

both branches of the fitting if the highest hydrant has a Siamese fitting, at a pitot-tube pressure of at least 344 kPa (50 psi) and a flow rate of at least 300 lpm (80 gpm); and

(2) Being energized remotely from a safe place outside the engine room and from the pump.

(b) All valves necessary for the operation of the fire main must be kept in the open position or must be capable of operation from the same place where the remote fire pump control is located.

(c) The fire main must have a sufficient number of fire hydrants with attached hose to reach any part of the machinery space using a single length of fire hose.

(d) The hose must be lined commercial fire-hose, at least 40mm (1.5 inches) in diameter, 15 meters (50 feet) in length, and fitted with a nozzle made of corrosion-resistant material capable of providing a solid stream and a spray pattern.

(e) The portable fire pump must be self-priming and power-driven, with—

(1) A minimum capacity of at least 300 lpm (80 gpm) at a discharge gauge pressure of not less than 414 kPa (60 psi), measured at the pump discharge;

(2) A sufficient amount of lined commercial fire hose at least 40mm (1.5 inches) in diameter and 15 meters (50 feet) in length, immediately available to attach to it so that a stream of water will reach any part of the vessel; and

(3) A nozzle made of corrosion-resistant material capable of providing a solid stream and a spray pattern.

(f) You must stow the pump with its hose and nozzle outside of the machinery space.

**§ 27.303 What are the requirements for fire-extinguishing equipment on towing vessels in inland service, and on towing vessels in ocean or coastal service whose construction was contracted for before August 27, 2003?**

You must carry on your towing vessel both—

(a) The minimum number of hand-portable fire extinguishers required by subpart 25.30 of this part; and

(b) By April 29, 2005, either—

(1) An approved B–V semi-portable fire-extinguishing system to protect the engine room; or

(2) A fixed fire-extinguishing system installed to protect the engine room of the vessel.

**§ 27.305 What are the requirements for fire-extinguishing equipment on towing vessels in ocean or coastal service whose construction was contracted for on or after August 27, 2003?**

(a) You must carry on your towing vessel both—

(1) The minimum number of hand-portable fire extinguishers required by subpart 25.30 of this part; and

(2) An approved B–V semi-portable fire-extinguishing system to protect the engine room.

(b) You must have a fixed fire-extinguishing system installed to protect the engine room of the vessel.

(c) This section does not apply to any towing vessel pushing a barge ahead, or hauling a barge alongside, when the barge's coastwise or Great Lakes route is restricted (as indicated on its certificate of inspection), so that the barge may operate "in fair weather only, within 12 miles of shore," or with words to that effect.

Dated: April 9, 2004.

**T.H. Gilmour,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[CGD09–04–023]**

**RIN 1625–AA00**

**Safety Zone; Port Huron, St. Clair River, MI**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the Southside Summer Festival fireworks display on June 27, 2004. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of the St. Clair River.

**DATES:** This temporary final rule is effective from 10 p.m. until 10:25 p.m. on June 27, 2004.

**ADDRESSES:** Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–04–023] and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave. Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** ENS Cynthia Lowry, U.S. Coast Guard Marine Safety Office Detroit, (313) 568–9580.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard 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. 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**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

**Background and Purpose**

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on accidents that have occurred in other Captain of the Port zones and the explosive hazard of fireworks, the Captain of the Port Detroit has determined firework launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone will encompass all waters of the St. Clair River within a 500-foot radius of the fireworks launch platform in approximate position 42°57'05" N, 083°25'19" W (off of the River Rats Club). The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-

scene patrol representative. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

#### 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 this rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This determination is based on the minimal time that vessels will be restricted from the safety zone.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant 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 for the following reasons: This safety zone is only in effect from 10 p.m. until 10:25 p.m. the day of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the St. Clair River by the Ninth Coast Guard District Local Notice to Mariners and Marine Information Broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), small entities may be assisted in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction or if you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (see **ADDRESSES**).

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

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 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. The Coast Guard analyzed this rule under that Order and has 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 would 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 affect 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.

#### Environment

The Coast Guard has analyzed this rule under Commandant Instruction M16475.1D, which guides their compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and has concluded that there are no factors in this rule 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 Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

#### 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.

### Energy Effects

The Coast Guard has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, and has 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### 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. A new temporary § 165.T09–023 is added to read as follows:

#### § 165.T09–023 Safety Zone; St. Clair River, Port Huron, MI.

(a) *Location.* The safety zone encompasses all waters of the St. Clair River within a 500-foot radius of the fireworks launch platform in approximate position 42°57'05" N, 083°25'19" W (off of the River Rats Club) (NAD 83).

(b) *Effective date.* This rule is effective from 10 p.m. until 10:25 p.m. (local time) on June 27, 2004.

(c) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16.

Dated: June 9, 2004.

**P.G. Gerrity,**

*Commander, U.S. Coast Guard, Captain of the Port Detroit.*

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**BILLING CODE 4910–15–P**

### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 17

**RIN 2900–AL39**

#### Priorities for Outpatient Medical Services and Inpatient Hospital Care

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This final rule affirms without change an interim final rule that amended VA's medical regulations. The rule established that in scheduling appointments for non-emergency outpatient medical services and admissions for inpatient hospital care, VA will give priority to veterans with service-connected disabilities rated 50 percent or greater and veterans needing care for a service-connected disability. The Veterans' Health Care Eligibility Reform Act of 1996 authorizes VA to ensure that these two categories of veterans receive priority access to this type of care. The intended effect of this final rule is to carry out that authority.

**DATES:** *Effective Date:* June 18, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ruth Hoffman, Office of the Assistant Deputy Under Secretary for Health (10A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, at (202) 273–8934.

**SUPPLEMENTARY INFORMATION:** We published in the *Federal Register* on September 17, 2002 (67 FR 58528), an interim final rule amending VA's medical regulations at 38 CFR 17.49 to include a new provision establishing for certain veterans a priority for outpatient medical services and inpatient hospital care. The priority was for two groups of veterans: Veterans needing care for service-connected conditions, and veterans with service-connected disability rated at 50 percent or more. We provided a 60-day comment period that ended on November 18, 2002. We received comments from thirteen commenters, and three of them expressed support for the rule. The issues raised by the commenters are discussed below.

One commenter stated that 38 U.S.C. 1705 and 1706 prohibit the Secretary from promulgating the interim final

rule. The commenter stated that the plain language of 38 U.S.C. 1705 and 1706 prohibits VA from establishing criteria to determine when health care will be accorded a veteran, and what type of health care is provided, that are unrelated to the medical needs of enrolled veterans. The commenter stated that VA has no authority to insert barriers based solely upon status and not upon medical judgment. The commenter noted that some veterans are exempted from the requirement of enrollment as a precondition for receiving VA health care, but stated that this exemption does not lead to an absolute priority in scheduling appointments for outpatient medical services and admissions for inpatient hospital care. The commenter stated that Congress intended the priority system in section 1705 to control access to VA when resources are scarce, and that the ability to enroll or disenroll veterans based on priority categories is VA's tool to ensure that care to enrollees is timely and of acceptable quality. The commenter stated that once enrolled, veterans are to be accorded health care based on medical need, and not on legal status. The commenter also stated that veterans who are unemployable are not exempted from the necessity of enrollment, and are outside the authority VA claims for the interim rule.

No changes are made based on this comment. The Veterans' Health Care Eligibility Reform Act of 1996, Public Law 104–262 (Eligibility Reform Act), supports the rule's provisions in 38 CFR 17.49 granting priority access to veterans with service-connected disabilities rated at 50 percent or greater based on one or more disabilities or unemployability and veterans needing care for a service-connected disability. Under the Eligibility Reform Act, these veterans are to be provided hospital care and medical services regardless of whether they enroll for care. The statute specifically directs the Secretary, in designing the enrollment system, to give highest priority to their needs when granting access to VA health care. The commenter asserts that veterans who are unemployable are not exempted from enrollment, but the commenter fails to note that there is a distinction between veterans determined to be unemployable for compensation purposes and veterans determined to be unemployable for pension purposes. Veterans determined to be unemployable for compensation purposes (see, e.g., 38 CFR 3.341 and 4.16) are awarded a total disability rating based on service-connected disabilities and thus would be exempted