

of this section and utility rates used for the Agency estimate must be no older than the rates in place 60 days prior to the beginning of the 90-day period under paragraph (c)(1) of this section. In the case of newly constructed or renovated buildings with less than 12 months of consumption data, the Agency (or an agent or other private contractor of the Agency that is a qualified professional within the meaning of paragraph (b)(4)(ii)(E) of this section) may use consumption data for the 12-month period of units of similar size and construction in the geographic area in which the building containing the units is located.

(D) *HUD Utility Schedule Model.* A building owner may calculate a utility estimate using the “HUD Utility Schedule Model” that can be found on the Low-Income Housing Tax Credits page at <http://www.huduser.org/datasets/lihtc.html> (or successor URL). Utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the beginning of the 90-day period under paragraph (c)(1) of this section.

(E) *Energy consumption model.* A building owner may calculate utility estimates using an energy and water and sewage consumption and analysis model (energy consumption model). The energy consumption model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. The utility consumption estimates must be calculated by either a properly licensed engineer or a qualified professional approved by the Agency that has jurisdiction over the building (together, qualified professional), and the qualified professional and the building owner must not be related within the meaning of section 267(b) or 707(b). Use of the energy consumption model is limited to the building’s consumption data for the twelve-month period ending no earlier than 60 days prior to the beginning of the 90-day period under paragraph (c)(1) of this section, and utility rates used for the energy consumption model must be no older than the rates in place 60 days prior to the beginning of the 90-day period under paragraph (c)(1) of this section. In the case of newly constructed or renovated buildings with less than 12 months of consumption data, the qualified professional may use consumption data for the 12-month period of units of similar size and construction in the geographic area in

which the building containing the units is located.

(c) *Changes in applicable utility allowance—(1) In general.* If, at any time during the building’s extended use period (as defined in section 42(h)(6)(D)), the applicable utility allowance for units changes, the new utility allowance must be used to compute gross rents of the units due 90 days after the change (the 90-day period). For example, if rent must be lowered because a local utility company estimate is obtained that shows a higher utility cost than the otherwise applicable PHA utility allowance, the lower rent must be in effect for rent due at the end of the 90-day period. A building owner using a utility company estimate under paragraph (b)(4)(ii)(B) of this section, the HUD Utility Schedule Model under paragraph (b)(4)(ii)(D) of this section, or an energy consumption model under paragraph (b)(4)(ii)(E) of this section must submit copies of the utility estimates to the Agency that has jurisdiction over the building and make the estimates available to all tenants in the building at the beginning of the 90-day period before the utility allowances can be used in determining the gross rent of rent-restricted units. An Agency may require additional information from the owner during the 90-day period. Any utility estimates obtained under the Agency estimate under paragraph (b)(4)(ii)(C) of this section must also be made available to all tenants in the building at the beginning of the 90-day period. The building owner must pay for all costs incurred in obtaining the estimates under paragraphs (b)(4)(ii)(B), (C), (D), and (E) of this section and providing the estimates to the Agency and the tenants. The building owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90 percent occupancy for a period of 90 consecutive days or the end of the first year of the credit period, whichever is earlier.

(2) *Annual review.* A building owner must review at least once during each calendar year the basis on which utility allowances have been established and must update the applicable utility allowance in accordance with paragraph (c)(1) of this section. The review must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.

(d) *Record retention.* The building owner must retain any utility consumption estimates and supporting data as part of the taxpayer’s records for purposes of § 1.6001–1(a).

■ **Par. 3.** Section 1.42–12 is amended by adding paragraph (a)(4) to read as follows:

**§ 1.42–12 Effective dates and transitional rules.**

(a) \* \* \*

(4) *Utility allowances.* The first sentence in § 1.42–10(a), § 1.42–10(b)(1), (2), (3), and (4), the last two sentences in § 1.42–10(b)(4)(ii)(A), the third, fourth, and fifth sentences in § 1.42–10(b)(4)(ii)(B), § 1.42–10(b)(4)(ii)(C), (D), and (E), and § 1.42–10(c) and (d) are applicable to a building owner’s taxable years beginning on or after July 29, 2008. Taxpayers may rely on these provisions before the beginning of the building owner’s taxable year beginning on or after July 29, 2008 provided that any utility allowances calculated under these provisions are effective no earlier than the first day of the building owner’s taxable year beginning on or after July 29, 2008. The utility allowances provisions that apply to taxable years beginning before July 29, 2008 are contained in § 1.42–10 (see 26 CFR part 1 revised as of April 1, 2008).

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

Approved: July 20, 2008.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E8–17268 Filed 7–28–08; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG–2008–0695]

RIN 1625–AA00

**Safety Zone; Maine; Sector Northern New England August Swim Events.**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary safety zones during the month of August around the “Sprucewold Cabbage Island Swim,” “Tri for a Cure Triathlon,” “Greater Burlington YMCA Lake Swim,” “Y-Tri Triathlon,” and “Rockland Breakwater Swim” marine events while the events are in progress. These safety zones are needed to protect swimmers, event sponsors’ safety vessels, and others in the maritime community from the safety hazards that may arise from events of

this type. Entry into these safety zones is prohibited unless authorized by the Captain of the Port Sector Northern New England.

**DATES:** This rule is effective from August 9 through August 23, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0695 and are available online at [www.regulations.gov](http://www.regulations.gov). They are also available for inspection or copying 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 at U.S. Coast Guard Sector Northern New England, 259 High Street, South Portland, ME 04106 between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call LT Jarrett Bleacher, U.S. Coast Guard Sector Northern New England, Waterways Management Division, at (207) 741-5421. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The logistics of these events were not provided to the Coast Guard with sufficient time to publish a NPRM and still ensure that this temporary final rule would be effective by August 9, 2008, the start of the events. These safety zones are needed to protect the event participants and maritime public by ensuring that large numbers of swimmers remain separate and safe from vessel traffic.

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**. Immediately implementing this rule promotes the public interest by

protecting the maritime public and participants.

**Background and Purpose**

The “Greater Burlington YMCA Lake Swim,” “Tri for a Cure,” “Y-Tri Triathlon Swim,” “Sprucewold Cabbage Island Swim,” and “Rockland Breakwater Swim” are annual marine swimming events held in the month of August. This rule creates safety zones from 8 a.m. to 6 p.m. EDT on August 9, 2008 for 33 CFR 165.T01-0695(a) (“Greater Burlington YMCA Lake Swim”), 7:30 a.m. to 9:30 a.m. EDT on August 9, 2008 for 33 CFR 165.T01-0695(b) (“Tri for a Cure”), 9 a.m. to 10 a.m. EDT on August 9, 2008 for 33 CFR 165.T01-0695(c) (“Y-Tri Triathlon”), 3 p.m. to 4 p.m. EDT on August 9, 2008 for 33 CFR 165.T01-0695(d) (“Sprucewold Cabbage Island Swim”), and 10 a.m. to 12 p.m. on August 23, 2008 for 33 CFR 165.T01-0695(e) (“Rockland Breakwater Swim”).

**Discussion of Rule**

This rule establishes fixed safety zones for each of these events in the locations and at the times listed in the regulatory text. During the effective period of the safety zones, vessel traffic will be prohibited from entering the affected locations during the marine events, unless specifically authorized by the Captain of the Port Sector Northern New England. These safety zones are needed to safeguard the maritime public and the participants from the hazards associated with this type of large scale swimming event.

The Captain of the Port anticipates negligible negative impact on vessel traffic from these temporary safety zones as they will be in effect only for a short duration. The zones are not expected to affect commercial vessels transiting in or out of the port. The zones around the events will only be enforced while the participants are in the water. The enhanced safety to life and property provided by this rule greatly outweighs any potential negative impacts. Public notifications will be made during the entire effective period of these safety zones via marine information broadcasts.

**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.

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The effect of this rule will not be significant for the following reasons: the safety zones will be of limited duration; the events are designed to avoid, as much as practicable, deep draft, fishing, and recreational boating traffic routes; vessels may be authorized to transit the zone with permission of the COTP; and, advance notice of the zones will be provided via marine broadcast.

**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 may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the safety zones. 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 areas, the ample space available for vessels to maneuver and navigate around the zones, and advance notifications will be made to the local community by marine information broadcasts.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding the rule so that they can 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 Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, 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.

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, and 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, 3306, 3703; 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 temporary § 165.T01-0695 to read as follows:

#### § 165.T01-0695 Safety Zone; Maine; Sector Northern New England August Swim Events.

(a) The following area is a fixed safety zone for the "Greater Burlington YMCA Lake Swim":

(1) *Location.* All waters in Lake Champlain in the vicinity of North Hero Island enclosed by an area from shore to shore starting at latitude 44°46'55"N, longitude 73°22'14"W; thence to latitude 44°47'08"N, longitude 73°19'05"W; from latitude 44°46'48"N, longitude 73°17'13"W; thence to latitude 44°46'09"N, longitude 73°16'39"W; and from latitude 44°41'08"N, longitude 73°20'58"W thence to latitude 44°41'36"N, longitude 73°23'01"W.

(2) *Effective Date.* This rule will be enforced from 8 a.m. to 6 p.m. on August 9, 2008.

(b) The following area is a fixed safety zone for the "Tri for a Cure Triathlon":

(1) *Location.* All waters in the vicinity of Spring Point in Portland Harbor, Maine enclosed by a box starting at latitude 43°39'05"N, longitude 70°13'42"W; thence to latitude 43°39'08"N, longitude 70°13'39"W; thence to latitude 43°39'07"N, longitude 70°13'27"W thence to the point of beginning.

(2) *Effective Date.* This rule will be enforced from 7:30 a.m. to 9:30 a.m. on August 9, 2008.

(c) The following area is a fixed safety zone for the "Y-Tri Triathlon":

(1) *Location*. All waters in the vicinity of Point Au Roche State Park in Plattsburgh, New York, enclosed by a box starting at latitude 44°46'30"N, longitude 73°23'26"W; thence to latitude 44°46'17"N, longitude 73°23'26"W; thence to latitude 44°46'17"N, longitude 73°23'46"W; thence to latitude 44°46'29"N, longitude 73°23'46"W; thence to the point of beginning.

(2) *Effective Date*. This rule will be enforced from 9 a.m. to 10 a.m. on August 9, 2008.

(d) The following area is a fixed safety zone for the "Sprucewold Cabbage Island Swim":

(1) *Location*. All waters in the vicinity of Linekin Bay between Cabbage Island and Sprucewold Beach in Boothbay Harbor, Maine enclosed by a box starting at latitude 43°50'37"N, longitude 69°36'23"W; thence to latitude 43°50'37"N, longitude 69°36'59"W; thence to latitude 43°50'16"N, longitude 69°36'46"W; thence to latitude 43°50'22"N, longitude 69°36'21"W; thence to the point of beginning.

(2) *Effective Date*. This rule will be enforced from 3 p.m. to 4 p.m. on August 9, 2008.

(e) The following area is a fixed safety zone for the "Rockland Breakwater Swim":

(1) *Location*. All waters in the vicinity of Rockland Breakwater in Rockland Harbor, Maine enclosed by a box starting at latitude 44°06'16"N, longitude 69°04'39"W; thence to latitude 44°06'14"N, longitude 69°04'36"W; thence to latitude 44°06'13"N, longitude 69°04'41"W; thence to latitude 44°06'16"N, longitude 69°04'42"W; thence to latitude 44°06'16"N, longitude 69°04'40"W.

(2) *Effective Date*. This rule will be enforced from 10 a.m. to 12 p.m. on August 23, 2008.

(f) *Definition*: As used in this section, designated representative means any Coast Guard commissioned, warrant, or petty officer, or any federal, state, or local law enforcement officer authorized to enforce this regulation on behalf of the Coast Guard Captain of the Port (COTP).

(g) *Regulations*. (1) In accordance with the general regulations in 165.23 of this part, entry into or movement within this zone by any person or vessel is prohibited unless authorized by the COTP Sector Northern New England or the COTP's designated representative.

(2) Vessel operators desiring to enter or operate within the safety zones may contact the COTP or the COTP's designated representative for permission at telephone number 207-767-0303, on VHF Channel 13 (156.7 MHz), or VHF channel 16 (156.8 MHz). If permission

is granted, all persons and vessels must comply with the instructions provided by the COTP or the COTP's designated representative.

Dated: July 16, 2008.

**J.B. McPherson,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Northern New England.*

[FR Doc. E8-17292 Filed 7-28-08; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2006-0806, FRL-8683-5]

### Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana—Air Quality, Incinerators

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Governor of Montana on December 8, 1997, May 28, 2003, and August 25, 2004. The December 8, 1997 submittal revised the Administrative Rules of Montana (ARM) chapter 8, subchapter 3, section 17.8.316 (Incinerators) by adding subsection (6). ARM 17.8.316(6) excludes incinerators from having to comply with the other provisions of ARM 17.8.316, including the particulate matter emissions standard of 0.10 grains per cubic foot and the 10% opacity standard, if these sources have been issued a Montana air quality permit under 75-2-215, Montana Code Annotated (MCA), and ARM 17.8.770, which pertain to permitting of solid or hazardous waste incinerators. The August 25, 2004 submittal made a minor editorial revision to ARM 17.8.316(5). The May 28, 2003 submittal made minor editorial revisions to ARM 17.8.316(6). In a December 12, 2007 Notice of Proposed Rulemaking (72 FR 70540), we proposed to approve these revisions to the Montana State Implementation Plan (SIP). This action is being taken under section 110 of the Clean Air Act (CAA). **DATES:** *Effective Date:* This final rule is effective August 28, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2006-0806. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available,

e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, 303-312-6142, [dolan.kathy@epa.gov](mailto:dolan.kathy@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Summary of SIP Revision
- II. Final Action
- III. Statutory and Executive Order Reviews

#### Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

#### I. Summary of SIP Revision

On December 8, 1997, the State of Montana submitted a SIP revision for EPA's approval. The revision added subsection (6) to section 17.8.316 (Incinerators) of the Administrative Rules of Montana (ARM), chapter 8 (Air Quality), subchapter 3 (Emission Standards). Subsection (6) exempts incinerators from the requirements of ARM 17.8.316, including the particulate matter emissions standard of 0.10 grains per cubic foot and the 10% opacity standard, if these sources have been issued a Montana air quality permit