on NOAs does not apply to U.S. recreational vessels under 46 U.S.C. 4301. Third, the interim rule added a definition of "CDC residue" that, in effect, exempted certain vessels carrying CDC residue from the same NOA requirements imposed on vessels carrying CDCs. The 2005 definition of CDC residue is limited to residue quantities of bulk ammonium nitrate or ammonium nitrate fertilizer remaining onboard after the vessel discharges all saleable cargo; no other cargo residues fall within the current definition of "CDC residue."

In response to the 2005 interim rule, the Coast Guard received comments from the Chemical Transportation Advisory Committee (CTAC) suggesting the Coast Guard revise the definition of CDC residue to include some bulk liquids and liquefied gases. The Coast Guard tasked CTAC's Hazardous Cargoes Transportation Security Subcommittee with reviewing the current requirement that a CDC vessel remain a CDC vessel until the removal of all bulk liquid and liquefied gas CDC cargoes, including residue quantities of such cargoes, from the vessel. The Committee completed its recommendation on August 24, 2006, and submitted it to the Coast Guard for review and consideration. The Coast Guard concurs with CTAC and, with this NPRM, proposes to amend the definitions of CDC and CDC residue consistent with CTAC's recommendation.

#### *B. Parallel Rulemaking Affecting This Rulemaking*

Concurrent with this proposal to amend the definition of CDC residue, a parallel rulemaking effort has proposed to renumber relevant paragraphs and change some of the provisions implemented by the 2005 interim rule. That parallel rulemaking is "Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System" (NOAD AIS). The Coast Guard published an NPRM on December 16, 2008, and the comment period closed on April 15, 2009 (73 FR 76295). Section V.C., "Interim Rule Changes Affected by Parallel Rulemaking," discusses the impact of this NOAD AIS proposal on specific provisions implemented by the 2005 interim rule. You may read the NOAD AIS proposal, and public comments on it, at docket USCG-2005-21869.

#### **IV. Discussion of Comments on the Interim Rule**

The Coast Guard received two letters commenting on the 2005 interim rule: one submitted by an advisory committee and the other submitted by a trade association. The letter from the advisory committee addressed several issues associated with CDC residue and NOAs. The letter from the trade association addressed the clarification made by the interim rule with regard to applicability of 33 CFR part 160. The Coast Guard received no comments on the interim rule as it affected 33 CFR parts 104 and 105 or the electronic submission of NOAs.

##### *A. CDC Residue*

One commenter sought to provide information on industry practices relevant to vessel transport of CDCs. In particular, the commenter described the manner in which chemical cargo residues are diluted by washing the tanks with water or by loading another cargo over the residue. The commenter suggested that these practices, as well as the practice of carrying multiple cargoes on one vessel, reduce the risk of an intentional incident involving CDC residues. The commenter suggested the Coast Guard undertake further study of CDC residues in order to avoid expending Coast Guard and industry resources on unnecessary security precautions. The Coast Guard agreed with this recommendation and tasked the Chemical Transportation Advisory Committee (CTAC) with providing recommendations on CDC residue. The Committee's recommendations form the basis of the Coast Guard's proposal in this NPRM.

The same commenter suggested that the definition of "CDC residue" implemented by the interim rule be renamed "Ammonium Nitrate Residue" to avoid implying that all CDCs carried in residue quantities satisfy the definition. With this NPRM, the Coast Guard proposes to broaden the definition of "CDC residue" to include cargo residue other than ammonium nitrate, thereby removing the possibility of confusion.

##### *B. NOAs and Port Scheduling*

One commenter described the difficulty of complying with NOA requirements when vessels plan to call at multiple berths in the same port. The commenter indicated that the minimum notice required before transit to another berth causes delays and unnecessary ship movements, contributing to traffic congestion in busy ports. This proposed rule is likely to reduce the number of

intra-port transits requiring NOAs because it broadens the definition of CDC residue. However, the general issues of port congestion and NOAs for intra-port transit are outside the scope of the interim rule and this NPRM, neither of which addresses the time for the submission of NOAs. We have forwarded these comments to the appropriate program staff for further consideration and appropriate action.

The same commenter suggested that the Coast Guard use Vessel Traffic Service systems and/or Automatic Identification System coverage to track vessel movements in the port area, instead of requiring NOAs. In this proposed rule, the Coast Guard is revising the definition of CDC and CDC residue in its NOA regulations. Because the Coast Guard escorts vessels carrying CDC in ports, this proposed change would allow the Coast Guard to focus on vessels that are loaded with a CDC cargo and free it from having to escort vessels that are only transporting CDC residue. This proposed rule would also relieve some vessels that do not operate in VTS areas from having to submit NOAs. This commenter's recommendation goes beyond the scope of this rulemaking so we are forwarding it to the appropriate program staff for consideration in the NOAD AIS rulemaking.

##### *C. Definition of Charterer*

One commenter suggested that requiring NOAs to include the identity of the vessel charterer provides minimal value to the Coast Guard. In addition, this commenter indicated that individual companies submitting NOAs identify the vessel charterer differently because the definition of "charterer" is confusing. Regulations at 33 CFR 160.204 define the term charterer to mean "the person or organization that contracts for the majority of the carrying capacity of a ship for the transportation of cargo to a stated port for a specified period. This includes 'time charterers' and 'voyage charterers.'" However, the use of the information collected in the NOA is outside the narrow scope of the interim rule and this NPRM. We have forwarded these comments to the appropriate program staff for further consideration and appropriate action.

##### *D. Foreign Recreational Vessels*

One commenter expressed concern that the term "foreign recreational vessels" could create confusion between foreign-made vessels and foreign-owned vessels. Specifically, the commenter recommended inserting a reference to the definition of "vessel of the United States" found in 46 App. U.S.C. 1903(b).

The Coast Guard agrees that the phrase “U.S. recreational vessels under 46 U.S.C. 4301 et seq.” could create some confusion, as it does not directly refer to definitions found in Title 46 of the United States Code. As discussed below, the provision that concerns this commenter is addressed in the parallel NOAD AIS rulemaking proceeding.

As part of the separate NOAD AIS rulemaking mentioned earlier in this preamble, the Coast Guard has proposed to delete the provision that is the subject of the comment, revise the remaining language on applicability of 33 CFR part 160, and add a definition of “foreign vessel” to Part 160. The proposed revisions should clarify the issues identified by the commenter concerned about § 160.202(b). Interested parties may review the NOAD AIS proposal at docket USCG–2005–21869.

## V. Discussion of Proposed Rule

### A. Proposed Changes to Definitions of CDC and CDC Residue

The Coast Guard proposes to amend the definition of CDC residue to include certain bulk liquids and liquefied gases that remain onboard in a cargo system after discharge and are not accessible through normal transfer procedures. A vessel carrying only CDC residue may qualify for an NOA exemption for vessels not carrying CDC, provided it meets criteria in § 160.203(b). Changing the definition of CDC residue will allow the Coast Guard to better allocate resources to vessels that are carrying CDCs and not just CDC residue.

In formulating this proposal, the Coast Guard considered aspects of the transportation industry and chemical properties to decide which chemicals to include in the definition. These aspects included: Real-life workings of vessels in handling residues; methods of pumping material; the quantity of cargo remaining onboard after discharge, including stripping, cleaning tanks, etc.; the relative hazard of CDCs; physical properties of the chemicals; vapor pressures of the chemicals; toxicity of the chemicals; and exposure guidelines for the chemicals.

The Coast Guard believes that expanding the definition of CDC residue is appropriate for several reasons. First, discharging a typical chemical cargo leaves a minimal amount of cargo in the tank that is not accessible using the normal pumping system. Second, preparing the tank for a new cargo effectively removes the potential hazard of the previous cargo due to dilution or removal of the potential hazard. Third, with specific respect to liquefied gases, gas tankers carry residue at a pressure

well below its vapor pressure, which mitigates the hazard.

The Coast Guard also proposes that a few bulk liquid and liquefied gas cargoes should remain CDCs even when carried in residue quantities. We base this proposal primarily on the relative hazard created by the vapor pressure of the cargo and its potential impact to health and safety. Therefore, the Coast Guard proposes to amend the definition of CDC residue to specify that the following cargoes remain CDCs at all times, even when only residue quantities remain onboard: anhydrous ammonia, chlorine, ethane, ethylene oxide, methane (LNG), methyl bromide, sulfur dioxide, and vinyl chloride. Under this proposal, vessels carrying residue quantities of these cargoes will remain CDC vessels.

### B. Interim Rule Changes To Be Adopted

The 2005 interim rule made changes to 33 CFR parts 104 and 105 dealing with vessel security regulations for CDC vessels. In particular, the interim rule adopted the change, first made in the 2004 temporary final rule, specifying that 33 CFR part 104 applies to barges carrying CDCs in bulk and engaged on international voyages. Additionally, the 2005 interim rule removed all other changes made to parts 104 and 105 by the 2004 temporary final rule, because those paragraphs were no longer necessary. The Coast Guard proposes to adopt these part 104 and 105 changes introduced by the interim rule as final.

### C. Interim Rule Changes Affected by Parallel Rulemaking

The 2005 interim rule also updated electronic submission options by adding the eNOAD system as an optional method for electronically submitting NOAs under 33 CFR part 160. However, an NPRM published in the parallel NOAD AIS rulemaking proposes to revise § 160.210 to require that all NOAs be submitted electronically.

Separately, the 2005 interim rule added a new paragraph, § 160.202(b), clarifying that the NOA provisions in Part 160 do not apply to U.S. recreational vessels. The NOAD AIS rulemaking proposes to remove § 160.202(b), renumber § 160.202 as § 160.203, and revise the new § 160.203(a) to read: “This subpart applies to U.S. vessels in commercial service and all foreign vessels that are bound for or departing from ports or places of the United States.” Similarly, the NOAD AIS proposal would renumber § 160.204 as § 160.202, and add definitions of “commercial service” and “foreign vessel.”

In light of the NOAD AIS proposal to remove or revise these two sections affected by the 2005 interim rule, the Coast Guard does not expect to address either section in the final rule to follow this NPRM. Interested parties may review the relevant sections in the NOAD AIS docket at USCG–2005–21869.

## VI. Regulatory Analysis

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we present our analysis based on 13 of these statutes or executive orders.

### A. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review. OMB has not reviewed it under that Order.

As discussed in the “Background and Purpose” section of this proposed rule, the Coast Guard published an interim rule in 2005 that changed the definition of certain dangerous cargo (CDC) to include ammonium nitrate, in bulk; ammonium nitrate based fertilizers, in bulk; and propylene oxide, alone or mixed with ethylene oxide, in bulk. In the regulatory analysis for the interim rule, the Coast Guard presented the costs and impacts associated with changing the definition of CDC (70 FR 74663).

After publication of the interim rule, the Coast Guard received comments and recommendations from the Chemical Transportation Advisory Committee (CTAC). Based on these recommendations, the Coast Guard proposes to change the definition of CDC so that residue quantities of some chemicals are not CDC. CTAC defined residue as the cargo that remains onboard in a cargo system after discharge that is not accessible through normal transfer procedures. Currently, vessel operators affected by the interim rule are required to submit a notice of arrival (NOA) when transporting CDC, regardless of quantity (including residue amounts). If the Coast Guard adopts this change, some vessel operators would no longer be required to submit NOAs when transporting residue quantities of CDCs. Some chemicals will continue to be considered CDCs in residue amounts (see the “Discussion of Proposed Rule” section for more details). Vessel owners carrying these chemicals will continue submitting NOAs when transporting these chemicals in residue amounts, which is the current practice under the interim rule.

Due to the proposed change in the definition of CDC, we expect there

would be a reduction in the cost and reporting burden for vessel owners who transport CDCs in residue amounts. The Coast Guard does not have precise estimates of how many vessel trips or vessel owners will no longer be subject to the NOA requirement. Under current requirements, there is no distinction made for shipments of CDC in residue status.

Based on data from the Coast Guard Ship Arrival Notification System (SANS), we estimate there are on average 2,800 vessels currently carrying CDC that make approximately 25,000 port arrivals a year. Under the current interim rule baseline, each of these vessel arrivals involving CDCs in any amount would require an NOA. Under the proposed rule, some of these vessel arrivals would no longer require an NOA if the vessel is carrying certain CDCs in residue quantity. Based on information from the Coast Guard Office of Vessel Activities, we estimate that there will be at least a five-percent annual reduction in the number of NOA submittals as a result of this proposed rule. Changes in vessel operations and the demand for marine transportation of bulk CDC shipments may affect these estimates.

Based on data in the existing collection of information "Advance Notice of Vessel Arrival," OMB Control Number 1625-0100, we estimate the NOA preparation time to be about 30 minutes (0.5 hours). We estimate the cost for an NOA submission to be about \$17.50 ((0.5 hours × \$31 labor rate/hour) + \$2 transmittal fee).<sup>1</sup> Therefore, we consider a five-percent annual reduction in NOA submissions to be equivalent to a \$22,000 decrease in cost burden for vessel operators that transport certain CDCs in residue status.<sup>2</sup> This would also result in a reduction in the NOA information the Coast Guard would need to process.

The Coast Guard carefully considered chemical properties and aspects of the transportation industry in determining which chemicals to include or exclude from the definition of CDC residue. The Coast Guard excluded chemicals that may pose an unreasonable risk in residue quantities from the proposed

changes to the definition of CDC residue.

#### B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 governmental jurisdictions with populations fewer than 50,000 people.

This proposed rule would not increase the NOA reporting costs to vessel operators shipping CDC. This rulemaking would reduce the burden to vessel operators shipping residue quantities of certain CDCs. Therefore, the Coast Guard certifies that under 5 U.S.C. 605(b) this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rulemaking would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rulemaking would economically affect it.

#### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Sharmine Jones, Office of Vessel Activities (CG-5432), Coast Guard, telephone 202-372-1234. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

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).

#### D. Collection of Information

This proposed rule does not require a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). It would modify an existing collection under OMB Control Number 1625-0100, Advance Notice of Vessel Arrival.

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

Due to the proposed change in the definition of CDC, we expect that this rulemaking would reduce the annual burden for vessel operators who transport certain CDCs. Regulations would no longer require vessel operators to submit NOAs when transporting residue quantities of certain CDCs. This proposed rule would result in a reduction of the total number of annual respondents and responses in the existing collection under OMB Control Number 1625-0100. The following is a summary of the changes to the existing collection as a result of this proposed rule and updated ship arrival data. The Coast Guard based most of the information on estimates discussed in the "Regulatory Planning and Review" section and data from the Coast Guard Ship Arrival Notification System (SANS).

*Title:* Advance Notice of Vessel Arrival.

*OMB Control Number:* 1625-0100.

*Summary of the Collection of Information:* The Coast Guard requires pre-arrival notices from certain vessels entering a port or place in the United States. These vessels include those carrying a CDC as defined in 33 CFR 160.204. This proposed rule would change the definition of CDC so that residue quantities of some chemicals would no longer be considered CDC. As a result, the Coast Guard would no longer require vessel operators to submit NOAs when transporting residue quantities of certain CDCs.

*Need for Information:* To ensure port safety and security and to ensure the uninterrupted flow of commerce.

<sup>1</sup> Sources for time, labor rate and transmittal fee estimates: (1) Collection of Information, OMB Control Number 1625-0100, "Advance Notice of Vessel Arrival," Supplementary Document "1625-0100 eNOAD NPRM R1," January 14, 2009; and (2) Notice of Proposed Rulemaking, "Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System" docket number USCG-2005-21869.

<sup>2</sup> The figure \$22,000 is rounded from \$21,875 = \$17.50 NOA cost × 25,000 arrivals × 0.05 [the 5% reduction in NOA].

*Proposed Use of Information:* The Coast Guard would use the information to enhance maritime domain awareness.

*Description of the Respondents:* Respondents are the owners, agents, masters, operators, or persons in charge of a vessel that carries a CDC and arrives at a port or place in the United States.

*Number of Respondents:* The total number of respondents for the collection of information is 31,594 per year. The number of these respondents or vessels (the subset of the total number of vessels) affected by this rulemaking is 2,800 per year.

*Frequency of Response:* The frequency or number of responses associated with the collection of information is 170,866 per year. The number of these responses associated with CDC transits affected by this rulemaking is about 25,000 per year. This rulemaking would decrease that number of responses by about 5 percent or 1,250 per year [25,000 X 0.05 (the 5% reduction in NOA)].

*Burden of Response:* The burden of response associated with the collection of information is approximately 30 minutes or 0.5 hours per response. This rulemaking would not change the burden of response. It would reduce the number of responses.

*Estimate of Total Annual Burden:* The total annual burden for the collection of information is 163,994 hours per year for all NOA respondents. We estimate this proposed rule would reduce the total annual burden by 625 hours per year.<sup>3</sup>

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information. We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection. If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**. You need not respond to a collection of information unless it displays a currently valid control number from OMB.

<sup>3</sup> 625 hours per year reduction = 1,250 less NOA responses per year × 0.5 hours per NOA.

#### *E. 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 proposed rule under that Order and have determined that it does not have implications for federalism.

#### *F. 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 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *G. Taking of Private Property*

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### *H. Civil Justice Reform*

This proposed 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.

#### *I. Protection of Children*

We have analyzed this proposed 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.

#### *J. Indian Tribal Governments*

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

#### *K. Energy Effects*

We have analyzed this proposed 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.

#### *L. 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### *M. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 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 made a preliminary determination that this action is one of a category of actions which does not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. This rule involves editorial or procedural regulations, such as those updating addresses or establishing applications procedures and regulations concerning manning, documentation, admeasurement, inspection, and

equipping of vessels. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 104

Maritime security, Reporting and recordkeeping requirements, Security measures, and Vessels.

33 CFR Part 105

Maritime security, Reporting and recordkeeping requirements, and Security measures.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to adopt the amendments to 33 CFR parts 104 and 105, introduced by the interim rule published at 70 FR 74669 on December 16, 2005, as final, and to amend 33 CFR part 160 as follows:

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

1. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart D is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

2. In § 160.204, revise paragraphs (7) through (9) of the definition for "Certain dangerous cargo (CDC)" and the entire definition of "Certain dangerous cargo residue (CDC residue)" to read as follows:

§ 160.204 Definitions.

\* \* \* \* \*

Certain dangerous cargo (CDC) includes any of the following:

\* \* \* \* \*

(7) All bulk liquefied gas cargo carried under 46 CFR 151.50–31 or listed in 46 CFR 154.7 that is flammable and/or toxic and that is not carried as certain dangerous cargo residue (CDC residue).

(8) The following bulk liquids except when carried as CDC residue:

- (i) Acetone cyanohydrin;
(ii) Allyl alcohol;
(iii) Chlorosulfonic acid;
(iv) Crotonaldehyde;
(v) Ethylene chlorohydrin;
(vi) Ethylene dibromide;
(vii) Methacrylonitrile;
(viii) Oleum (fuming sulfuric acid);
and

(ix) Propylene oxide, alone or mixed with ethylene oxide.

(9) The following bulk solids:

- (i) Ammonium nitrate listed as a Division 5.1 (oxidizing) material in 49 CFR 172.101 except when carried as CDC residue; and
(ii) Ammonium nitrate based fertilizer listed as a Division 5.1 (oxidizing) material in 49 CFR 172.101 except when carried as CDC residue.

Certain dangerous cargo residue (CDC residue) includes any of the following:

- (1) Ammonium nitrate in bulk or ammonium nitrate based fertilizer in bulk remaining after all saleable cargo is discharged, not exceeding 1,000 pounds in total and not individually accumulated in quantities exceeding two cubic feet.
(2) For bulk liquids and liquefied gases, the cargo that remains onboard in a cargo system after discharge that is not accessible through normal transfer procedures, with the exception of the following bulk liquefied gas cargoes carried under 46 CFR 151.50–31 or listed in 46 CFR 154.7:
(i) Ammonia, anhydrous;
(ii) Chlorine;
(iii) Ethane;
(iv) Ethylene oxide;
(v) Methane (LNG);
(vi) Methyl bromide;
(vii) Sulfur dioxide; and
(viii) Vinyl chloride.

\* \* \* \* \*

Dated: December 15, 2009.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. E9–30347 Filed 12–22–09; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 380

[Docket No. 2005–1 CRB DTRA]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Royalty Judges are publishing for comment proposed regulations governing the statutory minimum fees to be paid by Commercial Webcasters under two statutory licenses, permitting certain digital performances of sound recordings and the making of ephemeral recordings, for

the period beginning January 1, 2006, and ending on December 31, 2010.

DATES: Comments and objections, if any, are due by no later than January 22, 2010.

ADDRESSES: Comments and objections may be sent electronically to crb@loc.gov. In the alternative, send an original, five copies and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments and objections may not be delivered by an overnight delivery service other than U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments and objections must be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000, between 8:30 a.m. and 5 p.m. If delivered by a commercial courier, comments and objections must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC, and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, Room LM–403, 101 Independence Avenue, SE., Washington, DC 20559–0600.

FOR FURTHER INFORMATION CONTACT:

Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or by e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2007, the Copyright Royalty Judges published in the Federal Register their determination of royalty rates and terms under the statutory licenses under Sections 112(e) and 114 of the Copyright Act for the period 2006 through 2010 for a digital public performance of sound recordings by means of an eligible nonsubscription transmission or a transmission by a new subscription service. 72 FR 24084. In Intercollegiate Broadcast System, Inc. v. Copyright Royalty Board, 574 F.3d 748 (D.C. Cir. 2009), the United States Court of Appeals for the District of Columbia Circuit affirmed the Judges' determination in the main but remanded to the Judges the matter of setting the minimum fee to be paid by both Commercial Webcasters and Noncommercial Webcasters under