

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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

### 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 procedure; and related management system 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.ID and Department of Homeland Security Management Directive 5100.1, 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, based on the Instruction, 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 event establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

A final environmental analysis check list 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, and 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, 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 new temporary § 165.T09–0630 is added as follows:

#### § 165.T09–0630 Safety Zone; Mackinac Bridge Birthday Fireworks, Lake Huron, St. Ignace, MI.

(a) *Location.* The following area is a temporary safety zone: all waters of Lake Huron within a 500-foot radius from the fireworks launch site with its center in position: 45°52.25' N, 084°43.20' W [DATUM: NAD 83].

(b) *Effective period.* This regulation is effective from 9 p.m. to 11:59 p.m. on July 26, 2008.

(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 Sault Ste. Marie, or on-scene representative.

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

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

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

Dated: July 2, 2008.

**M.J. Huebschman,**

*Captain, U.S. Coast Guard, Captain of the Port Sault Ste. Marie.*

[FR Doc. E8–16168 Filed 7–15–08; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2008–0631]

RIN 1625–AA00

#### Safety Zone; 100th Anniversary Chicago to Mackinac Race Fireworks, Lake Huron, Mackinac Island, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Lake Huron, Mackinac Island, MI. This zone is intended to restrict vessels from a portion of Lake Huron during the 100th Anniversary Chicago to Mackinac Race Fireworks, July 22, 2008 fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

**DATES:** This rule is effective from 9 p.m. to 11:59 p.m. on July 22, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0631 and are available online at [www.regulations.gov](http://www.regulations.gov). They are also available for inspection or copying at two locations: 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, and the U.S. Coast Guard Sector Sault Ste. Marie, 337 Water St., Sault Ste. Marie, MI 49783 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call LCDR Christopher Friese, Prevention Dept. Chief, Sector Sault Ste. Marie, 337 Water St., Sault Ste. Marie, MI 49783; 906-635-3220. 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 permit application was not received in time to publish a NPRM followed by a final rule before the effective date.

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**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

**Background and Purpose**

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port zones, and the explosive hazards of fireworks, the Captain of the Port Sault Ste. Marie has determined that fireworks launches proximate to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

**Discussion of Rule**

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the 100th Anniversary Chicago to Mackinac Race fireworks display. The fireworks display will occur between 9 p.m. and 11:59 p.m. on July 22, 2008.

The safety zone for the fireworks will encompass all waters of Lake Huron within a 600-foot radius from the fireworks launch site off of Bindle Point, with its center in position 45°50.57' N, 084°37.54' W [DATUM: NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Sault Ste. Marie, or his on-scene representative. The Captain of the Port or his on-scene 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.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

**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 rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of Lake Huron off Mackinac Island, Michigan between 9 p.m. and 11:59 p.m. on July 22, 2008.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for fewer than three hours for one event. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sault Ste. Marie 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 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 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 would 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 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

### 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 procedure; and related management system 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.ID and Department of Homeland Security Management Directive 5100.1, 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, based on the Instruction, 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 event establishes a safety zone; therefore paragraph (34)(g) of the Instruction applies.

A final environmental analysis check list 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, and 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, 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 new temporary § 165.T09–0631 is added as follows:

#### **§ 165.T09–0631 Safety Zone; 100th Anniversary Chicago to Mackinac Race Fireworks, Lake Huron, Mackinac Island, MI.**

(a) *Location.* The following area is a temporary safety zone: All waters of Lake Huron within a 600-foot radius from the fireworks launch site with its center in position 45°50.57' N, 084°37.54' W [DATUM: NAD 83].

(b) *Effective period.* This regulation is effective from 9 p.m. to 11:59 p.m. on July 22, 2008.

(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 Sault Ste. Marie, or on-scene representative.

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

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

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

Dated: July 2, 2008.

**M.J. Huebschman,**

*Captain, U.S. Coast Guard, Captain of the Port Sault Ste. Marie.*

[FR Doc. E8-16170 Filed 7-15-08; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 19 and 20

RIN 2900-AM49

#### Supplemental Statement of the Case

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its regulations to adjust the time period for filing a response to a Supplemental Statement of the Case in appeals to the Board of Veterans' Appeals (Board) from 60 days to 30 days. The purpose of this adjustment is to improve efficiency in the appeals process and reduce the time that it takes to resolve appeals while still providing appellants with a reasonable period to respond to a Supplemental Statement of the Case.

**DATES:** *Effective Date:* This rule is effective July 16, 2008.

*Applicability Date:* VA will apply this rule to appeals pending before VA after a period of 90 days from the effective date of this rule.

**FOR FURTHER INFORMATION CONTACT:**

Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565-5978. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Board is an administrative body within VA that decides appeals from denials by Agencies of Original Jurisdiction (AOJ) of claims for veterans' benefits, as well as a limited class of cases of original jurisdiction. The Board is under the administrative control and supervision of a Chairman who is directly responsible to the Secretary of Veterans Affairs. 38 U.S.C. 7101(a).

On March 26, 2007, VA published in the **Federal Register** (72 FR 14056) a Notice of Proposed Rulemaking (NPRM) that proposed to reduce the time limit for filing a response to a Supplemental Statement of the Case from 60 days to 30 days. Interested persons were invited to submit written comments on or before May 25, 2007.

Eight comments were received, all of which disagreed with the proposed rule for reasons summarized below. At least

three commenters argued that 30 days was simply not enough time to respond to a Supplemental Statement of the Case. Those commenters also questioned the purpose of the time reduction, arguing that this action would not serve the stated purpose of expediting appeals adjudication. One commenter indicated that the proposed rule would add further confusion regarding the various time periods within which claimants must respond to VA documents. Another commenter expressed concern that the proposed rule did not consider individuals who have appeals pending and yet reside outside of the United States. Two commenters expressed concern over the process of requesting an extension for filing a response to a Supplemental Statement of the Case. Finally, several commenters provided general suggestions for improving the VA adjudication system.

A recurring theme among the comments received was that 30 days was simply not enough time to prepare a response to a Supplemental Statement of the Case. One commenter noted that many veterans are represented by veterans service organizations that are overworked and understaffed, which results in veterans having to wait 3 to 4 weeks just to get an appointment with their representative. Thus, the commenter concluded, 30 days would be an insufficient amount of time in which to prepare a response. The commenter also suggested that VA was implementing this time reduction in hopes of receiving fewer responses to Supplemental Statements of the Case. A second commenter noted that if additional medical evidence, such as a rebuttal medical opinion, was required to respond to evidence outlined in the Supplemental Statement of the Case, a 30-day response period leaves little time to obtain such evidence. Yet another commenter remarked that Supplemental Statements of the Case often contain only a brief description of the evidence added to the record, thus, requiring claimants to request complete copies of such evidence from the AOJ in order to prepare a response. The commenter argued that this process alone can take more than 30 days.

Although VA recognizes and appreciates the concerns expressed by these commenters, we believe that the 30-day response time offered under the proposed rule does in fact afford appellants a reasonable opportunity to meaningfully respond to a Supplemental Statement of the Case, and we decline to make any changes to the response time outlined in the proposed rule based on these comments.

As explained in the NPRM, Supplemental Statements of the Case are issued at a late stage in the appellate process, often the last formal step prior to certification of an appeal to the Board. By that stage in the appeal period, appellants have already had extensive opportunity to gather evidence, including supportive medical opinions, for submission to the AOJ. Unlike a Statement of the Case, which must contain specific information about the evidence and issues in the case, the applicable laws and regulations, and the reasons for each determination, a Supplemental Statement of the Case is not required to contain the same degree of detail. As its name implies, a Supplemental Statement of the Case is a *supplement* to the Statement of the Case. The purpose of this document is to inform the appellant of any material changes in, or additions to, the information included in the Statement of the Case or any prior Supplemental Statement of the Case. 38 CFR 19.31(a). In *no case* will a Supplemental Statement of the Case be used to announce AOJ decisions on issues that were not previously addressed in a Statement of the Case. 38 CFR 19.31(a). Therefore, due to the limited purpose of a Supplemental Statement of the Case, less time should be needed to respond to a Supplemental Statement of the Case as compared to the Statement of the Case. Significantly, a response to a Supplemental Statement of the Case is *optional* and generally is not required to perfect an appeal. 38 CFR 20.302(c).

To the extent that certain cases involve a degree of medical or legal complexity so as to require additional time to craft an appropriate response to a Supplemental Statement of the Case, appellants can easily request an extension of the 30-day period for responding to a Supplemental Statement of the Case under the provisions of 38 CFR 20.303. Section 20.303 provides that an extension of the period for filing a response to a Supplemental Statement of the Case may be granted for good cause. Although good cause is not specifically defined by that regulation, it seems logical that a request for an extension on the basis that additional medical evidence was being sought would indeed be good cause for such an extension. Moreover, in response to one commenter's concern that the extension request may not be granted, the rule provides that a denial of a request for extension is appealable to the Board. 38 CFR 20.303.

We will, however, make one minor revision to the extension provisions of 38 CFR 20.303 to ensure that they have