

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

[CGD13-05-027]

RIN 1625-AA00

**Safety Zones: Fireworks Displays in the Captain of the Port Portland Zone****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing safety zones on the waters of the Willamette and Columbia Rivers, located in the Area of Responsibility (AOR) of the Captain of the Port, Portland, Oregon, during fireworks displays. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with these displays. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

**DATES:** This rule is effective from 9:30 p.m. on August 6, 2005 until 10:30 p.m. on September 17, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket (CGD13-05-027) and are available for inspection or copying at the U.S. Coast Guard Sector Portland, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Petty Officer Charity Keuter, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, (503) 240-9301.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the various fireworks launching barges and displays. If normal notice and comment procedures were followed, this rule would not become effective until after the dates of the events. For this reason, following normal rulemaking procedures in this

case would be impracticable and contrary to the public interest.

**Background and Purpose**

The Coast Guard is establishing temporary safety zones to allow for safe fireworks displays. All events occur within the Captain of the Port, Portland, OR, Area of Responsibility (AOR). These events may result in a number of vessels congregating near fireworks launching barges and sites. The safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other Federal and local agencies.

**Discussion of Rule**

This rule, for safety concerns, will control vessels, personnel and individual movements in a regulated area surrounding the fireworks event indicated in section 2 of this Temporary Final Rule. Entry into these zones is prohibited unless authorized by the Captain of the Port, Portland or his designated representative. Captain of the Port, Portland, Oregon, will enforce these safety zones. The Captain of the Port may be assisted by other Federal and local agencies.

**Regulatory Evaluation**

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 this rule under that Order. This rule is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures act of DHS is unnecessary. This expectation is based on the fact that the regulated areas established by the proposed regulation will encompass small portions of the Columbia and Willamette Rivers in the Portland AOR on different dates, all in the evening when vessel traffic is low.

**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.

This 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 may be small entities: the owners or operators of vessels intending to transit a portion of the Willamette and Columbia Rivers during the times mentioned in section 2(a)(1-4) at the conclusion of this rule. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only sixty minutes during the evenings when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so.

**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 the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will 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. 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).

**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 State, local, or tribal government, in the aggregate, or 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 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs 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 Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule establishes safety zones which have a duration of no more than two hours each. Due to the temporary safety zones being less than one week in duration, an Environmental Checklist and Categorical Exclusion is not required.

#### 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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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. A temporary section 165.T13–009 is added to read as follows:

#### § 165.T13–009 Safety Zones: Fireworks displays in the Captain of the Port Portland Zone.

(a) Safety Zones. The following areas are designated safety zones:

(1) World War II 60th Anniversary Fireworks Display, Vancouver, WA: (i) *Location.* All water of the Columbia River enclosed by the following points: 45°37'16" N, 122°40'18" W following the shoreline to 45°36'55" N, 122°39'11" W then south to 45°36'28" N, 122°39'19" W following the shoreline to 45°36'52" N, 122°40'32" W then back to the point of origin.

(ii) *Effective time and date.* 9:30 p.m. to 11 p.m. on August 28, 2005.

(2) Northwynd Grand Opening, Vancouver, WA: (i) *Location.* All water of the Columbia River enclosed by the following points: 45°37'04" N, 122°39'29" W following the shoreline to 45°36'50" N, 122°38'56" W then south to 45°36'50" N, 122°38'56" W west to 45°36'48" N, 122°39'36" W then back to the point of origin.

(ii) *Effective time and date.* 9:30 p.m. to 11 p.m. on August 20, 2005.

(3) City of Washougal Display, Washougal, WA: (i) *Location.* All water of the Columbia River extending out to a 600' radius from the launch site at 45°33'52" N, 122°40'14" W.

(ii) *Effective time and date.* 9:30 p.m. to 11 p.m. on August 6, 2005.

(4) White Bird Fireworks Display, Portland, OR: (i) *Location.* All water of the Willamette River enclosed by the following points: 45°35'19" N, 122°45'51" W following the shoreline to 45°35'11" N, 122°45'40" W then southwest to 45°35'03" N, 122°45'55" W following the shoreline to 45°35'12" N, 122°46'06" W then back to the point of origin.

(ii) *Effective time and date.* 9 p.m. to 10:30 p.m. on September 17, 2005.

(b) Regulations. In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

Dated: July 11, 2005.

**Paul D. Jewell,**

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

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**BILLING CODE 4910–15–P**