

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 Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, 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 this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishment of a safety zone.

An environmental analysis checklist and a 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 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 new temporary zone § 165.T11-167 to read as follows:

#### § 165.T11-167 Safety zone; AVI July Fireworks Display; Laughlin, Nevada.

(a) *Location.* The following area is a safety zone: the navigable waters extending out 1000 feet from the firing site located at approximately 35°00'45" N, 114°38'18" W.

(b) *Enforcement Period.* This rule will be enforced from 8:15 p.m. to 9:15 p.m. on July 4, 2009. If the need for the safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone.

(c) *Definitions.* The following definition applies to this section: designated representative means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF-FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 27, 2009.

**T.H. Farris,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. E9-13776 Filed 6-11-09; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[USCG-2009-0191]

RIN 1625-AA00

#### Safety Zone: Ohio River Mile 265.2 to 266.2 and From Kanawha River Mile 0.0 to 0.5, Point Pleasant, WV

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the waters of the Ohio River beginning at mile 265.2 and ending at mile 266.2, and the waters of the Kanawha River beginning at mile 0.0 and ending at mile 0.5, extending the entire width of both rivers. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with the City of Point Pleasant 2009 Fireworks Display. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or a designated representative.

**DATES:** This rule is effective from 9:30 p.m. on July 4, 2009 until 10:30 p.m. on July 4, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0191 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0191 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Petty Officer Sean T. Lewis, Marine Safety Unit Huntington at

(304) 733-0198, extension 2135 or e-mail at [sean.t.lewis@uscg.mil](mailto:sean.t.lewis@uscg.mil). 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 because immediate action is needed to protect participant and spectator craft from the hazards associated with the fireworks display.

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**. Publishing an NPRM and delaying its effective date would be contrary to public interest because immediate action is needed to protect vessels and mariners from the hazards associated with the fireworks display.

##### **Background and Purpose**

The City of Point Pleasant, WV is sponsoring a fireworks display on July 4, 2009. Fireworks will be launched from the left descending bank of the Ohio River at mile 265.7. A hazardous situation could exist for vessels, mariners and spectators in the vicinity of the fireworks display. A safety zone is needed to protect those vessels, mariners and spectators from the hazards associated with this fireworks display.

##### **Discussion of Rule**

The Captain of the Port Ohio Valley is establishing a temporary safety zone for the waters the Ohio River beginning at mile 265.2 and ending at mile 266.2, and the waters of the Kanawha River beginning at mile 0.0 and ending at mile 0.5, extending the entire width of both rivers. The term "participating vessel" includes all vessels registered with the fireworks event officials to work in the event. With the exception of participating vessels and those mariners operating participating vessels, all vessels and persons are prohibited from

transiting within this safety zone unless authorized by the Captain of the Port Ohio Valley or a designated representative. The Captain of the Port Ohio Valley may be contacted on VHF-FM Channels 13 or 16, or by telephone at (800) 253-7465. This rule is effective from 9:30 p.m. on July 4, 2009 until 10:30 p.m. on July 4, 2009. The Captain of the Port Ohio Valley will inform the public through broadcast notice to mariners of the enforcement period for the safety zone.

##### **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.

##### **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 will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Ohio River beginning at mile 265.2 and ending at mile 266.2, and the waters of the Kanawha River beginning at mile 0.0 and ending at mile 0.5 from 9:30 p.m. on July 4, 2009 until 10:30 p.m. on July 4, 2009. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for a short period of time.

##### **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 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 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 Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, 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 this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g.), of the Instruction. This rule involves establishment of a safety zone to protect persons and vessels from the potential safety hazards associated with the City of Point Pleasant 2009 Fireworks Display. Under figure 2-1, paragraph (34)(g.), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

### 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.T08-0191 is added to read as follows:

#### § 165.T08-0191 Safety Zone; Ohio River, Mile 265.2 to 266.2 and from Kanawha River, Mile 0.0 to 0.5, Point Pleasant, WV.

(a) *Location.* The following area is a safety zone: The Ohio River mile 265.2 to 266.2 and from Kanawha River mile 0.0 to 0.5, Point Pleasant, WV

(b) *Effective date.* This rule is effective from 9:30 p.m. on July 4, 2009 until 10:30 p.m. on July 4, 2009.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited to all persons and vessels except participant vessels and those vessels specifically authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels other than participating vessels and mariners requiring entry into or passage through

the zone must request permission from the Captain of the Port Ohio Valley or a designated representative. They may be contacted on VHF-FM Channel 13 or 16 or by telephone at (800) 253-7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: May 1, 2009.

**H.M. Nguyen,**

*Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0268]

RIN 1625-AA00

#### Safety Zone; Sea World Summer Nights Fireworks; Mission Bay, San Diego, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone, on the navigable waters of Mission Bay in support of the Sea World Summer Nights Fireworks. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 8 p.m. on June 12, 2009 to 10 p.m. on August 30, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0268 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0268 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at two locations: The Docket Management Facility (M-30), U.S. Department of Transportation, West