

# Rules and Regulations

Federal Register

Vol. 74, No. 180

Friday, September 18, 2009

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2009–0529]

RIN 1625–AA00

#### Safety Zone; Cape Charles Tomato Festival Fireworks Event, Chesapeake Bay, Cape Charles, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a 280-foot radius safety zone on the Chesapeake Bay in the vicinity of the Cape Charles Town Harbor, Cape Charles, VA in support of the Cape Charles Tomato Festival Fireworks event. This action will protect mariners from the hazards associated with fireworks displays by restricting vessel traffic movement in the vicinity of the event.

**DATES:** This rule is effective on September 26, 2009 from 8 p.m. to 8:30 p.m.

**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–2009–0529 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–2009–0529 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 July 20, 2009, we published a notice of proposed rulemaking (NPRM) entitled Cape Charles Tomato Festival, Chesapeake Bay, Cape Charles, VA in the *Federal Register* (74 FR 137). 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 the Cape Charles Renewal Project will sponsor a fireworks display on the Chesapeake Bay shoreline centered on position 37°15'46" N/076°01'30" W (NAD 1983) on September 26, 2009. Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, the United States Coast Guard will restrict access within 280 feet of the fireworks launch area.

##### Discussion of Rule

The Coast Guard is establishing a safety zone on the navigable waters of the Chesapeake Bay within 280 feet of position 37°15'46" N/076°01'30" W (NAD 1983). This safety zone will be established in the vicinity of the Cape Charles Town Harbor, Cape Charles, VA on September 26, 2009. In the interest of public safety, access to the safety zone will be restricted from 8 p.m. to 8:30 p.m. on September 26, 2009. Except for participants and vessels authorized by the Coast Guard Captain of the Port or his representative, no person or vessel will be authorized to enter or remain in the regulated area.

##### 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 would not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone would be of limited size; and (iii) the Coast Guard would 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 rule will affect the following entities, some of which may be small entities: owners and operators of vessels intending to transit or anchor in that portion of the Chesapeake Bay from 8 p.m. until 8:30 p.m. on September 26, 2009. The 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. The safety zone will be of limited size. Maritime advisories will be issued allowing the mariners to adjust their plans accordingly. Furthermore, since the safety zone will apply to only a small portion of the Chesapeake Bay, there will be adequate space for mariners to safely transit around the zone.

##### 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.ID, 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 establishing a safety zone around a fireworks display. The fireworks will be launched from a land area; however some fallout debris, to include live fireworks or hot embers, may enter the water within a 280 foot radius of the launching site. This zone is designed to protect the maritime public from the hazards associated with fireworks displays. 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; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05-0529, to read as follows:

#### § 165.T05-0529 Safety Zone: Cape Charles Tomato Festival Fireworks Event, Chesapeake Bay, Cape Charles, VA.

(a) *Regulated Area.* The following area is a safety zone: All navigable waters within 280 feet of position 37°15'46" N/076°01'30" W (NAD 1983), in the vicinity of the Cape Charles Town Harbor in Cape Charles, VA.

(b) *Definitions.* As used in this section, 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 and the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia can be contacted at telephone number (757) 668-5555.

(4) The Captain of the Port Representative enforcing the safety zone can be contacted on VHF-FM marine band radio, channel 13 (156.65Mhz) and channel 16 (156.8Mhz).

(d) Enforcement Period. This rule is effective on September 26, 2009 from 8 p.m. to 8:30 p.m.

Dated: August 24, 2009.

M.S. Ogle,

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

[FR Doc. E9-22458 Filed 9-17-09; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0747]

RIN 1625-AA00

#### Safety Zone; San Clemente Island Northwest Harbor October and November Training; Northwest Harbor, San Clemente Island, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the navigable waters of the Northwest Harbor of San Clemente Island in support of the Naval Underwater Detonation. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activity. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port (COTP) or his designated representative.

**DATES:** This rule is effective from October 1, 2009 through November 30, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0747 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-0747 in the "Keyword" box, and then clicking "Search." They are 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 Petty Officer Kristen Beer, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619-278-7262, e-mail [Kristen.A.Beer@uscg.mil](mailto:Kristen.A.Beer@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

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 immediate action is necessary to ensure the safety of commercial and recreational vessels in the vicinity of any underwater detonation on the dates and times this rule will be in effect and delay would be contrary to the public interest.

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**. Delay in the effective date would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

##### Background and Purpose

The Navy will be conducting intermittent training involving the detonation of military grade explosives

underwater throughout October and November 2009. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activity.

##### Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from October 1, 2009 through November 30, 2009. The limits of the safety zone will be the navigable waters of the Northwest Harbor of San Clemente Island bounded by the following coordinates: 33°02'06" N, 118°35'36" W; 33°02'00" N, 118°34'36" W; thence along San Clemente Island shoreline to 33°02'06" N, 118°35'36" W. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activities. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

##### 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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial and recreational vessels will not be allowed to transit through the designated safety zone during the specified times while training is being conducted.

##### 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