

is traveling for pleasure. As stated, the Agency's interpretations have held that such carriage is not within the scope of, and incidental to, the company's business. The ability of the Company to communicate with him is in no way dependent upon charging him for carriage for such purposes." The NBAA made similar arguments in its recent request that company officials have the ability to conduct meaningful, real-time work aboard company aircraft, and so personal travel can be within the scope of the company's business even though it is incidental to that business. The FAA rejects this argument as sufficient to merit a change in agency interpretation of § 91.501(b)(5). If anything, the advances in communication technology weaken any argument that the use of company aircraft is necessary for personal travel. The advent of laptop computers and handheld PDAs has led to greater communication than ever before.

The FAA finds more compelling the argument that certain, highly-placed officials and employees may be unable to reliably schedule personal travel due to the nature of their employment.

Recalling an individual from a vacation because of an emergency is clearly within the scope of a company's business. To the extent that using company aircraft is the most efficient way to transport the individual in an emergency situation, the FAA would not object to company aircraft being used; although there could be some question as to whether the transport was still incidental to the company's business, such that both prongs of § 91.501(b)(5) apply.

However, the FAA believes there is merit to the position that even the first leg of the trip could, under limited circumstances, be within the scope of a company's business, even though there were no emergency circumstances at play. The FAA recognizes that fairly routine personal travel, such as a summer vacation or weekend ski trip, could be cancelled up to the last moment because of compelling business concerns. As such, the company may determine that it is more efficient to provide the company aircraft than to reimburse the individual for the cost of cancelled commercial airfare. In addition, the company may be able to accommodate the individual's altered plans by providing the company aircraft as soon as possible after the compelling business concern has been resolved. As such, while the personal travel is not within the scope of the company's business, indeed it is clearly incidental to that business, the need to modify the travel on very short notice may well be.

Likewise, to the extent that the return trip is not compelled by emergency circumstances, the ability of a company to alter an individual's travel plans on very short notice may render a particular flight both within the scope of and incidental to the company's business. Thus, the FAA has tentatively determined that a company could be reimbursed for the pro rata cost of owning, operating, and maintaining the aircraft when used for routine personal travel by an individual whose position merits such a high level of company interference into his or her personal travel plans.

The FAA notes that not all personal travel would meet these conditions. As noted above, truly emergency circumstances would likely obviate a company's ability to demonstrate that a particular flight is incidental to the company's business. By the same token, there are certain types of personal travel that are unlikely to be altered or cancelled, even for compelling business reasons. For example, absent an emergency, it is highly unlikely that a senior officer or employee would be expected to miss a significant event, such as a wedding or funeral of a close family member. It is also unlikely that the individual would be expected to cancel or reschedule necessary surgery or other medical treatment.

In order to prevent companies from abusing the proposed change in the Schwab Interpretation, the FAA believes that a company wishing to take advantage of the interpretation should maintain and regularly update a list of individuals whose position within the company require him or her to routinely change travel plans within a very short period of time. The company should be prepared to share this list with the FAA if requested. The FAA recognizes that the Securities Exchange Commission and Internal Revenue Service employ the concept of "specified individuals" in the context of certain reporting requirements and taxation issues. These individuals generally include officers, directors, and more than 10 percent owners of a company. The FAA does not believe that all officers of a company are likely to be subject to the level of company control discussed above, nor are all directors. Rather than issue a blanket description of which individuals may be covered by the proposed revision, the FAA believes it is appropriate for the company's board, or equivalent governing body, to list which company individuals are so situated. In addition, the company would need to keep records indicating that a determination has been made by

the company that the flight in question was of a routine personal nature.

Issued in Washington, DC, on June 30, 2010.

**Rebecca B. MacPherson,**  
Assistant Chief Counsel for Regulations.

[FR Doc. 2010-16385 Filed 7-7-10; 8:45 am]

BILLING CODE 4910-13-P

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0600]

RIN 1625-AA00

#### Safety Zone; Fireworks Display, Portland, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes the establishment of a temporary safety zone covering specified waters of the Willamette River bounded by the Hawthorne Bridge to the north, Marquam Bridge to the south, and the shoreline to the east and west in support of the Oregon Symphony Celebration Fireworks Display, Portland, Oregon. The safety zone is necessary to help ensure the safety of the maritime public during the event and will do so by prohibiting all persons and vessels from entering the safety zone unless authorized by the Captain of the Port or his designated representative.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 9, 2010.

**ADDRESSES:** You may submit comments identified by docket number USCG-2010-0600 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section

below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail MST1 Jaime Sayers, Waterways Management Division, Coast Guard Sector Portland; telephone 503-240-9319, e-mail

*Jaime.A.Sayers@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

**Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG-2010-0600), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2010-0600" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit

comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

**Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2010-0600" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

**Privacy Act**

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting 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**.

**Basis and Purpose**

The Oregon Symphony Celebration Fireworks display is an annual event. The display has an established safety zone in 33 CFR 165.1315(a)(7) but the established safety zone covers an event which is to be held in the month of August. The display this year will take place during the month of September. Due to the inherent dangers associated with such events, the safety zone created by this rule is necessary to help ensure the safety of the maritime public and will do so by prohibiting all persons and vessels from coming too close to the

fireworks display and its associated hazards.

**Discussion of Proposed Rule**

The proposed rule would suspend 33 CFR 165.1315(a)(7) until 10 p.m. on September 2, 2010. This proposed rule establishes a temporary safety zone covering specified waters of the Willamette River in the vicinity of Portland, Oregon. Specifically, the safety zone would include all waters of the Willamette River bounded by the Hawthorne Bridge to the north, the Marquam Bridge to the south, and the shoreline to the east and west from 7 p.m. until 10 p.m. on September 2, 2010. All persons and vessels will be prohibited from entering the safety zone unless authorized by the Captain of the Port or his designated representative.

**Regulatory Analyses**

We developed this proposed 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 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. The Coast Guard has made this determination because the safety zone will only be in effect for 3 hours on one day and maritime traffic may be able to transit the zone with permission of the Captain of the Port or his designated representative.

**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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: the owners or operators of vessels wishing to transit the safety zone established by this rule. The rule

will not have a significant economic impact on a substantial number of small entities, however, because the safety zone will only be in effect for 3 hours on one day and maritime traffic may be able to transit the zone with permission of the Captain of the Port or his designated representative.

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), 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 MST1 Jaime Sayers. The Coast Guard will not retaliate against small entities that question or complain about this proposed 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 (adjusted for inflation) or more in any one year. Though this proposed 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 proposed rule would not cause 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 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2 Figure 2–1, paragraph 34(g) of the Instruction and neither an environmental assessment nor an environmental impact statement is required. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a temporary safety zone. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed 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 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

**§ 165.1315(a)(7) [Suspended]**

2. Section 165.1315(a)(7) is suspended until 10 p.m. on September 2, 2010.

3. A new temporary § 165.1315-149 is added from 7 p.m. to 10 p.m. on September 2, 2010 to read as follows:

**§ 165.1315-149 Safety Zone; Fireworks Display, Portland, OR.**

(a) *Location.* The following area is a safety zone: All waters of the Willamette River bounded by the Hawthorne Bridge to the north, the Marquam Bridge to the south, and the shoreline to the east and west.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, Subpart C, no person or vessel may enter or remain in the safety zone created by this section without the permission of the Captain of the Port or his designated representative. Designated representatives are Coast Guard personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. See 33 CFR Part 165, Subpart C, for additional information and requirements.

(c) *Enforcement Period.* The safety zone created by this section will be enforced from 7 p.m. until 10 p.m. on September 2, 2010.

Dated: June 22, 2010.

**F.G. Myer,**

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

[FR Doc. 2010-16585 Filed 7-7-10; 8:45 am]

**BILLING CODE 9110-04-P**

**POSTAL REGULATORY COMMISSION****39 CFR Part 3050**

[Docket No. RM2010-10; Order No. 482]

**Periodic Reporting**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice of proposed rulemaking; availability of rulemaking petition.

**SUMMARY:** The Commission is establishing a docket to consider a proposed change in certain analytical methods used in periodic reporting. This action responds to a Postal Service rulemaking petition. The proposed change has two parts. One part would reduce the sample size of a major ongoing data collection effort. The other part would divert a designated percentage of sample tests to a special study using an alternative sample frame. Establishing this docket will allow the Commission to consider the Postal Service's proposal and comments from the public.

**DATES:** Comments are due: August 16, 2010.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov) or 202-789-6820.

**SUPPLEMENTARY INFORMATION:** *Regulatory History*, 75 FR 7426 (Feb. 19, 2010).

On June 25, 2010, the Postal Service filed a petition to initiate an informal rulemaking proceeding to consider a change in the analytical methods approved for use in periodic reporting.<sup>1</sup> The Postal Service's proposal is in two parts. Proposal Two-A proposes to reduce the size of the sample that it uses to collect Origin-Destination Information System/Revenue Pieces and Weight (ODIS/RPW) data by 20 percent. *Id.* at 3. In effect, Proposal Two-A asks that the Commission's decision in Order No. 396<sup>2</sup> not to approve an identical proposal submitted by the Postal Service in June of 2009 be reconsidered.

The second part of Proposal Two is presented as Proposal Two-B. It proposes to divert 10 percent of the sample tests conducted under the current ODIS-RPW sample size to a special study utilizing an alternative sample frame. The alternative sample frame that the Postal Service proposes to test in Proposal Two-B would define a sample frame unit as a "delivery unit." According to the Postal Service, delivery units would include "city and rural carriers, box sections, and firms." Petition, Attachment Proposal Two-B, at 1.

Currently, ODIS-RPW sample frame units are Mail Exit Points (MEPs), which the Postal Service defines as a letter, flat, or parcel mail stream in a post office, station, branch or associate office. When sampling MEPs, the data collector samples Delivery Point Sequence (DPS) sorted letter trays after they arrive at the delivery unit from the processing plant and before they are dispatched to carriers. The Postal Service asserts that this interval is becoming too short to provide an adequate opportunity for the

<sup>1</sup> Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytic Principles (Proposal Two), June 25, 2010 (Petition).

<sup>2</sup> Docket No. RM2009-5, Order Concerning Principles for Periodic Reporting (Proposal One), January 21, 2010 (Order No. 396).

data collector to take a probabilistic sample of trays and record their contents. Another drawback of using MEPs as the sample frame unit, according to the Postal Service, is that the data collector cannot determine whether a tray is destined for a carrier, a firm hold-out, or the box unit. Since its 5-day delivery proposal does not envision delivering carrier mail on Saturday, a data collector working on Saturdays would need to be able to distinguish between trays destined for carriers from those destined for firm hold-outs and box sections. The Postal Service asserts that defining the "delivery unit as the ODIS-RPW frame and sample unit" would ameliorate both problems. *Id.*

The Postal Service explains that if the Commission were to approve Proposals Two-A and Two-B as a package, current total ODIS-RPW tests would be reduced by 10 percent and another 10 percent would be reallocated to study the alternative. If the Commission were to approve only Proposal Two-B, total tests would not be reduced, but 10 percent would be reallocated to studying the alternative. Petition at 1-4. If the Commission were to decline to approve either, ODIS-RPW data would continue to be collected at the current sample size.

The attachments to the Postal Service's petition explain its proposals in more detail, including their backgrounds, objectives, and rationale.

*It is ordered:*

1. The Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytic Principles (Proposal Two), filed June 25, 2010, is granted.

2. The Commission establishes Docket No. RM2010-10 to consider the matters raised by the Postal Service's Petition.

3. Interested persons may submit comments on or before August 16, 2010.

4. Pursuant to 39 U.S.C. 505, Diane Monaco is designated to serve as the Public Representative to represent the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**  
*Secretary.*

[FR Doc. 2010-16531 Filed 7-7-10; 8:45 am]

**BILLING CODE 7710-FW-S**