

attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before this Commission. An eligible party may receive an award when it prevails over the U.S. Department of Labor, Mine Safety and Health Administration ("MSHA"), unless the Secretary of Labor's position in the proceeding was substantially justified or special circumstances make an award unjust. In addition to the foregoing ground of recovery, a non-prevailing eligible party may receive an award if the demand of the Secretary is substantially in excess of the decision of the Commission and unreasonable, unless the applicant party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. The rules in this part describe the parties eligible for each type of award. They also explain how to apply for awards, and the procedures and standards that this Commission will use to make the awards. In addition to the rules in this part, the Commission's general rules of procedure, part 2700 of this chapter, apply where appropriate.

■ 27. Section 2704.104 is amended by removing paragraph (b)(2), redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(2) and (b)(3), and revising paragraph (c) to read as follows:

**§ 2704.104 Eligibility of applicants.**

\* \* \* \* \*

(c) For the purposes of awards for non-prevailing parties under § 2704.105(b), eligible applicants are small entities as defined in 5 U.S.C. 601, subject to the annual-receipts and number-of-employees standards as set forth by the Small Business Administration at 13 CFR part 121.

\* \* \* \* \*

■ 28. Section 2704.105 is amended by revising paragraph (b) introductory text to read as follows:

**§ 2704.105 Standards for awards.**

\* \* \* \* \*

(b) If the demand of the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with such decision, under the facts and circumstances of the case, the Commission shall award to an eligible applicant who does not prevail the fees and expenses related to defending against the excessive demand, unless the applicant has committed a willful violation of law or otherwise acted in bad faith or special circumstances make an award unjust. The burden of proof is on the applicant

to establish that the Secretary's demand is substantially in excess of the Commission's decision; the Secretary may avoid an award by establishing that the demand is not unreasonable when compared to that decision. As used in this section, "demand" means the express demand of the Secretary which led to the adversary adjudication, but does not include a recitation by the Secretary of the maximum statutory penalty—

\* \* \* \* \*

■ 29. Section 2704.206 is amended by revising the second sentence of paragraph (a) and paragraph (c) to read as follows:

**§ 2704.206 When an application may be filed.**

(a) \* \* \* An application may also be filed by a non-prevailing party when a demand by the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with such decision. \* \* \*

\* \* \* \* \*

(c) For purposes of this part, final disposition before the Commission means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final (pursuant to sections 105(d) and 113(d) of the Mine Act (30 U.S.C. 815(d) and 823(d)) and unappealable, both within the Commission and to the courts (pursuant to section 106(a) of the Mine Act (30 U.S.C. 816(a)).

■ 30. Section 2704.302 is amended by revising the second sentence of paragraph (a) to read as follows:

**§ 2704.302 Answer to application.**

(a) \* \* \* Unless counsel requests an extension of time for filing, files a statement of intent to negotiate under paragraph (b), or a proceeding is stayed pursuant to § 206(b), failure to file an answer within the 30-day period may be treated as a consent to the award requested.

\* \* \* \* \*

**PART 2705—PRIVACY ACT IMPLEMENTATION**

■ 31. The authority citation for part 2705 continues to read as follows:

**Authority:** 5 U.S.C. 552a; Public Law 93-579, 88 Stat. 1896.

■ 32. Section 2705.1 is amended by republishing the introductory text and revising paragraph (a) to read as follows:

**§ 2705.1 Purpose and scope.**

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the Federal Mine Safety and Health Review Commission, hereafter the "Commission," maintains a system of records which includes a record pertaining to the individual. This does not include Commission files generated in adversary proceedings under the Federal Mine Safety and Health Act; and

\* \* \* \* \*

Dated: July 28, 2006.

**Michael F. Duffy,**

*Chairman, Federal Mine Safety and Health Review Commission.*

[FR Doc. 06-6642 Filed 8-3-06; 8:45 am]

**BILLING CODE 6735-01-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[CGD13-06-038]

**RIN 1625-AA08**

**Special Local Regulations, Seattle Seafair, Lake Washington, WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations (SLR) for the Seattle Seafair, Lake Washington, Washington. These special local regulations limit the movement of non-participating vessels in the regulated race area and provide for a viewing area for spectator craft. This rule is needed to provide for the safety of life on navigable waters during Seafair. The rule adds four hours to the effective time period of the existing SLR to accommodate the addition of a fireworks display in this year's Seafair.

**DATES:** This rule is effective from 8 p.m. (PDT) until 11:59 p.m. (PDT) on August 5, 2006 unless sooner cancelled by the Captain of the Port.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [CGD13-06-038] and are available for inspection or copying at the Waterways Management Division, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA 98134, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Jessica Hagen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217-6200.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. The Coast Guard was not notified about the fireworks show until July 19, 2006. 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 a 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 commercial and recreational vessels in the vicinity of the fireworks on the date and times this rule will be in effect. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event.

On July 2, 2001, the Coast Guard published a final rule (66 FR 34822) modifying the regulations in 33 CFR 100.1301 for the safe execution of the Seattle Seafair Unlimited Hydroplane races on the waters of Lake Washington. This SLR provides for a regulated area to protect spectators while providing unobstructed vessel traffic lanes to ensure timely arrival of emergency response craft. Movements are regulated for all vessels in the area as described under 33 CFR 100.1301 or unless otherwise regulated by the COTP or his designee. This temporary final rule is required to increase the length of time affected by the regulation.

**Background and Purpose**

For more than 50 years Seafair on Lake Washington has been a Pacific Northwest tradition, entertaining millions of people over that period. However, this entertaining event involves risks to both spectators and participants. During Seafair, the marine congestion associated with the number of boats, swimmers, and spectators on shore challenges even the most experienced seaman. These conditions necessitate the maintenance of a regulated area to protect spectators while providing unobstructed vessel traffic lanes to ensure timely arrival of emergency response craft.

The Coast Guard is establishing special local regulations to provide for the safety of boaters during a fireworks display. The Coast Guard is establishing these regulations to protect vessels and persons from the hazards associated

with the fallout of burning embers that will be generated by the fireworks. The regulated area is also intended to protect boaters from the hazards associated with excessive vessel congestion associated with Seafair's activities.

**Discussion of Rule**

This rule will control the movement of all vessels in a regulated area on Lake Washington as indicated in section 2 of this Temporary Final Rule. This rule adds four hours to the effective time period of the existing SLR to accommodate the addition of a fireworks display for this year's Seafair.

The Coast Guard, through this action, intends to promote the safety of personnel and vessels in the area. The regulated areas will be enforced by the U.S. Coast Guard. The Captain of the Port may be assisted in the enforcement of the regulations by other federal, state, or 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 it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This change slightly modifies existing safety regulations, and should not effect the economic activities of any Seafair participant or spectator. The regulation is established for the benefit and safety of the recreational boating public, and any negative recreational boating impact is offset by the benefits of allowing the fireworks event to occur. This rule is effective from 8 p.m. until 11:59 p.m. on August 5, 2006. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard 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 temporary 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 this portion of Lake Washington during the time this regulation is in effect. The regulations will not have a significant economic impact due to its short duration and the limited area of enforcement.

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

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 would call 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 Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs

the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

#### **Taking of Private Property**

This rule would 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 rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. We have determined that safety zones and fishing rights protection need not be incompatible. We have also determined that this Temporary Final 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 Temporary Final 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 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 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 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)(h), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends part 100 of Title 33, Code of Federal Regulations, as follows:

### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 8 p.m. until 11:59 p.m. on August 5, 2006, a temporary § 100.T13–023 is added to read as follows:

#### **§ 100.T13–023 Special Local Regulations, Seattle Seafair, Lake Washington, WA.**

(a) This section is in effect from 8 p.m. until 11:59 p.m. on August 5, 2006 unless sooner cancelled by the Captain of the Port.

(b) The area where the Coast Guard will restrict general navigation by this regulation during the hours it is in effect is: The waters of Lake Washington bounded by the Interstate 90 (Mercer Island/Lacey V. Murrow) Bridge, the western shore of Lake Washington, and the east/west line drawn tangent to Bailey Peninsula and along the shoreline of Mercer Island.

(c) The area described in paragraph (b) of this section has been divided into two zones. The zones are separated by a line perpendicular from the I–90 Bridge to the northwest corner of the East log boom and a line extending from the southeast corner of the East log boom to the southeast corner of the hydroplane race course and then to the northerly tip of Ohlers Island in Andrews Bay. The western zone is designated Zone I, the eastern zone, Zone II. (Refer to NOAA Chart 18447).

(d) The Coast Guard will maintain a patrol consisting of Coast Guard vessels, assisted by Auxiliary Coast Guard vessels, in Zone II. The Coast Guard patrol of this area is under the direction of the Coast Guard Patrol Commander (the "Patrol Commander"). The Patrol Commander is empowered to control the movement of vessels on the racecourse and in the adjoining waters during the period this regulation is in effect. The Patrol Commander may be assisted by other federal, state and local law enforcement agencies.

(e) Only authorized vessels may be allowed to enter Zone I during the hours this regulation is in effect. Vessels in the vicinity of Zone I shall maneuver and anchor as directed by Coast Guard Officers or Petty Officers.

(f) During the times in which the regulation is in effect, swimming, wading, or otherwise entering the water in Zone I by any person is prohibited.

(g) During the times in which the regulation is in effect, any person swimming or otherwise entering the water in Zone II shall remain within ten (10) feet of a vessel.

(h) During the times this regulation is in effect, rafting to a log boom will be limited to groups of three vessels.

(i) During the times this regulation is in effect, up to six (6) vessels may raft together in Zone II if none of the vessels are secured to a log boom.

(j) During the times this regulation is in effect, only vessels authorized by the Patrol Commander, other law enforcement agencies or event sponsors shall be permitted to tow other watercraft or inflatable devices.

(k) Vessels permitted to proceed through either Zone I or Zone II during the hours this regulation is in effect shall do so only at speeds which will create minimum wake, seven (07) miles per hour or less. This maximum speed may be reduced at the discretion of the Patrol Commander.

(l) Upon completion of the daily racing activities, all vessels leaving either Zone I or Zone II shall proceed at speeds of seven (07) miles per hour or less. The maximum speed may be reduced at the discretion of the Patrol Commander.

(m) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the Patrol Commander shall serve as signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard may be assisted by other Federal, state and local law enforcement agencies, as well as official Seafair event craft.

Dated: July 26, 2006.

**R. Houck,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

[FR Doc. E6-12582 Filed 8-3-06; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[CGD05-06-042]

RIN 1625-AA08

#### Special Local Regulations for Marine Events; Susquehanna River, Port Deposit, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing permanent special local regulations for "Ragin' on the River", a

power boat race held annually each Labor Day weekend on the waters of the Susquehanna River adjacent to Port Deposit, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Susquehanna River adjacent to Port Deposit, Maryland during the power boat race.

**DATES:** This rule is effective August 21, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket (CGD05-06-042) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398-6204.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On May 4, 2006, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Susquehanna River, Port Deposit, MD in the **Federal Register** (71 FR 26287). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

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**. Any delay encountered in this regulation's effective date would be contrary to the public interest since the safety zone is needed to prevent traffic from transiting a portion of the Susquehanna River during the marine event thus ensuring that the maritime public is protected from any potential harm associated with such an event.

##### Background and Purpose

Annually, during Labor Day weekend, the Port Deposit, Maryland Chamber of Commerce sponsors the "Ragin' on the River" power boat race, on the waters of the Susquehanna River. The event consists of approximately 60 inboard hydroplanes and runabouts racing in heats counter-clockwise around an oval racecourse. A fleet of spectator vessels gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the

safety of participants, spectators and transiting vessels.

##### Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Susquehanna River, Port Deposit, Maryland.

The event enforcement time was adjusted to start 1 hour earlier than what was indicated in the NPRM. Enforcement of this section was changed from 11:30 a.m. to 10:30 a.m. to allow the Coast Guard Patrol Commander ample time to clear the regulated area prior to the event.

##### 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 it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Susquehanna River adjacent to Port Deposit, Maryland during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, area newspapers and radio stations 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 would not have a significant economic impact on