

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket No. USCG–2013–0313]

RIN 1625–AA00

**Safety Zone; Bay Village Independence Day Fireworks, Lake Erie, Bay Village, OH****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Lake Erie, Bay Village, OH. This safety zone is intended to restrict vessels from a portion of Lake Erie during the Bay Village Independence Day Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

**DATES:** This rule is effective from 9:30 p.m. until 10:50 p.m. on July 4, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2013–0313]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email [SectorBuffaloMarineSafety@uscg.mil](mailto:SectorBuffaloMarineSafety@uscg.mil). If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:****Table of Acronyms**

DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of Proposed Rulemaking  
TFR Temporary Final Rule

**A. Regulatory History and 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 doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard’s ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

Under 5 U.S.C. 553(d)(3), The Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

**B. Basis and Purpose**

Between 10 p.m. and 10:20 p.m. on July 4, 2013, a fireworks display will be held on Lake Erie near Cahoon Memorial Park, Bay Village, OH. The Captain of the Port Buffalo has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

**C. Discussion of the Final Rule**

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Bay Village Independence Day Fireworks. This zone will be effective and enforced from 9:30 p.m. until 10:50 p.m. on July 4, 2013. This zone will encompass all waters of Lake Erie, Bay Village, OH within a 560 foot radius of position 41°29’23.93” N and 81°55’44.56” W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the

Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

**D. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. 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 created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

*2. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. 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 in a portion of Lake Erie on the evening of July 4, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only 80 minutes late in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

### 3. 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 rule. 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 the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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.

### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

### 6. 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### 7. Taking of Private Property

This rule will 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.

### 8. 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.

### 9. 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.

### 10. 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.

### 11. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

### 12. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### 13. 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination 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 record keeping 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. Chapters 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.T09-0313 to read as follows:

#### § 165.T09-0313 Safety Zone; Bay Village Independence Day Fireworks, Lake Erie, Bay Village, OH.

(a) *Location.* This zone will encompass all waters of Lake Erie, Bay Village, OH within a 560 foot radius of position 41°29'23.93" N and 81°55'44.56" W (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on July 4, 2013 from 9:30 p.m. until 10:50 p.m.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

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

(3) The “on-scene representative” of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene 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 Buffalo, or his on-scene representative.

Dated: May 3, 2013.

**S. M. Wischmann,**

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

[FR Doc. 2013-12232 Filed 5-22-13; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

RIN 2900-AO58

#### Copayments for Medications in 2013

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, without change, an interim final rule amending the Department of Veterans Affairs (VA) medical regulations to freeze the copayments required for certain medications provided by VA until December 31, 2013. Under that rule, the copayment amounts for all enrolled veterans were maintained at the same rates as they were in 2012, which were \$8 for veterans in priority groups 2–6 and \$9 for veterans in priority groups 7 and 8. On January 1, 2014, the copayment amounts may increase based on the prescription drug component of the Medical Consumer Price Index (CPI–P).

**DATES:** *Effective Date:* This rule is effective on May 23, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kristin Cunningham, Director, Business Policy, Chief Business Office, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461-1599. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On December 31, 2012, VA published in the *Federal Register* (77 FR 76865) an interim final rule that froze copayments required for certain medications

provided by VA until December 31, 2013.

Under 38 U.S.C. 1722A(a), VA must require veterans to pay a \$2 copayment for each 30-day supply of medication furnished on an outpatient basis for the treatment of a non-service-connected disability or condition unless a veteran has a service-connected disability rated 50 percent or more, is a former prisoner of war, or has an annual income at or below the maximum annual rate of VA pension that would be payable if the veteran were eligible for pension. Under 38 U.S.C. 1722A(b), VA “may,” by regulation, increase that copayment amount and establish a maximum annual copayment amount (a “cap”). We have consistently interpreted section 1722A(b) to mean that VA has discretion to determine the appropriate copayment amount and annual cap amount for medication furnished on an outpatient basis for covered treatment, provided that any decision by VA to increase the copayment amount or annual cap amount is the subject of a rulemaking proceeding. We have implemented this statute in 38 CFR 17.110.

Under 38 CFR 17.110(b)(1), veterans are obligated to pay VA a copayment for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment). Under the regulation as amended by the interim final rule published on December 31, 2012, 77 FR 76865, for the period from July 1, 2010, through December 31, 2013, the copayment amount for veterans in priority categories 2 through 6 of VA’s health care system is \$8. 38 CFR 17.110(b)(1)(ii). Thereafter, the copayment amount for all affected veterans will be established using a formula based on the prescription drug component of the CPI–P, set forth in 38 CFR 17.110(b)(1)(iv). For veterans in priority categories 7 and 8, the copayment amount from July 1, 2010, through December 31, 2011, was \$9. 38 CFR 17.110(b)(1)(iii). After December 31, 2011, copayments for veterans in priority categories 7 and 8 were subject to the regulatory formula; however, that formula did not trigger an increase in the copayment amount, so it remains \$9.

Current § 17.110(b)(2) also includes a “cap” on the total amount of copayments in a calendar year for a veteran enrolled in one of VA’s health care enrollment system priority categories 2 through 6. As a result of the interim final rule, the annual cap is set at \$960 through December 31, 2013. Thereafter, the cap is to increase “by \$120 for each \$1 increase in the

copayment amount” applicable to veterans enrolled in one of VA’s health care enrollment system priority categories 2 through 6.

VA invited interested persons to submit comments on the interim final rule on or before March 1, 2013, and we received one comment. The commenter suggested that VA should not charge veterans a medication copayment. No changes are made based on this comment. With certain statutory exceptions set forth in 38 CFR 17.110(c), the provisions of 38 U.S.C. 1722A require veterans to pay a copayment for each 30-day or less supply of medication furnished on an outpatient basis for the treatment of a non-service-connected disability or condition. VA has no authority to exempt veterans from this statutory requirement.

At the end of calendar year 2013, unless additional rulemaking is initiated, VA will once again use the CPI–P methodology in § 17.110(b)(1)(iv) to determine whether to increase copayments and calculate any mandated increase in the copayment amount for veterans in priority categories 2 through 8. At that time, the CPI–P as of September 30, 2013, will be divided by the index as of September 30, 2001, which was 304.8. The ratio will then be multiplied by the original copayment amount of \$7. The copayment amount of the new calendar year will be rounded down to the whole dollar amount. As mandated by current § 17.110(b)(2), the annual cap will be calculated by increasing the cap by \$120 for each \$1 increase in the copayment amount. Any change in the copayment amount and cap, along with the associated calculations explaining the basis for the increase, will be published in a **Federal Register** notice.

Therefore, based on the rationale set forth here and in the interim final rule, VA is adopting the provisions of the interim final rule as a final rule with no changes.

#### Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Secretary of Veterans Affairs concluded that there was good cause to dispense with the opportunity for advance notice and opportunity for public comment and good cause to publish this rule with an immediate effective date. The Secretary found that it was impracticable and contrary to the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date. Increasing the copayment amount on January 1, 2013, might have caused a significant financial hardship for some veterans.