

prior to issuance. This is because the effective date of the changes to these statutes was October 28, 2004. The rule changes the regulation to conform to the new statutory entitlement. Based on these statutory requirements, the Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be unnecessary, impractical and contrary to the public interest. Public comments are invited. All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the final rule.

*Paperwork Reduction Act*

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

**List of Subjects in 32 CFR Part 199**

Claims, Dental Program, Dental Health, Health care, Health insurance, Military personnel.

■ For the reasons set out in the preamble, the Department of Defense amends 32 CFR part 199 as follows:

**PART 199—[AMENDED]**

■ 1. The authority citation for Part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.13 is amended by revising paragraphs (a)(2)(iii), (c)(2)(i)(a)(2) and (c)(3)(ii)(E)(2), and adding paragraphs (a)(2)(iv) and (i) to read as follows:

**§ 199.13 TRICARE Dental Program.**

- (a) \* \* \*
- (2) \* \* \*

(iii) *Exclusion of benefit services performed in military dental care facilities.* Except for emergency treatment, dental care provided outside the United States, services incidental to noncovered services, and services provided under paragraph (a)(2)(iv), dependents of active duty, Selected Reserve and Individual Ready Reserve members enrolled in the TDP may not obtain those services that are benefits of the TDP in military dental care facilities, as long as those covered benefits are available for cost-sharing under the TDP. Enrolled dependents of active duty, Selected Reserve and Individual Ready Reserve members may continue to obtain noncovered services from military dental care facilities subject to the provisions for space available care.

(iv) *Exception to the exclusion of services performed in military dental care facilities.*

(A) Dependents who are 12 years of age or younger and are covered by a dental plan established under this section may be treated by postgraduate dental residents in a dental treatment facility of the uniformed services under a graduate dental education program accredited by the American Dental Association if

(1) Treatment of pediatric dental patients is necessary in order to satisfy an accreditation standard of the American Dental Association that is applicable to such program, or training in pediatric dental care is necessary for the residents to be professionally qualified to provide dental care for dependent children accompanying members of the uniformed services outside the United States; and

(2) The number of pediatric patients at such facility is insufficient to support satisfaction of the accreditation or professional requirements in pediatric dental care that apply to such programs or students.

(B) The total number of dependents treated in all facilities of the uniformed services under paragraph (a)(2)(iv) in a fiscal year may not exceed 2,000.

\* \* \* \* \*

- (c) \* \* \*
- (2) \* \* \*
- (i) \* \* \*
- (A) \* \* \*

(2) Child. To be eligible, the child must be unmarried and meet one of the requirements set forth in section 199.3(b)(2)(ii)(A)–(F) or 199.3(b)(2)(ii)(H).

\* \* \* \* \*

- (c) \* \* \*
- (3) \* \* \*
- (ii) \* \* \*
- (E) \* \* \*

(2) *Continuation of eligibility.* Eligible dependents of active duty members while on active duty for a period of more than 30 days and eligible dependents of members of the Ready Reserve (i.e., Selected Reserve or Individual Ready Reserve, as specified in 10 U.S.C. 10143 and 10144(b) respectively), shall be eligible for continued enrollment in the TDP for up to three (3) years from the date of the member's death, if, on the date of the death of the member, the dependent is enrolled in the TDP, or is not enrolled by reason of discontinuance of a former enrollment under paragraphs (e)(3)(ii)(E)(4)(ii) and (c)(3)(ii)(E)(4)(iii) of this section, or is not enrolled because the dependent was under the minimum age for enrollment at the time

of the member's death. This continued enrollment is not contingent on the Selected Reserve or Individual Ready Reserve member's own enrollment in the TDP. During the three-year period of continuous enrollment, the government will pay both the Government and the beneficiary's portion of the premium share.

\* \* \* \* \*

(i) *Implementing Instructions.* The Director, TRICARE Management Activity or designee may issue TRICARE Dental Program policies, standards, and criteria as may be necessary to implement the intent of this section.

\* \* \* \* \*

Dated: September 14, 2005.

**L.M. Bynum,**  
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*  
 [FR Doc. 05–18753 Filed 9–20–05; 8:45 am]  
**BILLING CODE 5001–06–M**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[USCG–2005–22429]**

**RIN 1625–AA11**

**Safety Zones; Sector New Orleans; Barges**

**AGENCY:** Coast Guard, DHS.  
**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing safety zones on the navigable waters of Sector New Orleans surrounding barges that have sustained damage requiring salvage operations during Hurricane Katrina. This action is necessary to provide for the safety of life and property during salvage operations, as well as to minimize effects on the navigable waters of Sector New Orleans.

**DATES:** This rule is effective from September 19, 2005 through December 31, 2005.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2005–22429 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this

docket on the Internet at <http://dms.dot.gov>.

#### 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. Publishing a NPRM would be contrary to the public interest, as there is an immediate need to quickly and safely remove damaged barges from the navigable waterways within Sector New Orleans.

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**. This safety zone is needed immediately, in order to re-establish safe and efficient navigation within the navigable waterways.

##### Background and Purpose

On August 29, 2005, Hurricane Katrina struck the Gulf Coasts of Louisiana, Mississippi, and Alabama, causing severe damage throughout the area. The severity of the damage is still not fully known; however we are aware of a large number of barges that have been damaged and strewn throughout the waterways within the boundaries of Sector, New Orleans. Some of these barges are directly interfering with waterway traffic, while others present environmental or safety hazards. It is imperative that salvage operations begin on these barges in an orderly and efficient manner.

##### Discussion of Rule

This temporary rule establishes safety zones around those barges located in the waters within Sector New Orleans that sustained damage during Hurricane Katrina, when the damage was severe enough to require salvage operations. This temporary rule regulates salvage operations within those zones. It requires that a salvage plan be submitted to the COTP prior to beginning salvage operations on any Coast Guard inspected barge, as well as on any uninspected barge that is currently affecting waterway traffic. Additionally, for any barge requiring salvage operations that will affect waterway traffic, a salvage plan must be submitted to the COTP New Orleans for approval.

For those uninspected barges that are not affecting the navigation channel or vessel traffic, this temporary final rule requires that the COTP be notified when salvage operations begin and end, even though a salvage plan is not required.

##### 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 DHS is unnecessary. This is because the Coast Guard will allow barge owners and operators to salvage damaged barges. The Coast Guard is requiring the submission of salvage plans in order to ensure that these operations proceed smoothly, without having a detrimental effect on the navigable waterways within Sector New Orleans.

##### 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.

This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act.

##### 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 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).

##### Collection of Information

The Office of Management and Budget has exempted this rule from the requirements of the Paperwork Reduction Act due to the emergency nature of the rule.

##### 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. The Act does not require an assessment in the case of a rule issued without prior notice and public comment. Nevertheless, the Coast Guard does not expect this rule to result in such an expenditure. We discuss this rule’s effects 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 M16475.1D, 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. This rule establishes a safety zone.

A final "Environmental Analysis Check List" 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. Chapter 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 temporary § 165.T08–999 to read as follows:

#### § 165.T08–999 Safety zones; Sector New Orleans.

(a) Location. The following areas are safety zones:

(1) A 25-yard radius surrounding all damaged barges located in navigable waters within Sector New Orleans.

(b) Definitions.

(1) *The Captain of the Port New Orleans* means the Commander, Coast Guard Sector New Orleans.

(2) *Damaged barge* means a barge requiring salvage operations.

(c) Regulations.

(1) Salvage operations may not begin on any Coast Guard inspected barge located within a safety zone established by paragraph (a) of this section until the Captain of the Port New Orleans, or his designee, has approved a salvage plan for that barge.

(2) Salvage operations may not begin on any uninspected barge located within a safety zone established by paragraph (a) of this section that is affecting waterway traffic until the Captain of the Port New Orleans, or his designee, has approved a salvage plan for that barge.

(3) The Captain of the Port New Orleans, or his designee, must approve a salvage plan for any barge located within a safety zone established by paragraph (a) of this section when salvage operations on that barge will affect waterway traffic.

(4) The salvage plan shall provide the information contained in the Brownwater Salvage Checklist. To receive the checklist, contact the Coast Guard Incident Command Post (ICP) in Alexandria, Virginia:

(i) Via phone at: (318) 443–2084, (318) 448–5351, or (318) 443–0651;

(ii) Via fax at: (318) 443–2573; or

(iii) Via e-mail at: [secnolasalvage@yahoo.com](mailto:secnolasalvage@yahoo.com).

(5) The Captain of the Port New Orleans, or his designee, must be notified when salvage operations commence and are completed on uninspected barges located within a safety zone established by paragraph (a) of this section but not affecting the navigation channel or vessel traffic.

(d) The salvage plan required in paragraph (c) above should be faxed to Coast Guard Incident Command Post (ICP) in Alexandria, LA at (318) 443–2573, Attention: Salvage Group. You may contact the Salvage Operations Department at the ICP at (318) 443–2084, (318) 448–5351, or (318) 443–0651 for more information.

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

(f) Effective period. This section is effective from September 19, 2005 through December 31, 2005.

Dated: September 19, 2005.

**Steve Venckus,**

*Chief, Office of Regulations & Administrative Law, Office of the Judge Advocate General, United States Coast Guard.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 174

[OPP–2005–0211; FRL–7735–4]

### Bacillus Thuringiensis Cry34Ab1 and Cry35Ab1 Proteins and the Genetic Material Necessary for Their Production in Corn; Exemption from the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production in corn on corn, field; corn, sweet; and corn, pop when applied/used as a plant-incorporated protectant. Mycogen Seeds c/o Dow AgroSciences LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the