

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket No. USCG–2009–0149]

RIN 1625–AA00

**Safety Zone; Allegheny River, Pittsburgh, PA**

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard has established a temporary safety zone from mile marker 0.5 (Roberto Clemente Highway Bridge) on the Allegheny River to mile marker 1.4 (16th Street Highway Bridge), extending 500 feet out from the right descending bank. This safety zone is needed to protect spectators and vessels from the hazards associated with the Urban Adventure's Adventure Race event. Entry into this zone is prohibited, unless specifically authorized by the Captain of the Port Pittsburgh or a designated representative.

**DATES:** This rule is effective from 9 a.m. until 11 a.m. on May 30, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in this docket are part of docket USCG–2009–0149 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0149 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying two locations: 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, and the U.S. Coast Guard Marine Safety Unit Pittsburgh, Suite 1150 Town Place, 100 Forbes Avenue, Pittsburgh, PA 15222, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Lieutenant Junior Grade Douglas Kang, Marine Safety Unit Pittsburgh, telephone 412–644–5808. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to protect participant and spectator craft from the hazards associated with Urban Adventure's Adventure Race event.

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**. Publishing an NPRM and delaying its effective date would be contrary to public interest because immediate action is needed to protect participant and spectator craft from the hazards associated with Urban Adventure's Adventure Race event.

**Background and Purpose**

The Coast Guard has established a temporary safety zone from mile marker 0.5 (Roberto Clemente Highway Bridge) on the Allegheny River to mile marker 1.4 (16th Street Highway Bridge), extending 500 feet out from the right descending bank. This safety zone is needed to protect spectators and vessels from the hazards associated with the Urban Adventure's Adventure Race event.

**Discussion of Rule**

The Captain of the Port Pittsburgh is establishing a safety zone from mile marker 0.5 (Roberto Clemente Highway Bridge) on the Allegheny River to mile marker 1.4 (16th Street Highway Bridge), extending 500 feet out from the right descending bank. Vessels shall not enter into, depart from, or move within this safety zone without permission from the Captain of the Port Pittsburgh or his authorized representative. Persons or vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Pittsburgh, or a designated representative. They may be contacted on VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465. This rule is effective from 9 a.m. until 11 a.m. on May 30, 2009. The Captain of the Port

Pittsburgh will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

**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 rule will be in effect for a short period of time and notifications to the marine community will be made through broadcast notices to mariners. The impacts on routine navigation are expected to be minimal.

**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 that portion of the waterways from mile marker 0.5 (Roberto Clemente Highway Bridge) on the Allegheny River to mile marker 1.4 (16th Street Highway Bridge), extending 500 feet out from the right descending bank from 9 a.m. to 11 a.m. on Saturday, May 30, 2009. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for a short period of time.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small

entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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 affect 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 0023–01 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 that 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, from further environmental documentation.

Under figure 2–1, paragraph (34)(g.), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

#### 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(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T0149 to read as follows:

#### § 165.T0149 Safety Zone; Allegheny River, Pittsburgh, PA.

(a) *Location.* The following area is a Safety Zone: the portion of the waterways from mile marker 0.5 (Roberto Clemente Highway Bridge) on the Allegheny River to mile marker 1.4 (16th Street Highway Bridge), extending 500 feet out from the right descending bank.

(b) *Effective date.* This rule is effective from 9 a.m. until 11 a.m. on May 30, 2009.

(c) *Periods of Enforcement.* This rule will only be enforced from 9 a.m. until 11 a.m. on May 30, 2009. The Captain of the Port Pittsburgh or a designated representative will inform the public

through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

(d) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Pittsburgh.

(2) Persons or vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Pittsburgh or a designated representative. They may be contacted on VHF-FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1-800-253-7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel includes Commissioned, Warrant, and Petty Officers of the U.S. Coast Guard.

Dated: March 31, 2009.

**S.T. Higman,**

*Lieutenant Commander, U.S. Coast Guard,  
Acting Captain of the Port Pittsburgh.*

[FR Doc. E9-10115 Filed 5-1-09; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**46 CFR Parts 2, 8, and 189**

[Docket No. USCG-2004-19823]

**RIN 1625-AA92**

**Alternate Compliance Program: Vessel Inspection Alternatives**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard amends the vessel inspection regulations to expand the Alternate Compliance Program (ACP). Through these amendments, we are updating the list of certificates the Coast Guard issues, incorporating Coast Guard policy regarding eligibility requirements for classification societies participating in the ACP, recognizing classification societies other than the American Bureau of Shipping, and expanding the ACP to include oceanographic research vessels.

**DATES:** This rule is effective June 3, 2009

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2004-19823 and are

available for inspection at the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Mr. William Peters, U.S. Coast Guard Office of Design and Engineering Standards, at telephone 202-372-1371, or e-mail him at [William.S.Peters@uscg.mil](mailto:William.S.Peters@uscg.mil). If you have questions on viewing the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents for the Preamble**

- I. Abbreviations
- II. Background and Purpose
- III. Discussion of Comments
- IV. Discussion of Final Rule
- V. Regulatory Analyses
  - A. Regulatory Planning and Review
  - B. Small Entities
  - C. Assistance for Small Entities
  - D. Collection of Information
  - E. Federalism
  - F. Unfunded Mandates Reform Act
  - G. Taking of Private Property
  - H. Civil Justice Reform
  - I. Protection of Children
  - J. Indian Tribal Governments
  - K. Energy Effects
  - L. Technical Standards
  - M. Environment

**I. Abbreviations**

ACP Alternate Compliance Program  
 CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 DMS Docket Management System  
 DOT Department of Transportation  
 FR Federal Register  
 IMO International Maritime Organization  
 NEPA National Environmental Policy Act of 1969  
 NPRM Notice of Proposed Rulemaking  
 NTTAA National Technology Transfer and Advancement Act  
 NVIC Navigation and Vessel Inspection Circular  
 PSSC Passenger Ship Safety Certificate  
 HSC High-speed Craft  
 RIN Regulation Identifier Number  
 SIP Streamlined Inspection Program  
 SOLAS International Convention for the Safety of Life at Sea  
 US United States  
 USC United States Code  
 USCG United States Coast Guard  
 VAP Vessel Action Plan

**II. Background and Purpose**

The Alternate Compliance Program (ACP) was launched as a pilot program in 1995. A notice about the ACP was published in the **Federal Register** on

February 3, 1995. 60 FR 6687. Under the ACP, owners and operators of eligible vessels may request inspection by an authorized classification society, as defined in 46 CFR 8.100, using an equivalence to the requirements in the Code of Federal Regulations (CFR) comprising classification society rules, provisions of International Maritime Organization (IMO) treaties, and a supplementary list of requirements from the CFR that were not in IMO provisions or classification society rules. A classification society gained eligibility to participate in the ACP by meeting the standards described in the regulations. If it met these standards, a classification society was recognized and delegated authority to conduct plan reviews and inspections, and issue, on the Coast Guard's behalf, certain IMO certificates documenting compliance with IMO treaty provisions.

An interim rule establishing new 46 CFR part 8, "Vessel Inspection Alternatives" was published in the **Federal Register** on December 27, 1996. 61 FR 68510. The pilot program was concluded in 1997 and the ACP was fully implemented by a final rule published on December 24, 1997. 62 FR 67526.

Predictably, the program has evolved since 1997 and the lessons learned have been documented and typically implemented through Coast Guard policy decisions, where appropriate. The May 2007 notice of proposed rulemaking (NPRM) preceding this final rule described the Coast Guard's plans to expand the ACP and incorporate the lessons we have learned into the CFR. 72 FR 28650, May 22, 2007. For example, when the ACP was initiated, the Coast Guard chose to retain issuing authority for the SOLAS Passenger Ship Safety Certificate (PSSC). This decision was based on our experience with the complexities of the passenger vessel plan review, inspection, and certification process. Experience has shown that retaining this issuing authority has created confusion over the roles of the Coast Guard versus the authorized classification society under the ACP. Experience with the ACP has also allowed us to gain confidence with the ACP process. Therefore, we decided to grant PSSC issuing authority to authorized classification societies.

For similar reasons, in the May 2007 NPRM, we proposed to delegate to authorized classification societies issuing authority for the High-Speed Craft (HSC) Safety Certificate. This follows our determination that the HSC Code is equivalent to the 46 CFR Subchapter H requirements for passenger vessels. We published our