

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165****[Docket No. USCG–2010–0065]****RIN 1625–AA00****Safety Zone; United Portuguese SES Centennial Festa, San Diego Bay, San Diego, CA****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the navigable waters of the San Diego Bay in support of the United Portuguese SES Centennial Festa. This temporary safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this temporary safety zone unless authorized by the Captain of the Port or his designated representative.

**DATES:** This rule is effective from 9 p.m. to 9:30 p.m. on May 16, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0065 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0065 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 Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail [Corey.R.McDonald@uscg.mil](mailto:Corey.R.McDonald@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 the logistical details of the fireworks show were not finalized nor presented to the Coast Guard in enough time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete.

**Background and Purpose**

Pyro Spectaculars is sponsoring the United Portuguese SES Centennial Festa, which will include a fireworks presentation originating from a tug and barge combination in the vicinity of Shelter Island in the San Diego Bay. The safety zone will encompass all navigable waters within 600 feet of any point of the tug and barge combination. This safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway.

**Discussion of Rule**

The Coast Guard is establishing a safety zone that will be enforced from 9 p.m. to 9:30 p.m. on May 16, 2010. The safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative. The limits of the safety zone encompass all navigable waters within 600 feet of any point of the tug and barge combination located at approximately 32°42.55′ N, 117°13.13′ W.

**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 size, location, and brief duration of the

safety zone. Commercial vessels will not be hindered by the safety zone. Vessel traffic can pass safely around the zone. Recreational vessels will not be allowed to transit through or anchor in the established safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

**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 or operators of vessels intending to transit or anchor in a portion of the San Diego Bay from 9 p.m. to 9:30 p.m. on May 16, 2010.

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 enforced only 30 minutes late in the day when vessel traffic is low. Vessel traffic can pass safely around the zone. Before the effective period, the Coast Guard will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the temporary safety zone is enforced.

**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 (adjusted for inflation) 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 the establishment of a safety zone.

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; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–286 to read as follows:

### § 165.T11–286 Safety Zone; United Portuguese SES Centennial Festa; San Diego Bay, San Diego, CA.

(a) *Location.* The limits of the safety zone encompass all navigable waters within 600 feet of any point of the tug and barge combination located at approximately 32°42.55' N, 117°13.13' W.

(b) *Enforcement Period.* This section will be enforced from 9 p.m. to 9:30 p.m. on May 16, 2010. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Communications Center (COMCEN). The COMCEN may be contacted via VHF–FM channel 16 or 619–278–7033.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: March 15, 2010.

**T.H. Farris,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2010-6995 Filed 3-29-10; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 64

[Docket ID FEMA-2010-0003; Internal Agency Docket No. FEMA-8123]

#### Suspension of Community Eligibility

##### *Correction*

In rule document 2010-6632 beginning on page 14356 in the issue of Thursday, March 25, 2010 make the following corrections:

(1) The department docket number is corrected to read as set forth above.

(2) On page 14357, in the fourth column, under the heading "Current effective map date", the date should read April 5, 2010.

[FR Doc. C1-2010-6632 Filed 3-29-10; 8:45 am]

**BILLING CODE 1505-01-D**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 107

[Docket No. PHMSA-2009-0201 (HM-208H)]

**RIN 2137-AE47**

#### Hazardous Materials Transportation; Registration and Fee Assessment Program

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** PHMSA is amending the statutorily mandated registration and fee assessment program for persons who transport, or offer for transportation, certain categories and quantities of hazardous materials. For those registrants not qualifying as a small

business or not-for-profit organization, PHMSA is increasing the annual fee from \$975 (plus a \$25 administrative fee) to \$2,575 (plus a \$25 administrative fee) for registration year 2010-2011 and following years. The increase is necessary to fund the national Hazardous Materials Emergency Preparedness (HMEP) grants program at approximately \$28,300,000 in accordance with the Administration's Fiscal Year 2010 budget and proposed Fiscal Year 2011 budget.

**DATES:** Effective date of this final rule is April 29, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, PHMSA, (202) 366-4484, and Ms. Deborah Boothe or Mr. Steven Andrews, Office of Hazardous Materials Standards, PHMSA, (202) 366-8553.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Since 1992, PHMSA has conducted a national registration program under the mandate in 49 U.S.C. 5108 for persons who offer for transportation or transport certain hazardous materials in intrastate, interstate, or foreign commerce. The purposes of the registration program are to gather information about the transportation of hazardous materials, and to fund the Hazardous Materials Emergency Preparedness (HMEP) grants program and additional related activities. See 49 U.S.C. 5108(b), 5116, 5128(b). PHMSA may set the annual registration fee between a minimum of \$250 and maximum of \$3,000. See 49 U.S.C. 5108(a)(2), 5108(g)(2)(A).

Since 2006, the annual registration fee has been set at \$250 (plus a \$25 processing fee) for small businesses and not-for-profit organizations and \$975 (plus a \$25 processing fee) for all other registrants. See 49 CFR 107.612(d). Because PHMSA had accumulated a surplus following a prior adjustment in 2000 (See 65 FR 7297, 7309 [Feb. 14, 2000]), notwithstanding a temporary reduction between 2003 and 2006, since Fiscal Year 2008, PHMSA has been able to fully fund the obligation limit of \$28,318,000 in the Consolidated Appropriations Act of 2008 (Pub. L. 110-116 [121 Stat. 1295], November 13, 2007), and the Omnibus Appropriations Act, 2009 (Pub. L. 111-8 [123 Stat. 945], March 11, 2009). However, that surplus has now been reduced to \$1,500,000, and it is necessary to adjust registration fees in order to collect additional monies in the 2010-2011 and following registration years and fully fund the current authorization and expected

budget requests of \$28.3 million for Fiscal Years beginning in 2010. This can be done by leaving the annual registration fee at \$250 (plus a \$25 processing fee) for those persons who are a small business or not-for-profit organization and increasing to \$2,575 (plus a \$25 processing fee) the annual fee paid by all other persons required to register.

##### **II. Notice of Proposed Rulemaking**

On February 2, 2010, PHMSA published a notice of proposed rulemaking (NPRM; 75 FR 5258) to ensure full funding of the HMEP grants program, by proposing an increase in registration fees beginning with the 2010-2011 registration year to fund the program at the \$28.3 million level. As explained in the NPRM, since 2006, the annual registration fee has been set at \$250 (plus a \$25 processing fee) for small businesses and not-for-profit organizations and \$975 (plus a \$25 processing fee) for all other registrants. See 49 CFR 107.612(d). Because PHMSA had accumulated a surplus following a prior adjustment in 2000 (See 65 FR 7297, 7309 [Feb. 14, 2000]), notwithstanding a temporary reduction between 2003 and 2006, since Fiscal Year 2008, PHMSA has been able to fully fund the obligation limit of \$28,318,000 in the Consolidated Appropriations Act of 2008 (Pub. L. 110-116 [121 Stat. 1295], November 13, 2007), and the Omnibus Appropriations Act, 2009 (Pub. L. 111-8 [123 Stat. 945], March 11, 2009). However, that surplus has now been reduced to \$1,500,000, and it is necessary to adjust registration fees in order to collect additional monies in the 2010-2011 and following registration years and fully fund the current authorization in Fiscal Year 2010 and expected budget requests of \$28.3 million for future fiscal years. Accordingly, PHMSA proposed to increase the registration fees for persons other than small businesses from \$975 (plus \$25 processing fee) to \$2,975 (plus \$25 processing fee) for registration year 2010-2011 and following, in order to maintain the statutorily mandated goal of funding the HMEP grants program activities at approximately \$28,300,000.

##### **III. HMEP Grants Program**

###### *A. Purpose and Achievements of the HMEP Grants Program*

The HMEP grants program, as mandated by 49 U.S.C. 5116, provides Federal financial and technical assistance to States and Indian Tribes to "develop, improve, and carry out emergency plans" within the National Response System and the Emergency