any implications these circumstances may have for a Section 811 rule.

• Consider the following scenario: a supplier provides a particular type or formulation of product that cannot be obtained from other suppliers (not due to monopolization by the supplier). This particular product is needed in certain areas, and is not easily substituted for by other suppliers' products. The Commission seeks comment on whether the following practice would constitute a manipulative device or contrivance: if the supplier sold some of its product to certain areas but not to other areas, at a loss or for a profit that is not as great as it would likely have made in the area where it did not sell. In answering this question, commenters are encouraged to address whether their answers depend on the supplier's knowledge or motivation(s), such as that the supplier (1) might have had contractual arrangements elsewhere; (2) might have anticipated developing more business elsewhere; (3) might have anticipated that prices in the particular areas might go up, making the rest of its supply sold in those areas more profitable; or (4) might have taken the foregoing steps for the express purpose of causing the prices in those areas to go up. Commenters are also encouraged to address whether their answers depend on how difficult it is to substitute for or do without the product, and, if so, what constitutes an unreasonable degree of difficulty.

• As noted above, market manipulation by certain firms (Enron and others) is often cited as a significant cause of the substantial disruptions in Western electricity and natural gas markets in 2000 and 2001. The Commission seeks comment on the extent to which such activities, including but not limited to the activities described above, may provide guidance as to what may constitute the use of a manipulative or deceptive device or contrivance, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale.

• In light of the electricity market characteristics identified by the FERC Staff Report, and the physical peculiarities of electricity storage and distribution, the Commission seeks comment on how relevant this experience may be to wholesale petroleum markets, and on whether (and if so to what extent) this experience can inform the Commission's approach to distinguishing manipulative or deceptive devices or contrivances from legitimate business practices.

VI. Regulatory Flexibility Act

• Does Subtitle B of the EISA impose any disparate impact on small businesses? If so, how may this disparate impact be minimized?

• Describe and, where feasible, estimate the number of small entities to which Subtitle B applies.

VII. Conclusion

The Commission will proceed from this ANPR to a Notice of Proposed Rulemaking. The evaluation of comments submitted in response to this ANPR will comprise part of the Commission's rulemaking process.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–10102 Filed 5–6–08: 8:45 am]

BILLING CODE 6750–01–S

COAST GUARD

33 CFR Part 165

[Docket No. USCG–2008–0314]

RIN 1625–AA00

Safety Zone; Red Bull Air Race, Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the Detroit River, Detroit, Michigan. This Zone is intended to restrict vessels from portions of the Detroit River during the Red Bull Air Race. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with air races.

DATES: Comments and related material must reach the Coast Guard on or before May 22, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0314 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Online: *http://www.regulation.gov.*

(2) Mail: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) Hand delivery: Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) Fax: 202–493–2251.

FOR FURTHER INFORMATION CONTACT: LT Jeff Ahlgren, Waterways Management, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207, (313) 568–9580.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0314), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name, mailing address, and an e-mail address or other contact information in the body of your document to ensure that you can be identified as the submitter. This also allows us to contact you in the event further information is needed or if there are questions. For example, if we cannot read your submission due to technical difficulties and you cannot be contacted; your submission may not be considered. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' and enter the docket number for this rulemaking (USCG–2008–0218) in the Docket ID

box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Sector Detroit at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and the public from hazards associated with an air race. The Captain of the Port Detroit has determined air races in close proximity to watercraft and infrastructure pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, airplanes traveling at high speeds and performing aerial acrobatics, and large numbers of spectators in close proximity on the water could easily result in serious injuries or fatalities. Establishing a safety zone around the location of the race course will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Proposed Rule

This proposed rule is intended to ensure safety of the public and vessels during the setup, course familiarization, time trials and race in conjunction with the Red Bull Air Race. The air race and associated set-up and removal will occur between 9 a.m., May 29, 2008 and 6 p.m., June 1, 2008. The safety zone will be enforced from 9 a.m. to 5 p.m. on May 29, 2008 through May 31, 2008, and from 9 a.m. to 6 p.m. on June 1, 2008.

The safety zone will encompass all navigable waters of the United States on the Detroit River, Detroit, MI, bound by a line extending from a point on land southwest of Joe Louis Arena at position 42°19.4′ N; 083°3.3′ W, northeast along the Detroit shoreline to a point on land at position 42°20.0′ N; 083°1.2′ W, southeast to the international border with Canada at position 42°19.8′ N; 083°1.0′ W, southwest along the international border to position 42°19.2′ N; 083°3.3′ W, and northwest to the point of origin at position 42°19.4′ N; 083°3.3′ W. (DATUM: NAD 83).

The Captain of the Port will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. Likewise, the Windsor Port Authority intends to restrict vessel movement on the Canadian side of the Detroit River. The exclusionary area on the Canadian side will be aligned with the east and west borders of the U.S. safety zone and will extend to the shoreline along Windsor, ON. The Captain of the Port will issue a broadcast Notice to Mariners notifying the public when enforcement of the safety zone is terminated.

Regulatory Evaluation

This proposed 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 proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

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 zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would 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 the above portion of the Detroit River between 9 a.m. and 6 p.m. on May 29, 2008 through June 1, 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 approximately six hours each day of the race. Additionally, small entities such as passenger vessels, have been involved in the planning stages for this event and have had ample time to make alternate arrangements with regards to mooring positions and business operations during the hours this safety zone will be in place. Furthermore, local sailing and yacht clubs will be notified prior to the event by Coast Guard Station Belle Isle with information on what to expect during the event with the intention of minimizing interruptions in their normal business practices. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect. Additionally, the COTP will suspend enforcement of the safety zone if the event for which the zone is established ends earlier than the expected time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 LT Jeff Ahlgren, Waterways Management, U.S. Coast Guard Sector Detroit, 110 Mount

Elliot Ave., Detroit MI, 48207; (313)568–9580. 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 proposed 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 proposed 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 proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might 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 Proposed 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 Proposed 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 proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination 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, we believe that this rule should be 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 preliminary ''Environmental Analysis Check List'' and ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this proposed rule should be categorically excluded from further environmental review. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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 proposes to amend 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. Section *165.T09–0314 is added to read as follows:*

§ 165.T09–0314 Safety Zone; Red Bull Air Race, Detroit River, Detroit, MI.

(a) *Location.* The following area is a temporary safety zone: all U.S. waters of the Detroit River, Detroit, MI, bound by a line extending from a point on land southwest of Joe Louis Arena at position 42°19.4′ N; 083°3.3′ W, northeast along the Detroit shoreline to a point on land at position 42°20.0′ N; 083°1.2′ W, southeast to the international boarder with Canada at position 42°19.8′ N; 083°1.0′ W, southwest along the international border to position 42°19.2′

N; 083°3.3′ W, and northwest to the point of origin at position 42°19.4′ N; 083°3.3′ W. (DATUM: NAD 83).

(b) *Effective Period.* This regulation is effective from 9 a.m. on May 29, 2008 through 6 p.m. on June 1, 2008. The safety zone will be enforced daily from 9 a.m. to 5 p.m. on May 29, 2008 through May 31, 2008, and from 9 a.m. to 6 p.m. on June 1, 2008.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated 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. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

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

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 or his on-scene representative.

Dated: April 23, 2008.

P.W. Brennan,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. E8–10238 Filed 5–6–08; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2007–11]

Definition of Cable System

AGENCY: Copyright Office, Library of Congress.

ACTION: Termination of rulemaking proceeding.

SUMMARY: The Copyright Office previously sought comment on issues associated with the definition of the term ''cable system'' under the Copyright Act as well as on the National Cable and Telecommunications Association's request for the creation of subscriber groups for the purposes of eliminating the ''phantom signal'' phenomenon. After reviewing the record in this proceeding, the Copyright Office finds that it lacks the statutory authority to adopt rules sought by the cable industry. The Copyright Office, however, clarifies regulatory policy regarding the application of the 3.75% fee to phantom signals. This proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Assistant General Counsel, and Tanya M. Sandros, General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Section 111 of the Copyright Act (''Act''), title 17 of the United States Code (''Section 111''), provides cable systems with a statutory license to retransmit a performance or display of a work embodied in a primary transmission made by a television or radio station licensed by the Federal Communications Commission (''FCC''). Cable systems that retransmit broadcast signals in accordance with the provisions governing the statutory license set forth in Section 111 are required to pay royalty fees to the Copyright Office. Payments made under the cable statutory license are remitted semi–annually to the Copyright Office which invests the royalties in United States Treasury securities pending distribution of these funds to those copyright owners who are entitled to receive a share of the fees.

I. Introduction

In 2007, the Copyright Office published a Notice of Inquiry (''NOI'') seeking comment on issues associated with the definition of the term ''cable system'' under the Copyright Act and the Copyright Office's implementing rules. The Copyright Office also sought comment on the National Cable and Telecommunications Association's (''NCTA'') request for the creation of subscriber groups for the purposes of eliminating the ''phantom signal'' phenomenon. 72 FR 70529 (Dec. 12, 2007). The purpose of the NOI was to solicit input on, and address possible solutions to, the complex issues presented when only a subset of a cable system's subscriber base receive a particular distant signal.

II. Background

Section 111(f) of the Copyright Act defines a ''cable system'' as:

> ''a facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission, and makes secondary transmissions of such signals or programs by wires, cables, microwave, or other communications channels to subscribing members of the public who pay for such service. For purposes of determining the royalty fee under subsection (d)(1)[of Section 111], two or more cable systems in contiguous communities under common ownership or control or operating from one headend shall be considered one system.'' 17 U.S.C. 111(f).

In implementing the cable statutory license provisions of the Copyright Act, the Copyright Office adopted a definition of the term ''cable system'' that replicated the statutory provision. The Copyright Office, however, separated the text of the provision into two parts in order to clarify that a cable system can be defined in either of two ways for the purpose of calculating royalty fees. Thus, the regulatory definition provides that ''two or more facilities are considered as one individual cable system if the facilities are either: (1) in contiguous communities under common ownership or control or (2) operating from one headend.'' 37 CFR 201.17(b)(2). The Copyright Office stated that its interpretation of the statutory ''cable system'' definition was consistent with Congress's goal of avoiding the ''artificial fragmentation'' of systems (a large system purposefully broken up into smaller systems) and the consequent reduction in royalty payments to copyright owners. *See Compulsory License for Cable Systems*, 43 FR 958 (Jan. 5, 1978).

The Copyright Office has, in the past, recognized certain practical problems associated with the definition when cable systems merge. For example, in 1997, the Copyright Office stated that ''[s]o long as there is a subsidy in the rates for the smaller cable systems, there will be an incentive for cable systems to structure themselves to qualify as a small system.'' *See A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals* (''1997 Report'') (Aug. 1, 1997) at 45. The Copyright Office further stated that although Section 111(f) has worked well to avoid artificial fragmentation, ''it has had the result of raising the royalty rates some cable systems pay when they merge. This happens because, if the two systems have different distant signal