

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, 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. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” will be 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.T01–131 to read as follows:

#### § 165.T01–131 Safety Zone; Cocheco River Dredging Project, Cocheco River, NH.

(a) *Location.* The following area is a safety zone: all waters in the Cocheco River, from surface to bottom, between the Upper and Lower Narrows within 100 yards of any and all blasting operations. All vessels are restricted from entering this area.

(b) *Effective Period.* This section is effective from 8 a.m. Eastern Standard Time (EST) on November 15, 2006 until 4 p.m. EST on December 30, 2006.

(c) *Definitions.* (1) *Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP).

(2) *[Reserved]*

(d) *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, Northern New England or the COTP’s designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP’s designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP’s designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP’s designated representative.

Dated: November 7, 2006.

**Stephen P. Garrity,**

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

[FR Doc. E6–19561 Filed 11–17–06; 8:45 am]

**BILLING CODE 4910–15-P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[COTP Honolulu 06–007]

RIN 1625–AA00

#### Safety Zone; Kealakekua Bay, HI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in Kealakekua Bay on the Island of Hawaii. This zone is established at the request of the Hawaii County Civil Defense due to mudslides and falling rocks. These falling rocks present a hazard to users of Kealakekua Bay. Entry of persons or vessels into this temporary safety zone is prohibited unless authorized by the Captain of the Port (COTP).

**DATES:** This rule is effective from 10 a.m. (HST) on October 25, 2006 until 12 a.m. (HST) on April 18, 2007.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket COTP Honolulu 06–007 and are available for inspection or copying at Coast Guard Sector Honolulu, 433 Ala Moana Blvd, Honolulu, HI between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) Quincey Adams, U.S. Coast Guard Sector Honolulu at (808) 842–2600.

**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. This zone is established due to reports of mudslides and falling rocks in Kealakekua Bay causing an immediate danger to the public. Publishing an NPRM and delaying the effective date would be contrary to the public safety. For the same reasons, 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 COTP finds this good cause to be the immediate need for a safety zone to protect the public.

#### Background and Purpose

On October 15, 2006, a 6.7-magnitude earthquake occurred at 7:08 am (HST) with an epicenter approximately 10

miles NNW of Kailua-Kona Bay on the island of Hawaii. The Hawaii County Civil Defense requested a safety zone after initial damage assessment reports of mudslides and falling rocks in Kealakekua Bay. In response, COTP Honolulu established a preliminary safety zone in Kealakekua Bay from the shore line to a line drawn from the lighthouse on Ka'awaloa Cove to the Hikiau Heiau landmark on Napo'opo'o Beach. As part of the ongoing damage assessments, the State of Hawaii has requested that the safety zone be reduced in size. The COTP will publish a final rule in the **Federal Register** to cancel this zone prior to its expiration date if future damage assessments indicate that the danger to the public from falling rocks and debris no longer exists.

#### Discussion of Rule

This temporary safety zone is effective from 10 a.m. (HST) on October 25, 2006 until 12 a.m. on April 18, 2007 unless cancelled earlier by the Captain of the Port. It is located in the waters of Hawaii Island's Kealakekua Bay between the shore and a line drawn from the Captain Cook Monument to the Hikiau Heiau landmark on Napo'opo'o Beach, from the surface of the water to the ocean floor.

The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through or anchoring within this zone is prohibited unless authorized by the Captain of the Port or a designated representative thereof. The Captain of the Port will cause notice of the enforcement of the safety zone described in this section to be made by broadcast notice to mariners. Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the zone. The Captain of the Port may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232.

#### Regulatory Evaluation

This rule is not a "significant regulatory action" under § 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under § 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).

The Coast Guard expects 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 expectation is based on the limited duration of the zone and the limited geographic area affected by it.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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. We expect that there will be little or no impact to small entities due to the narrowly tailored scope of this safety zone.

#### 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 this rule so that they could 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

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 either preempts State law or imposes 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 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.

#### 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 is 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 limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. An “Environmental Analysis Check List” and “Categorical Exclusion Determination (CED)” are available in the docket where indicated under ADDRESSES.

#### List of Subjects 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 a new § 165.T14–149 to read as follows:

#### § 165.T14–149 Safety zone; Kealakekua Bay, HI.

(a) *Location.* The following area, in U.S. navigable waters within the Honolulu Captain of the Port Zone (See 33 CFR 3.70–10), from the surface of the water to the ocean floor, is a safety zone: All waters of Kealakekua Bay from the shore to a line drawn from the Captain Cook Monument to the Hikiau Heiau landmark on Napo'opo'o Beach.

(b) *Effective dates.* This safety zone is effective from 10 a.m. (HST) on October 25, 2006 until 12 a.m. (HST) on April 18, 2007.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port or a designated representative thereof.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce this temporary safety zone.

(e) *Waiver.* The Captain of the Port may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the safety zone is unnecessary or impractical for the purpose of maritime security.

(f) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232.

Dated: October 25, 2006.

**V.B. Atkins,**

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

[FR Doc. E6–19557 Filed 11–17–06; 8:45 am]

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#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 3

**RIN 2900–AM13**

#### Phase-In of Full Concurrent Receipt of Military Retired Pay and Veterans Disability Compensation for Certain Military Retirees

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its regulations concerning concurrent receipt of military retired pay and veterans'

disability compensation. This final rule implements section 641 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). This law permits certain veterans who are entitled to military retired pay and are receiving disability compensation for a service-connected disability (or a combination of service-connected disabilities) rated at 50 percent or higher to receive disability compensation as well as their military retired pay. The intended effect of the regulation is to clearly state who is eligible for concurrent receipt of disability compensation and military retired pay, who must waive military retired pay to receive disability compensation, and how to file such a waiver.

**DATES:** *Effective Date:* This amendment is effective November 20, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Maya Ferrandino, Consultant, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7211.

**SUPPLEMENTARY INFORMATION:** On July 7, 2005, VA published in the **Federal Register** (70 FR 39213) a proposal to revise VA's rules concerning concurrent receipt of military retired pay and veterans' disability compensation. Interested persons were invited to submit written comments on or before September 6, 2005. We received comments from six members of the public. Subsequently, on January 6, 2006, Congress further amended section 1414 of title 10, United States Code, by enacting section 663 of Public Law 109–163, the National Defense Authorization Act for Fiscal Year 2006. This Notice first explains why we have made changes based on the comments to the July 7, 2005, notice of proposed rulemaking, and then explains changes necessitated by section 663 of Public Law 109–163.

#### Comments to July 7, 2005, Notice of Proposed Rulemaking

Three commenters stated support for concurrent receipt. These commenters did not suggest any changes to the proposed rule, and we make no change based on these comments.

Two commenters questioned the 20-year service requirement for the program, and why those who are medically retired from the military, with less than 20 years of service, have to give up their retired pay in order to receive disability compensation. Title 10 U.S.C. 1414(b)(2) clearly precludes persons medically retired with less than 20 years of service from concurrently