

## 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 0023-01 and Commandant Instruction M16475.1D, 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 pertains to a temporary safety zone established and extended to address an emergency situation lasting more than one week.

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; Public Law 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise temporary § 165.T01-1272, to read as follows:

### § 165.T01-1272 Safety Zone: Underwater Object, Massachusetts Bay, MA.

(a) *Location.* The following area is a safety zone: All navigable waters, from surface to bottom, of Massachusetts Bay within a 500 yard radius of underwater object, in approximate position 42°24'27.34" N, 70° 27'17.23" W.

(b) *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 Boston.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, all vessels and persons are prohibited from entering the safety zone without permission from the Captain of the Port Boston. In addition, all vessels and persons are prohibited from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Coast Guard Captain of the Port Boston.

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

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

(5) Persons desiring to enter the safety zone may request permission from the Captain of the Port Boston via VHF Channel 16 or via telephone at (617) 223-3201.

(d) *Enforcement Period.* This rule will be enforced from 11 p.m. January 8, 2009, until midnight May 20, 2009.

Dated: May 6, 2009.

Gail P. Kulisch,

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket No. USCG-2009-0064]

RIN 1625-AA00

### Safety Zone: Ocean City Air Show, Atlantic Ocean, Ocean City, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the Atlantic Ocean in the vicinity of Ocean City, MD to support the Ocean City Air Show. This action will restrict vessel traffic on the Atlantic Ocean to protect mariners from the hazards associated with air show events.

**DATES:** This rule is effective June 12 through June 14, 2009 from 10 a.m. to 4 p.m. each day.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-0064 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-2009-0064 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is 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 or e-mail LT Tiffany Duffy, Chief, Waterways Management Division, Sector Hampton Roads, Coast Guard; telephone 757-668-5580, e-mail [Tiffany.A.Duffy@uscg.mil](mailto:Tiffany.A.Duffy@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**

On March 23, 2009, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Ocean City Air Show, Atlantic Ocean, Ocean City, MD in the **Federal Register** (74 FR 12102). We received no comments on the proposed rule. No public meeting was requested, and none was held.

**Background and Purpose**

Coast Guard Sector Hampton Roads has been notified that from June 12 through June 14, 2009, Ocean City, MD will host an air show event on the Atlantic Ocean between Talbot Street and 33rd Street in Ocean City, MD. In recent years, there have been unfortunate instances of jets and planes crashing during performances at air shows. Along with the jet or plane crash, there is typically a wide area of scattered debris that also damages property and could cause significant injury or death to mariners observing the air shows. Due to the need to protect mariners and the public transiting the Atlantic Ocean immediately below the air show from hazards associated with the air show, the Coast Guard is establishing a safety zone bound by the following coordinates: 38°21'30"N/075°03'32"W, 38°21'39"N/075°04'08"W, 38°29'47"N/075°04'58"W, 38°19'37"N/075°04'20"W (NAD 1983). Access to this area will be temporarily restricted for public safety purposes.

**Discussion of Comments and Changes**

The Coast Guard is establishing a safety zone on specified waters of the Atlantic Ocean bound by the following coordinates: 38°21'30"N/075°03'32"W, 38°21'39"N/075°04'08"W, 38°29'47"N/075°04'58"W, 38°19'37"N/075°04'20"W (NAD 1983), in the vicinity of Ocean City, Maryland. This safety zone will be established in the interest of public safety during the Ocean City Air Show and will be enforced from 10 a.m. to 4 p.m. each day from June 12, through June 14, 2009. Access to the safety zone will be restricted during the specified dates and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone. No comments were received on docket USCG-2009-0064 regarding this rule and no changes have been made to this rule.

**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. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

**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 safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will only be in place for a limited duration, before the effective period of June 12, through June 14, 2009, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will not effect 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 M16475.1D, 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)(d) of the Instruction and neither an

environmental assessment nor an environmental impact statement is required. This rule involves a temporary safety zone that will be in effect for less than one week. An "Environmental Analysis Check List" supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble.

#### List of Subjects 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 § 165.T05-0064 to read as follows:

#### § 165.T05-0064 Safety Zone: Ocean City Air Show, Atlantic Ocean, Ocean City, MD.

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Atlantic Ocean bound by the following coordinates: 38°21'30" N/075°03'32" W, 38°21'39" N/075°04'08" W, 38°29'47" N/075°04'58" W, 38°19'37" N/075°04'20" W (NAD 1983), in the vicinity of Ocean City, Maryland.

(b) *Definition.* For the purposes of this part, Captain of the Port Representative: means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector

Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 668-5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement Period:* This regulation will be in enforced from 10 a.m. to 4 p.m. daily from June 12, 2009 to June 14, 2009.

Dated: May 1, 2009.

**M.S. Ogle,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

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#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 17

**RIN 2900-AN23**

#### Expansion of Enrollment in the VA Health Care System

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) medical regulations regarding enrollment in the VA health care system. In particular, it establishes additional sub-priorities within enrollment priority category 8 and provides that beginning on the effective date of the rule, VA will begin enrolling priority category 8 veterans whose income exceeds the current means test and geographic means test income thresholds by 10 percent or less.

**DATES:** *Effective date:* This final rule is effective June 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Tony Guagliardo, Director, Business Policy, Chief Business Office (163), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-1591. (This is not a toll free number).

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** (74 FR 3535) on January 21, 2009, we proposed amendments to 38 CFR 17.36 regarding enrollment of veterans for purposes of VA hospital and outpatient care. This document adopts as a final rule, without change, those proposed amendments.

This final rule amends regulations implementing Public Law 104-262, the Veterans' Health Care Eligibility Reform Act of 1996, which required VA to