

these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of these regulations is Karen Walny, Office of the Associate Chief Counsel (International). However, other persons from the Office of Associate Chief Counsel (International) and the Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 863(a) and 7805  
\* \* \*

■ **Par. 2.** Section 1.863–10 is added to read as follows:

#### § 1.863–10 Source of income from a qualified fails charge.

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, the source of income from a qualified fails charge shall be determined by reference to the residence of the taxpayer as determined under section 988(a)(3)(B)(i).

(b) *Qualified business unit exception.* The source of income from a qualified fails charge shall be determined by reference to the residence of a qualified business unit (as defined in section 989) of a taxpayer if—

(1) The taxpayer's residence, determined under section 988(a)(3)(B)(i), is the United States;

(2) The qualified business unit's residence, determined under section 988(a)(3)(B)(ii), is outside the United States;

(3) The qualified business unit is engaged in the conduct of a trade or business in the country where it is a resident; and

(4) The transaction to which the qualified fails charge relates is

attributable to the qualified business unit. A transaction will be treated as attributable to a qualified business unit if it satisfies the principles of § 1.864–4(c)(5)(iii) (substituting “qualified business unit” for “U.S. office”).

(c) *Effectively connected income exception.* Qualified fails charge income that arises from a transaction any income from which is (or would be if the transaction produced income) effectively connected with a United States trade or business pursuant to § 1.864–4(c) is treated as from sources within the United States, and the income from the qualified fails charge is treated as effectively connected to the conduct of a United States trade or business.

(d) *Qualified fails charge.* For purposes of this section, a qualified fails charge is a payment that—

(1) Compensates a party to a transaction that provides for delivery of a designated security (as defined in paragraph (e) of this section) in exchange for the payment of cash (delivery-versus-payment settlement) for another party's failure to deliver the specified designated security on the settlement date specified in the relevant agreement; and

(2) Is made pursuant to—

(i) A trading practice or similar guidance approved or adopted by either an agency of the United States government or the Treasury Market Practices Group, or

(ii) Any trading practice, program, policy or procedure approved by the Commissioner in guidance published in the Internal Revenue Bulletin.

(e) *Designated security.* For purposes of this section, a *designated security* means any—

(i) Debt instrument (as defined in § 1.1275–1(d)) issued by the United States Treasury Department, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any Federal Home Loan Bank; or

(ii) Pass-through mortgage-backed security guaranteed by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association.

(g) *Effective/applicability date.* This section is effective on February 21, 2012. This section applies to a qualified fails charge paid or accrued on or after December 8, 2010.

#### § 1.863–10T [Removed]

■ **Par. 3.** Section 1.863–10T is removed.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: February 14, 2012.

**Emily S. McMahon,**

*Acting Assistant Secretary of the Treasury, Tax Policy.*

[FR Doc. 2012–3909 Filed 2–17–12; 8:45 am]

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#### DEPARTMENT OF THE TREASURY

#### Office of the Secretary

#### 31 CFR Part 1

#### RIN 1505–AC33

#### Privacy Act of 1974; Implementation

#### Correction

In rule document 2011–29385 appearing on pages 70640–70644 the issue of Tuesday, November 15, 2011 make the following correction:

#### § 1.36 [Corrected]

■ On page 70644, in § 1.36, in paragraph (g)(1)(viii), in the untitled table, the third row of the table should read: “IRS 90.002 . . . . Chief Counsel Litigation and Advice (Civil) Records”

[FR Doc. C1–2011–29385 Filed 2–17–12; 8:45 am]

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#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2012–0067]

RIN 1625–AA00

#### Safety Zone; Kinnickinnic River Containment and Cleanup; Milwaukee, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Kinnickinnic River in Milwaukee, Wisconsin. This zone is intended to restrict vessels from a portion of the Kinnickinnic River due to the petroleum cleanup efforts. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the removal of petroleum product from this area of the Kinnickinnic River.

**DATES:** This rule is effective in the CFR on February 21, 2012. This rule is effective with actual notice for purposes of enforcement at 7 a.m. on January 30, 2012. This rule will remain in effect through 7 a.m. on March 1, 2012.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0067 and are available online by going to [www.regulations.gov](http://www.regulations.gov), inserting USCG-2012-0067 in the "Keyword" box, and then clicking "search." They are also available for inspection or copying at 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, contact or email BM1 Adam Kraft, U.S. Coast Guard Sector Lake Michigan, at 414-747-7148 or [Adam.D.Kraft@uscg.mil](mailto:Adam.D.Kraft@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 an agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 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 the dangers presented by the containment and cleanup of petroleum product are immediate and do not allow time for a notice and comment period. Thus, waiting for a notice and comment period to run would be impracticable and contrary to the public interest in that it would prevent the Coast Guard from protecting the public and vessels on navigable waters from the aforementioned hazards.

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**. For the reasons discussed in the preceding paragraph, a 30-day

notice period would be impracticable and contrary to the public interest.

##### Background and Purpose

On January 23, 2012 it was discovered that a large amount of jet fuel is entering the Kinnickinnic River from an underground fuel leak in the vicinity of the airport in Milwaukee, WI. The Captain of the Port, Sector Lake Michigan, has determined that the containment and cleanup poses a serious risk of injury to persons and property within this area of the river.

##### Discussion of Rule

Because of the aforesaid hazards, the Captain of the Port, Sector Lake Michigan, has determined that a safety zone is necessary to protect the public. The safety zone will encompass all U.S. navigable waters of Kinnickinnic River between the West Becher Street Bridge located at 43°00'37" N 087°54'51" W and the First street bridge located at 43°00'30" N 087°54'41" W (NAD 83). This rule will be enforced from 7 a.m. on January 30, 2012 until 7 a.m. on March 1, 2012.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Lake Michigan, or his or her designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF Channel 16.

##### 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. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant

or loan recipients, and will not raise any novel legal or policy issues. The safety zone will be in effect along a portion of the river, given the time of year that has minimal traffic. Moreover, the most prominent marine commercial company in the area has been notified of the situation and it has chosen to use an alternate mooring.

##### 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.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor on a portion of Kinnickinnic River between 7 a.m. on January 30, 2012 and 7 a.m. on March 1, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic will be minimal due to the time of year and the location of the safety zone.

In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of The Port, Sector Lake Michigan, or his or her designated representative to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

##### 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 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). 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 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 concern 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 the establishment of a safety zone and is therefore categorically

excluded under paragraph 34(g) of the Instruction.

A final environmental analysis checklist and 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. 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 § 165.T09-0067 to read as follows:

#### § 165.T09-0067 Safety Zone; Kinnickinnic River containment and cleanup, Milwaukee, Wisconsin.

(a) *Location.* All waters of the Kinnickinnic River between the West Becher Street Bridge located at 43°00'37" N 087°54'51" W and the First Street Bridge located at 43°00'30" N 087°54'41" W (NAD 83).

(b) *Effective and Enforcement Period.* This rule is effective and will be enforced from 7 a.m. on January 30, 2012 until 7 a.m. on March 1, 2012. The Captain of the Port, Sector Lake Michigan, or his or her designated representative, may suspend the enforcement of this safety zone.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

(3) The "designated representative" of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The designated representative of the Captain of the Port, Sector Lake Michigan, will be on land

in the vicinity of the safety zone and will have constant communications with the on-scene safety vessels.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her designated representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF Channel 16.

Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

Dated: January 31, 2012.

**C. W. Tenney,**

*Commander, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan, Acting.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2011-1146]

RIN 1625-AA08

#### Safety Zone; 2012 Mavericks Invitational, Half Moon Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in support of the Mavericks Surf Competition. This temporary safety zone will establish a temporary safety zone in vicinity of Pillar Point in the navigable waters of Half Moon Bay, California. The regulation will temporarily restrict vessel traffic in vicinity of Pillar Point and prohibit vessels not participating in the surfing event from entering the dedicated surfing area and the hazardous waters surrounding Pillar Point. This regulation is necessary to provide for the safety of life on the navigable waters immediately prior to, during, and immediately after the surfing competition.

**DATES:** *Effective Date:* This rule is effective in the CFR from February 21, 2012 until 3 p.m. March 31, 2012. This rule is effective with actual notice for purposes of enforcement beginning 7 a.m. January 23, 2012.

**ADDRESSES:** Documents indicated in this preamble as being available in the

docket are part of docket USCG-2011-1146 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1146 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at 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 Lieutenant Junior Grade DeCarol Davis (415) 399-7443, or email [D11-PF-MarineEvents@uscg.mil](mailto:D11-PF-MarineEvents@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 the event would occur before the rulemaking process would be completed. Because of the dangers posed by the surf conditions during the 2012 Mavericks Invitational surf competition, the safety zone is necessary to provide for the safety of event participants, spectators, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

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**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the surf conditions during the 2012 Mavericks Invitational.

##### Basis and Purpose

The 2012 Mavericks Invitational is a one day "Big Wave" surfing competition consisting of the top 24 big wave surfers and only occurs when 15-20 foot waves are sustained for over 24 hours and are

combined with mild easterly winds of no more than 5-10 knots. The rock and reef ridges that make up the sea floor of the Pillar Point area combined with optimal weather conditions create the large waves that Mavericks is known for. Due to the hazardous waters surrounding Pillar Point at the time of the surfing competition, the Coast Guard is establishing a safety zone in vicinity of Pillar Point that restricts navigation in the area of the surf competition and in neighboring hazardous areas.

##### Discussion of Rule

The Coast Guard is establishing a safety zone associated with the 2012 Mavericks Invitational surf competition. The 2012 Mavericks Invitational will take place on a day that presents favorable surf conditions between 7 a.m. Monday January 23, 2012 and 3 p.m. Saturday March 31, 2012. The 2012 Mavericks Invitational can only occur when 15-20 foot waves are sustained for over 24 hours and are combined with mild easterly winds of no more than 5-10 knots. Unpredictable weather patterns and the event's narrow operating window limit the Coast Guard's ability to notify the public of the event. The Coast Guard will issue notice of the event as soon as practicable, and no later than 24 hours prior via the Broadcast Notice to Mariners.

The 2012 Mavericks Invitational will occur on the navigable waters of Half Moon Bay in vicinity of Pillar Point. The Coast Guard will enforce a temporary safety zone bounded by a line connecting the following coordinates in the order they appear: 37°29'23" N, 122°30'04" W; 37°29'15" N, 122°30'10" W; 37°29'17" N, 122°30'30" W; 37°29'36" N, 122°30'16" W; 37°29'23" N, 122°30'04" W; 37°29'36" N, 122°29'21" W; 37°29'13" N, 122°29'25" W; 37°29'15" N, 122°29'58" W; 37°29'23" N, 122°30'04" W (NAD 83).

The effect of this temporary safety zone will be to restrict navigation in the vicinity of Pillar Point while the 2012 Mavericks Invitational is taking place. During the enforcement period, unauthorized persons or vessels are prohibited from transiting through, anchoring, blocking, or loitering in the safety zone without permission of the COTP or PATCOM. Vessels desiring to enter or operate in the safety zone shall do so with COTP or PATCOM permission via VHF-23A or through the 24-hour Command Center telephone at (415) 399-3547.

This safety zone is needed to keep spectators and vessels a safe distance away from the event participants and the hazardous waters surrounding Pillar