

often make costly investment errors. Those who receive and follow quality investment advice can reduce such errors and thereby reap substantial financial benefit. The Department estimated that the PPA statutory exemption as implemented by the final regulation, together with the final class exemption, would extend investment advice to 21 million previously unadvised participants and beneficiaries, generating \$13 billion in annual financial benefits at a cost of \$5 billion, for a net annual financial benefit of \$8 billion.

In arriving at its estimates, the Department assumed that on average participants and beneficiaries who are advised make investment errors at one-half the rate of those who are not. The Department further assumed that different types of investment advice arrangements on average would be equally effective: Arrangements operating without need for exemptive relief, those operating pursuant to the PPA, and those operating pursuant to the class exemption all would reduce investment errors by one-half on average.

The Department's assumptions regarding the effectiveness of different advice arrangements were subject to uncertainty, particularly as applied to its assessment of the final class exemption's effects. In the preamble to the January 2009 final regulation and class exemption the Department noted evidence that conflicts of interest, such as those that might be attendant to advice arrangements operating pursuant to the class exemption, can sometimes taint advice. Conflicted advisers pursuing their own interests, and the investment managers who compensate them, may profit at the expense of participants and beneficiaries. The conditions attached to the class exemption were intended to ensure that advisers operating pursuant to the class exemption would honor the interests of participants and beneficiaries.

As discussed earlier, a number of commenters raised legal and policy issues concerning the exemption and, in particular, questioned the adequacy of the final class exemption's conditions to mitigate the potential for investment adviser self-dealing. The Department believes that the questions raised in these comments are sufficient to cast doubt on the conditions' adequacy to mitigate advisers' conflicts. If conflicts are not mitigated advice might be tainted. Therefore the Department has set aside its previous assumption that participants and beneficiaries who follow advice delivered pursuant to the final class exemption will commit

investment errors at one-half the rate of those who are unadvised, together with its previous conclusion that the final class exemption's benefits justify its cost. Instead the Department believes that doubts as to whether the final class exemption's conditions are adequate to mitigate conflicts justify withdrawal of the final class exemption. Accordingly, the Department is withdrawing the January 2009 final rule. With regard to the statutory prohibited transaction exemption under ERISA Section 408(b)(14) and Section 408(g), and Code Section 4975, in order to address the absence of regulatory guidance that results from withdrawal of the January 2009 final rule, the Department intends to propose regulations that, upon adoption, implement those provisions. Work is currently being completed on those proposed regulations, and the Department anticipates that they will be published in the **Federal Register** shortly.

For the reasons set forth above, the publication on January 21, 2009 (74 FR 3822), of the final rule amending 29 CFR Part 2550, for which the effective and applicability date was delayed on March 20, 2009 (74 FR 11847), May 22, 2009 (74 FR 23951) and November 17, 2009, is withdrawn.

Signed at Washington, DC, this 16th day of November 2009.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration, Department of Labor.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-0946]

RIN 1625-AA00

#### **Safety Zones; Blasting and Dredging Operations and Movement of Explosives, Columbia River, Portland to St. Helens, OR**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing two temporary safety zones on the Columbia River to help ensure the safety of the maritime public during blasting and dredging operations taking place near St. Helens, Oregon as well as the movement of explosives for those operations from Portland, Oregon to the

work site. The first temporary safety zone is a fixed zone around the area where the blasting and dredging operations will be taking place near St. Helens, Oregon. The second temporary safety zone is a moving zone around the barge KRS 200-6 at any time that it has explosives onboard.

**DATES:** This rule is effective from 12:01 a.m. on November 20, 2009 through 11:59 p.m. on February 28, 2010.

The safety zone has been enforced with actual notice since October 30, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0946 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-0946 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 MST1 Jaime Sayers, Waterways Management Division, U.S. Coast Guard Sector Portland; telephone 503-240-9319, e-mail [Jaime.A.Sayers@uscg.mil](mailto:Jaime.A.Sayers@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) because the publishing of an NPRM would be impracticable and contrary to public interest since immediate action is needed to ensure the public's safety during blasting and dredging operations. Delaying the implementation of the safety zone would subject the public to the hazards associated with blasting and dredging operations and the movement of explosives for those operations. The

danger posed by the large volume of marine traffic on the Columbia River makes safety zone regulations necessary to provide for the safety of construction support vessels, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during blasting and dredging operations. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions. On-scene Coast Guard and local law enforcement vessels will also provide actual notice to mariners.

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** because to do otherwise would be contrary to the public interest of ensuring public safety during blasting and dredging operations, and immediate action is necessary to prevent possible loss of life and property.

#### Background and Purpose

As part of the Columbia River Deepening (Channel Improvement) Project, the Army Corps of Engineers must blast and dredge on portions of the Columbia River near St. Helens, Oregon. Due to the inherent dangers associated with blasting and dredging operations, a safety zone is necessary to help ensure the safety of the maritime public operating near the work site. The potential explosive arc for the work site of this project has been calculated to be approximately 832 feet.

The blasting and dredging operations also require the movement of explosives via barge from Portland, Oregon to the work site. Due to the inherent dangers associated with the movement of explosives, a safety zone is necessary to help ensure the safety of the maritime public operating near the barge when explosives are on board.

The project is also required to comply with applicable state laws.

#### Discussion of Rule

The Coast Guard is establishing two temporary safety zones. The first temporary safety zone applies to the navigable waters within a radius of 1500 feet centering on the Army Corps of Engineers Columbia River Deepening (Channel Improvement) Project work site near St. Helens, Oregon located on the Columbia River from Duck Club Light 6 across to Bachelor Island downstream to the point of Austin Point and across to Warrior Point, at 45°50'31.2" N/122°46'51.6" W; 45°50'31.2" N/122°46'51.6" W; 45°49'37.2" N/122°47'16.79" W;

45°49'47.9" N/122°47'42.00" W; 45°50'56.4" N/122°47'16.79" W (NAD 83). The second temporary safety zone applies to the navigable waters with a radius of 500 feet centering on the barge KRS 200-6 at any time that it has explosives onboard. Notice of the second safety zone will be issued via a Safety Marine Information Broadcast (SMIB) broadcast over Channel 16 and by actual notice on-site. Vessels will be able to transit the work site and/or barge safety zones with permission from the Captain of the Port, Portland or his designated representative. The Captain of the Port can be contacted at telephone number (503) 240-9310, or by radio on VHF Marine Band Radio, channel 16. The safety zones will be in effect from 12:01 a.m. on October 28, 2009 through 11:59 p.m. on February 28, 2010.

#### 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. The Coast Guard has made this determination based primarily on the fact that maritime traffic will be allowed to transit the safety zones with permission from the Captain of the Port, Portland so there should be little to no economic impact.

#### 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. The following entities may be affected by this rule, some of which may be small entities: The owners and operators of vessels intending to operate, transit, or anchor in a portion of the Columbia

River from 12:01 a.m. on October 28, 2009 through 11:59 p.m. on February 28, 2010. The safety zones will not have a significant impact on a substantial number of small entities for the following reasons. Maritime traffic will be allowed to transit the safety zones with permission from the Captain of the Port, Portland or his designated representative, and the Coast Guard will make notifications via maritime advisories so mariners can 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), we offer to assist small entities in understanding the rule so that they can 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 regulations establishing safety zones. 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, 160.5; Public Law 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. § 165.T13-114 is added to read as follows:

#### § 165.T13-114 Safety Zones; Blasting and Dredging Operations and Movement of Explosives, Columbia River, Portland to St. Helens, OR

(a) *Location.* The following areas are safety zones: (1) All waters of the Columbia River from Duck Club Light 6

across to Bachelor Island downstream to the point of Austin Point and across to Warrior Point at 45°50'31.2" N/122°46'51.6" W; 45°50'31.2" N/122°46'51.6" W; 45°49'37.2" N/122°47'16.79" W; 45°49'47.9" N/122°47'42.00" W; 45°50'56.4" N/122°47'16.79" W (NAD 83). (2) All waters encompassed within a circle with a radius of 500 feet centered on the barge KRS 200-6 at any time that it has explosives onboard.

(b) *Definitions.* As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Portland in the enforcement of the safety zone.

(c) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zones established in paragraph (a) or bring, cause to be brought, or allow to remain in the safety zones established in paragraph (a) of this section any vehicle, vessel, or object unless authorized by the Captain of the Port, Portland or his designated representative.

(d) *Enforcement Period.* The safety zones established in paragraph (a) or this section are applicable from 12:01 a.m. on October 28, 2009 through 11:59 p.m. on February 28, 2010.

Dated: October 30, 2009.

F.G. Myer,

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

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## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

#### RIN 1024-AD73

### Special Regulations; Areas of the National Park System

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule governs winter visitation and certain recreational use in Yellowstone National Park for the 2009-2010 and 2010-2011 seasons. This final rule is issued to implement the Finding of No Significant Impact (FONSI) for the 2008 Winter Use Plans Environmental Assessment (2008 EA) approved October 15, 2009, and will provide