

shall be determined by the district director under all the facts and circumstances.

(4) *Definition of intentional disregard.* If the transferor fails to qualify for the exception under paragraph (f)(3) of this section and if the taxpayer knew of the rule or regulation that was disregarded, the failure will be considered an intentional disregard of section 6038B, and the monetary penalty under paragraph (f)(1)(ii) of this section will not be limited to \$100,000. See § 1.6662-3(b)(2).

(g) *Effective date.* This section applies to transfers occurring on or after July 20, 1998. See § 1.6038B-1T for transfers occurring prior to July 20, 1998.

**Par. 10.** Section 1.6038B-1T is amended as follows:

1. The section heading is revised.
2. Paragraphs (a) through (b)(2) are revised.
3. Paragraph (b)(3) is redesignated as paragraph (b)(4).
4. New paragraph (b)(3) is added and reserved.
5. Paragraph (c) introductory text is revised and paragraph (c)(6) is added.
6. Paragraph (f) is revised.
7. Paragraph (g) is added.

The revisions and additions read as follows:

**§ 1.6038B-1T Reporting of certain transactions (temporary).**

(a) through (b)(2) [Reserved]. For further guidance, see § 1.6038B-1(a) through (b)(2).

(b)(3) [Reserved].

\* \* \* \* \*

(c) Introductory text [Reserved]. For further guidance, see § 1.6038B-1(c).

\* \* \* \* \*

(6) [Reserved]. For further guidance, see § 1.6038B-1(c)(6).

\* \* \* \* \*

(f) [Reserved]. For further guidance, see § 1.6038B-1(f).

(g) *Effective date.* This section applies to transfers occurring after December 31, 1984, except paragraph (e)(1) applies to transfers occurring on or after September 13, 1996. See § 1.6038B-1T(a) through (b)(2), (c) introductory text, and (f) (26 CFR part 1, revised April 1, 1998) for transfers occurring prior to July 20, 1998. See § 1.6038B-1 for transfers occurring on or after July 20, 1998.

**PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976**

**Par. 11.** The authority citation for part 7 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 12.** Section 7.367(b)-1 is amended as follows:

1. Paragraphs (a) and (c)(1) are revised.
2. The authority citation at the end of the section is removed.

The revisions read as follows:

**§ 7.367(b)-1 Other transfers.**

(a) [Reserved] For guidance relating to transfers occurring on or after July 20, 1998, see § 1.367(b)-1(a) of this chapter.

\* \* \* \* \*

(c)(1) [Reserved] For guidance relating to transfers occurring on or after July 20, 1998, see § 1.367(b)-1(c) of this chapter.

\* \* \* \* \*

**Par. 13.** Section 7.367(b)-4 is amended as follows:

1. Paragraphs (a) and (b) are revised.
2. The authority citation at the end of the section is removed.

The revision reads as follows:

**§ 7.367(b)-4 Certain changes described in more than one Code provision.**

(a) and (b) [Reserved]. For guidance relating to transfers occurring on or after July 20, 1998, see § 1.367(b)-4(a) and (b) of this chapter.

\* \* \* \* \*

**Par 14.** Section 7.367(b)-7 is amended as follows:

1. Paragraph (a) is revised.
2. The authority citation at the end of the section is removed.

The revision reads as follows:

**§ 7.367(b)-7 Exchange of stock described in section 354.**

\* \* \* \* \*

(a) [Reserved] For guidance relating to transfers occurring on or after July 20, 1998, see § 1.367(b)-7(a) of this chapter.

\* \* \* \* \*

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

**Par 15.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par 16.** In § 602.101, paragraph (c) is amended by:

1. Removing the following entry from the table:

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.367(a)-3T .....	1545-0026
* * * * *	

2. Adding the following entry to the table in numerical order to read as follows:

**§ 602.101 OMB Control numbers.**

\* \* \* \* \*

(c) \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.367(a)-8 .....	1545-1271
* * * * *	

**Michael P. Dolan,**

*Deputy Commissioner of Internal Revenue.*

Approved: May 13, 1998.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

[FR Doc. 98-15454 Filed 6-18-98; 8:45 am]

BILLING CODE 4830-01-U

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Parts 62 and 66**

[USCG 97-3112; CGD 97-018]

RIN 2115-AF45

**Merger of the Uniform States Waterway Marking System With the United States Aids to Navigation**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard commences a five year phased-in merger of the Uniform State Waterway Marking System with the United States Aids to Navigation System. This merger eliminates distinctions between the two systems and creates safer, less confusing waterways.

**DATES:** This final rule is effective July 20, 1998.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, [USCG-97-3112], U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

**FOR FURTHER INFORMATION CONTACT:**

For questions on this rule contact Dan Andrusiak, OPN-2 Short Range Aids to Navigation Division, USCG Headquarters, telephone (202) 267-0327, For questions on viewing material in the docket, contact Carol Kelley, Coast Guard Dockets Team Leader, or

Paulette Twine, Chief Documentary Services Division, U.S. Department of Transportation, telephone (202) 366-9329.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

On December 23, 1997, the Coast Guard published a notice of proposed rulemaking entitled "Merger of the Uniform State Waterway Marking System and the United States Aids to Navigation System" in the **Federal Register** (62 FR 67031). The Coast Guard received five letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

##### Background and Purpose

The Uniform State Waterways Marking System (USWMS), 33 CFR 66.10, prescribes regulatory markers and aids to navigation that may mark navigable waters that the Commandant designates as state waters in accordance with 33 CFR 66.05-5. The USWMS may also mark the non-navigable internal waters of a state.

The United States Aids to Navigation System (USATONS), 33 CFR 62, prescribes regulatory markers and aids to navigation that mark navigable waters of the United States. Navigable waters, defined by 33 CFR 62.02-25, include territorial seas and internal waters that have been or can be used for interstate commerce, either by themselves or in connection with other waterways.

Section 66.10-1(b), allows the use of USATONS on state and non-navigable internal waters, and many states already use the USATONS instead of the USWMS.

In 1992, the National Association of State Boating Law Administrators (NASBLA) passed a resolution requesting that the Coast Guard:

1. Change the meaning of the red and white striped buoy from the USWMS meaning of obstruction to the USATONS meaning of safe water,
2. Change the black USWMS buoy to the green USATONS buoy, and
3. Use a phased-in implementation period for these changes.

NASBLA requested these changes because they believe the current USWMS markings, which are different from the USATONS markings, confuse boaters and could cause casualties. A comparison of these two systems showed that almost all of the requirements of the USWMS are contained in the USATONS.

The major differences between the two systems are:

1. The USWMS has the additional requirement of orange bands on regulatory buoys;

2. The USWMS allows for lights on mooring buoys whereas the USATONS is silent; and,

3. The USWMS uses the cardinal system to mark obstructions and the USATONS uses the lateral System of marking obstructions.

##### Discussion of Comments and Changes

One comment suggested that in §§ 62.1(b)(2), 62.21(a), 66.05-1, 66.05-5(b), and 66.05-20 (c)(3) the wording "insert date five years from the date of publication in the **Federal Register** of the final rule" be changed to "December 31, 2003". The Coast Guard agrees with this suggestion, and will also change § 66.10-1.

One comment suggested that in § 62.33(b) the Coast Guard delete "of international orange" from the first sentence. The Coast Guard concurs and has changed § 62.33(b). This change eliminates potential confusion from a belief that two different shades of orange are required.

One comment suggested that in § 62.33(b) in the second sentence, change "at the top" to "near the top." The Coast Guard agrees with this suggestion because an orange band at the very top of a buoy would cease to be a band but would result in a buoy with an orange top.

One comment suggested the Coast Guard not add the lighting requirements for mooring buoys to § 62.35, but to § 62.45(d)(6), which prescribes the light rhythm requirements. The Coast Guard agrees.

One comment suggested that in § 62.54 the wording be changed to be less ambiguous. Specifically the comment suggested that § 62.54 read "Succinct, concise ownership identification which does not compromise signal effectiveness is permitted on aids to navigation." The Coast Guard disagrees with the suggested wording. Historically, ownership identification on private or State aids to navigation has not been a problem. Additionally, the Coast Guard does not desire at this time to expand the authority for ownership markings to Federal aids to navigation.

Another comment suggested that the reference to the "second category" in paragraph 66.10-15(a) be removed and this paragraph changed to read "USWMS aids to navigation may have lateral or cardinal meaning." The Coast Guard agrees. The "first category" of USWMS aids was regulatory markers discussed in § 66.10-5. This section is removed since equivalent regulatory marks exist in § 62.33. Therefore, because no "first category" exists,

discussion of a "second category" may be confusing.

One comment expressed concern over the change in definition of the red and white striped buoy, because this would eliminate an aid which provides the mariner specific information "not to pass between the buoy and the nearest shore". The comment also stated that in an area where it is hard to determine the head of navigation, the use of side marks would be impracticable. The comment suggested the creation of a black and white vertically striped buoy available for use on Inland Waters, with the meaning "do not pass between the buoy and the nearest shore". The Coast Guard agrees. A new section has been added that allows the use of a black and white striped buoy on Inland waters, where the head of navigation is hard to define, which warns mariners not to pass between the buoy and the nearest shore. Further, to avoid confusion, USWMS red and white striped obstruction buoys under § 66.10-15(e)(3) will not be permitted to exist on a body of water for which the new USATONS black and white vertically striped buoy is used.

Another comment suggested that once the regulations from the two systems are merged, proper training must be given to all users. The Coast Guard agrees, and will provide education and outreach information regarding the merger of these two systems through the office of Boating Safety website ([www.uscgboating.org](http://www.uscgboating.org)) and through the Coast Guard Customer Information Line at 1-800-368-5647. Additionally, the Coast Guard expects that the various State Boating Law Administrators will modify existing educational materials to reflect the changes.

One comment suggested that in addition to changing the meaning of the red and white striped buoy, the Coast Guard also change the shape of this aid. The USATONS requires the red and white safe water mark to be spherical or display spherical top mark. This is the requirement for all newly established safe water marks and for all safe water marks at the end of the phase-in period.

One comment suggested that the costs associated with this change would impose a monetary burden on the states currently using USWMS. The replacement of USWMS aids is linked to the aid's lifecycle. Since, the existing aids will need replacement during the phase-in period, no additional costs should be incurred. Also, most existing educational materials will need to be replaced during this five year phase-in period. Further, through training and education the Coast Guard believes any

confusion from the existence of the two systems on one waterway to be minimal.

#### Discussion of Rule

**Regulatory and Informational Markers:** The USATONS provides a system for information and regulatory markers nearly identical to the USWMS. The only USWMS requirement not prescribed by the USATONS is that buoys have two horizontal orange bands, one just above the water line and one near the top of the buoy. The Coast Guard amends 33 CFR 62.33 to add the USWMS requirement of two horizontal orange bands to the USATONS.

**Channel markers:** The USWMS black buoy will be replaced, via a phased-in process, with the green buoy required by the USATONS. The phase-in process avoids unnecessary replacement costs to the states.

**Red and white striped buoy:** The meaning of the red and white striped buoy changes from the USWMS "do not pass between the buoy and nearest shore" to the USATONS "safewater all around." Obstructions marked with the USWMS red and white striped buoy can be marked, via a phased-in process, with the USATONS' sidemark prescribed in 33 CFR 62.25(b), with an isolated danger mark prescribed in 33 CFR 62.29, or with the new black and white striped buoy prescribed in 33 CFR 62.32.

**Cardinal marks:** In the USWMS, white buoys with a red top band mean that the mariner can pass safely south or west of the buoy, and white buoys with a black top band mean that the mariner can pass safely north or east of the buoy. The USATONS does not contain cardinal marks, and areas presently marked with these USWMS aids can be replaced with the USATONS isolated danger mark prescribed in 33 CFR 62.29, or a side mark prescribed in 33 CFR 62.25(b), or with an isolated danger mark prescribed in 33 CFR 62.29, or with the new black and white striped buoy prescribed in 33 CFR 62.32.

**Mooring buoys:** Unlike the USWMS, the USATONS is silent on prescribing lights on mooring buoys. The Coast Guard amends 33 CFR 62.45 to incorporate mooring buoys, allowing white lights of various rhythms.

**Numbers, letters, or words on markers:** The guidance in the USATONS, 33 CFR 62.43(a) & (b), is similar to that in the USWMS 33 CFR 66.10-25, so the merging of the two systems does not affect numbers, letters, or words on marks.

**Reflectors and retroreflective materials:** The USATONS guidance for the uses of retroreflective material, 33 CFR 62.43(c), is less restrictive than the USWMS

guidance found in 33 CFR 66.10-30, so the merger does not require a change in the use of reflectors or retroreflective material.

**Navigation lights:** The USATONS requirements for the use of navigation lights, 33 CFR 62.45, is similar to that of the USWMS found in 33 CFR 66.10-35, so the merger does not affect the use of navigation lights.

**Size, shape, material, and construction of markers:** No specific guidance for size, shape, material and construction of markers exists in the USATONS. The USWMS wording on these items, found in 33 CFR 66.10-20, is not necessary and is not inserted into the USATONS.

**Ownership identification:** The USWMS, in 33 CFR 66.10-40, allows for the discretionary use of ownership identification on aids to navigation. The USATONS does not prohibit use of ownership identification. Ownership identification, however, should not be placed on an aid in a way that would change the meaning of the aid to navigation. The Coast Guard adds a section to the USATONS stating language to this effect.

#### Changes to 33 CFR Subpart 66.05

The merging of the USWMS with the USATONS requires conforming editorial corrections to Subpart 66.05 entitled, "State Aids to Navigation," to reflect the new rules.

#### Changes to 33 CFR Subpart 66.10

Sections 66.10-5, 66.10-10, 66.10-20, 66.10-25, 66.10-30, 66.10-40, and 66.10-45 are removed because the provisions of these sections are contained in the USATONS, or are being inserted into the USATONS.

The only sections remaining in subpart 66.10 are the general section, the aids to navigation section, and that portion of the navigation lights section which refers to lights on cardinal marks. These sections may be used until December 31, 2003.

**General, § 66.10-1:** This section is revised to reflect the merger of the two systems, the implementation date, and to remove references to deleted sections.

**Aids to Navigation, § 66.10-15:** This section provides information concerning the marking of channels and the cardinal system of marking, and as such remains until the end of the phase-in period.

#### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that

Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Merging the USWMS with the USATONS, via a phased-in implementation period, linked to the aid's lifecycle, will not impose an increased monetary burden on the States currently using the USWMS. There is currently no price difference between aids with the USWMS markings and aids with USATONS markings. Further, because the replacement of the aid is linked to its lifecycle, purchase of a USATONS aid is not required until the end of the USWMS aid's lifecycle, any additional costs are eliminated.

Consequently, the Coast Guard believes that this rulemaking will not impose any additional costs on the states.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard considers whether this rule will have a significant impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. The USWMS is a system that regulates state aids to navigation and will not directly impact small entities. Therefore, 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.

#### Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

If you have questions concerning its provisions or options for compliance, please contact Mr. Dan Andrusiak, Short Range Aids to Navigation Division, USCG Headquarters, Telephone: (202) 267-0327.

## Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Pursuant to 14 U.S.C. 85, the Coast Guard, as delegated by the Secretary, Department of Transportation, has responsibility to create all regulations concerning aids to navigation for all waters subject to the jurisdiction of the United States. This rule does not affect the states ability to prescribe regulations for its own internal non-navigable waters.

## Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104-4, 109 Stat. 48), requires Federal agencies to access the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain any Federal mandates. A "Federal mandate" is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities, to spend in aggregate, \$100 million or more in any one year the UMRA analysis is required. This rule does not impose Federal mandates on any State, local or tribal governments or the private sector.

## Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under figure 2-1, paragraph 34(a) and (i) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Merging the USWMS with the USATONS has no environmental implications. A Categorical Exclusion Determination is available in the rulemaking docket for inspection or copying where indicated under ADDRESSES.

## List of Subjects

### 33 CFR Part 62

Navigation (water).

### 33 CFR Part 66

Intergovernmental relations, navigation (water).

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 62 and 66 as follows:

## PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

1. The authority citation for part 62 continues to read as follows:

**Authority:** 14 U.S.C. 85; 33 U.S.C. 1233; 43 U.S.C. 1333; 49 CFR 1.46.

2. In § 62.1, redesignate paragraph (b) as paragraph (b)(1), and add a paragraph (b)(2) to read as follows:

### § 62.1 Purpose.

\* \* \* \* \*

(b)(1) \* \* \*

(2) The regulations found in 33 CFR subpart 66.10 expire on December 31, 2003, at which time the provisions of this part will apply.

\* \* \* \* \*

### § 62.21 [Amended]

3. In § 62.21(a), add after the words "The navigable waters of the United States" the words "and non-navigable State waters after December 31, 2003,".

4. Add § 62.32 to subpart B to read as follows:

### § 62.32 Inland waters obstruction mark.

(a) On inland waters designated by the Commandant as State waters in accordance with § 66.05-5 of this chapter and on non-navigable internal waters of a State which have no defined head of navigation, a buoy showing alternate vertical black and white stripes may be used to indicate to a vessel operator that an obstruction to navigation extends from the nearest shore to the buoy.

(b) The black and white buoy's meaning is "do not pass between the buoy and the shore". The number of white and black stripes is discretionary, provided that the white stripes are twice the width of the black stripes. Prior to December 31, 2003, this aid shall not be used on a waterway which has a red and white striped obstruction marker defined in § 66.10-15(e)(3) of this chapter, unless all obstruction markers are replaced.

5. In § 62.33, redesignate the introductory text as paragraph (a), redesignate existing paragraphs (a) through (d) as (a)(1) to (a)(4), and add a new paragraph (b) to read as follows:

### § 62.33 Information and regulatory marks.

\* \* \* \* \*

(b) When a buoy is used as an information or regulatory mark it shall be white with two horizontal orange bands placed completely around the buoy circumference. One band shall be

near the top of the buoy body, with a second band placed just above the waterline of the buoy so that both bands are clearly visible.

6. In § 62.45, revise paragraph (d)(6) to read as follows:

### § 62.34 Light characteristics.

\* \* \* \* \*

(d) \* \* \*

(6) Mooring Buoys and Information and Regulatory Marks display white lights of various rhythms.

\* \* \* \* \*

7. Add § 62.54 to subpart B to read as follows:

### § 62.54 Ownership identification.

Ownership identification on private or state aids to navigation is permitted so long as it does not change or hinder an understanding of the meaning of the aid to navigation.

## PART 66—PRIVATE AIDS TO NAVIGATION

8. The authority citation for part 66 continues to read as follows:

**Authority:** 14 U.S.C. 83, 85; 43 U.S.C. 1333; 49 CFR 1.46.

### § 66.01-10 [Amended]

9. In § 66.01-10 remove paragraph (b) and remove the paragraph designation (a).

10. Revise § 66.05-1 to read as follows:

### § 66.05-1 Purpose.

The purpose of the regulations in this subpart is to prescribe the conditions under which state governments may regulate aids to navigation owned by state or local governments, or private parties. With the exception on the provisions of subpart 66.10, which are valid until December 31, 2003, aids to navigation must be in accordance with the United States Aids to Navigation System in part 62 of this subchapter.

11. In § 66.05-5, revise the section heading and paragraph (b) to read as follows:

### § 66.05-5 Definitions.

\* \* \* \* \*

(b) The term Uniform State Waterway Marking System (USWMS) means the system of private aids to navigation which may be operated in State waters. Subpart 66.10, which describes the USWMS, expires on December 31, 2003.

\* \* \* \* \*

### § 66.05-20 [Amended]

12. In § 66.05-20(c)(3) add to the beginning of the paragraph the words "If prior to December 31, 2003," and uncapitalize the word "Specification".

13. Revise § 66.10-1 to read as follows:

**§ 66.10-1 General.**

(a) Until December 31, 2003, the Uniform State Waterway Marking System's (USWMS) aids to navigation provisions for marking channels and obstructions may be used in those navigable waters of the U.S. that have been designated as state waters for private aids to navigation and in those internal waters that are non-navigable waters of the U.S. All other provisions for the use of regulatory markers and other aids to navigation shall be in accordance with United States Aid to Navigation System, described in part 62 of this subchapter.

(b) The USATONS may be used in all U.S. waters under state jurisdiction, including non-navigable state waters.

**§ 66.10-5 [Removed]**

14. Remove § 66.10-5.

**§ 66.10-10 [Removed]**

15. Remove § 66.10-10.

16. In § 66.10-15 revise paragraph (a) to read as follows:

**§ 66.19-15 Aids to navigation.**

(a) USWMS aids to navigation may have lateral or cardinal meaning.

\* \* \* \* \*

**§ 66.10-20 [Removed]**

17. Remove § 66.10-20.

**§ 66.10-25 [Removed]**

18. Remove § 66.10-25.

**§ 66.10-30 [Removed]**

19. Remove § 66.10-30.

20. Revise § 66.10-35 to read as follows:

**§ 66.10-35 Navigation lights.**

A red light shall only be used on a solid colored red buoy. A green light shall only be used on a solid colored black or a solid colored green buoy. White lights shall be used for all other buoys. When a light is used on a cardinal system buoy or a vertically striped white and red buoy, it shall always be quick flashing.

**§ 66.10-40 [Removed]**

21. Remove § 66.10-40.

**§ 66.10-45. [Removed]**

22. Remove § 66.10-45.

Dated: June 11, 1998.

**Ernest R. Riutta,**

*Assistant Commandant for Operations.*

[FR Doc. 98-16242 Filed 6-18-98; 8:45 am]

BILLING CODE 4910-15-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 100

[CGD08-98-037]

RIN 2115-AE46

#### Special Local Regulations: EZ Challenge Speed Boat Race, Ohio River, Beech Bottom, West Virginia

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Special local regulations are being adopted for the EZ Challenge Speed Boat Race. This event will be held on Saturday and Sunday, July 4 and 5, 1998, between 9:30 a.m. and 6:30 p.m. Eastern Standard Time (EST) on the Ohio River. These regulations are needed to provide for the safety of life on navigable waters during the event.

**DATES:** These regulations become effective at 9:30 a.m. and terminate at 6:30 p.m. EST on July 4 and 5, 1998.

**FOR FURTHER INFORMATION CONTACT:** LT Ted Ferring, Coast Guard Marine Safety Office, Pittsburgh, PA at (412) 644-5808.

#### SUPPLEMENTARY INFORMATION:

##### Drafting Information

The drafters of this regulation are LT Ted Ferring, Project Officer, Coast Guard Marine Safety Office, Pittsburgh and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard District Legal Office.

##### Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication in the **Federal Register**. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received with sufficient time remaining to publish proposed rules in advance of the event or to provide for a delay effective date.

##### Background and Purpose

The marine event requiring this regulation is a powered boat race called the "EZ Challenge Speed Boat Race." This event is sponsored by Beech Bottom Marina. It will consist of approximately 20 participants operating at high speeds. Also, 50-100 spectator craft are expected for this event. The speed boat race will occur near Beech Bottom, West Virginia on the Ohio River. The resulting congestion of

navigable channels creates an extra and unusual hazard in the navigable waters.

##### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary, as this regulation will be in effect for approximately eighteen hours in a limited area of the Ohio River.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant effect upon a substantial number of small entities, because the regulation is in effect for approximately eighteen hours in a limited part of the Ohio River.

##### Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

##### Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

##### Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with section 2-1, paragraph (34)(h), Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.