

refund may be deductible under § 20.2053-3(d)(3). A protective claim for refund of estate taxes may be filed before the expiration of the period of limitations for claims for refund in order to preserve the estate's right to claim a refund if the amount of a deductible tax liability may be affected by such an adjustment or refund. The application of this section may be illustrated by the following examples:

*Example 1. Increase in tax due.* After the decedent's death, the Internal Revenue Service examines the gift tax return filed by the decedent in the year before the decedent's death and asserts a deficiency of \$100x. The estate spends \$30x in a non-frivolous defense against the increased deficiency. The final determination of the deficiency, in the amount of \$90x, is paid by the estate. The estate may deduct \$90x under section 2053(a)(3) and \$30x under § 20.2053-3(c)(2) or (d)(3).

*Example 2. Refund of taxes paid.* Decedent's estate timely files D's individual income tax return for the year in which the decedent died. The estate timely pays the entire amount of the tax due, \$50x, as shown on that return. The entire \$50x was attributable to income received prior to the decedent's death. Decedent's estate subsequently discovers an error on the income tax return and files a timely claim for refund. Decedent's estate receives a refund of \$10x. The estate is only allowed a deduction of \$40x under section 2053(a)(3) for the income tax liability accrued prior to the decedent's death. If a deduction for \$50x was allowed on the estate tax return prior to the receipt of the refund, it shall be the duty of the executor to notify the Commissioner of the change and to pay the resulting tax, with interest.

(h) *Effective date.* The rules of this section apply to the estates of decedents dying on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

**Par. 7.** Section 20.2053-9 is amended as follows:

1. Revising the heading for paragraph (a) and adding a sentence at the end of paragraph (a).
2. Revising the first and last sentences of paragraph (c).
3. Adding new paragraph (f).

The revisions and addition read as follows:

**§ 20.2053-9 Deduction for certain state death taxes.**

(a) *General rules for the estates of decedents dying on or before December 31, 2004.* \* \* \* For the estates of decedents dying after December 31, 2004, see section 2058 to determine the deductibility of state death taxes.

\* \* \* \* \*

(c) *Exercise of election.* The election to take a deduction for a state death tax

imposed upon a transfer for charitable, etc., uses shall be exercised by the executor by the filing of a written notification to that effect with the Commissioner. \* \* \* The election may be revoked by the executor by the filing of a written notification to that effect with the Commissioner at any time before the expiration of such period.

\* \* \* \* \*

(f) *Effective date.* The rules of this section apply to the estates of decedents dying on or before December 31, 2004.

**Par. 8.** Section 20.2053-10 is amended by revising paragraph (c) and adding a new paragraph (e) to read as follows:

**§ 20.2053-10 Deduction for certain foreign death taxes.**

\* \* \* \* \*

(c) *Exercise of election.* The election to take a deduction for a foreign death tax imposed upon a transfer for charitable, etc., uses shall be exercised by the executor by the filing of a written notification to that effect with the Commissioner. An election to take the deduction for foreign death taxes is deemed to be a waiver of the right to claim a credit under a treaty with any foreign country for any tax or portion thereof claimed as a deduction under this section. The notification shall be filed before the expiration of the period of limitations for assessment provided in section 6501 (usually 3 years from the last day for filing the return). The election may be revoked by the executor by the filing of a written notification to that effect with the Commissioner at any time before the expiration of such period.

\* \* \* \* \*

(e) *Effective date.* The rules of this section apply to the estates of decedents dying on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD13-07-009]

RIN 1625-AA00

**Safety Zones: Fireworks Displays in the Captain of the Port Portland Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to amend its regulations to establish additional safety zones on the waters of the Columbia River located in the Area of Responsibility (AOR) of the Captain of the Port, Portland, Oregon during annual fireworks displays. The Captain of the Port, Portland Oregon is taking this action to safeguard watercraft and their occupants from safety hazards associated with these displays. Entry into these zones is prohibited unless authorized by the Captain of the Port.

**DATES:** Comments and related material must reach the Coast Guard on or before May 23, 2007.

**ADDRESSES:** You may mail comments and related material to Petty Officer Michelle Duty at Sector Portland 6767 N. Basin Ave., Portland, OR 97217. Sector Portland maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Sector Portland between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Petty Officer Michelle Duty, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, 503-240-2590.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13-07-009), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, 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 in view of them.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector Portland at the address under

**ADDRESSES** explaining why one 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**.

### Background and Purpose

The Coast Guard is proposing establish additional permanent safety zones to allow for safe annual fireworks displays. All events occur within the Captain of the Port, Portland, OR, Area of Responsibility (AOR). These events may result in a number of vessels congregating near fireworks launching barges and sites. The safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays. These safety zones will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal and local agencies.

### Discussion of Proposed Rule

This proposed rule, for safety concerns, will control vessels, personnel and individual movements in a regulated area surrounding the following fireworks events: Hillman 4th of July Fireworks Display, Vancouver WA; East County 4th of July Fireworks Gresham, OR; Port of Cascade Locks July 4th Display, Cascade Locks OR; Gladstone 4th of July Celebration, Gladstone, OR. Entry into these zones is prohibited unless authorized by the Captain of the Port, Portland or his designated representative. Captain of the Port, Portland, Oregon, will enforce these safety zones. The Captain of the Port may be assisted by other federal and local agencies.

### Regulatory Evaluation

This proposed 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 proposed 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 fact that the regulated areas established by the regulation will be of limited duration and encompass small portions of the Columbia River in the Portland AOR in the evening when vessel traffic is low.

### 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 dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit a portion of the Columbia River during the times mentioned in proposed regulation text § 165.1315(a)(15–18) at the conclusion of this proposed rule.

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.

These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only three hours during the evenings when vessel traffic is low.

Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so.

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 (Public Law 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 rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please contact Petty Officer

Michelle Duty by phone at 503–247–4015 or by e-mail at Michelle.K.Duty@uscg.mil. 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 proposed rule would call 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 proposed 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 proposed rule would not result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### Environment

We have analyzed this proposed 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. This rule establishes safety zones which have duration of no more than three hours each.

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 proposes to amend 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. Amend § 165.1315 by adding paragraphs (a)(15) through (18) and (b)(2) to read as follows.

#### § 165.1315 Safety Zones: Fireworks displays in the Captain of the Port Portland Zone.

(a) \* \* \*

(15) Hillman 4th of July Fireworks Display, Vancouver WA:

(i) *Location.* All water of the Columbia River forming a 600 foot radius from the land launching point of: 45°35'46" N, 122°32'22" W.

(ii) *Enforcement Period.* This section is enforced annually on July fourth from approximately 8:30 p.m. to 11:30 p.m. (PDT).

(16) East County 4th of July Fireworks Gresham, OR

(i) *Location.* All water of the Columbia River forming a 600 foot radius from the land launching point: 45°33' 33" N, 122°27'03" W in the vicinity of Blue Lake Park.

(ii) *Enforcement Period.* This section is enforced annually on July fourth from 8:30 p.m. to 11:30 p.m. (PDT).

(17) Port of Cascade Locks July 4th Display, Cascade Locks OR.

(i) *Location.* All water of the Columbia River forming a 600 foot radius from the land launching point: 45°40'16" N 121°53'38" W the North point of Thunder Island.

(ii) *Enforcement Period.* This section is enforced annually on July fourth from 8:30 p.m. to 11:30 p.m. (PDT).

(18) Gladstone 4th of July Celebration, Gladstone, OR

(i) *Location.* All water of the Columbia River forming a 800 foot radius from the land launching point: 45°22'21" N, 122°36'34" W.

(ii) *Enforcement Period.* This section is enforced annually on July fourth from 8:30 p.m. to 11:30 p.m. (PDT).

(b) \* \* \*

(2) *Designated representative* means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers or other officers operating Coast Guard vessel and a Federal, State, and local officers designated by or assisting the Captain of the Port Portland (COTP) in the enforcement of the safety zone.

\* \* \* \* \*

Dated: March 20, 2007.

Patrick G. Gerrity,

Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD09-07-013]

RIN 1625-AA00

#### Safety Zone, Kenosha Harbor, Kenosha, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone near Kenosha Harbor, Kenosha, Wisconsin. This zone is intended to control the movement of vessels on portions of Lake Michigan during the Spill Of National Significance (SONS) exercise on June 19 and 20, 2007. This zone is necessary to protect the public from the hazards associated with ships and boats deploying oil containment equipment.

**DATES:** Comments and related material must reach the Coast Guard on or before May 8, 2007.

**ADDRESSES:** You may mail comments and related material to Commander, Coast Guard Sector Lake Michigan (spw), 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. The Sector Lake Michigan Prevention Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at