

**Subpart C—[Reserved]****Subpart D—Labeling and Advertising****§ 1140.30 Scope of permissible forms of labeling and advertising.**

(a)(1) A manufacturer, distributor, or retailer may, in accordance with this subpart D, disseminate or cause to be disseminated advertising or labeling which bears a cigarette or smokeless tobacco brand name (alone or in conjunction with any other word) or any other indicia of tobacco product identification, in newspapers; in magazines; in periodicals or other publications (whether periodic or limited distribution); on billboards, posters, and placards; in nonpoint-of-sale promotional material (including direct mail); in point-of-sale promotional material; and in audio or video formats delivered at a point-of-sale.

(2) A manufacturer, distributor, or retailer intending to disseminate, or to cause to be disseminated, advertising or labeling for cigarettes or smokeless tobacco in a medium that is not listed in paragraph (a)(1) of this section, shall notify the agency 30 days prior to the use of such medium. The notice shall describe the medium and discuss the extent to which the advertising or labeling may be seen by persons younger than 18 years of age. The manufacturer, distributor, or retailer shall send this notice to the Office of Compliance, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD, 20850-3229.

(b) [Reserved]

(c) This subpart D does not apply to cigarette or smokeless tobacco package labels.

**§ 1140.32 Format and content requirements for labeling and advertising.**

(a) Except as provided in paragraph (b) of this section, each manufacturer, distributor, and retailer advertising or causing to be advertised, disseminating or causing to be disseminated, any labeling or advertising for cigarettes or smokeless tobacco shall use only black text on a white background. This section does not apply to advertising:

(1) In any facility where vending machines and self-service displays are permitted under this part, provided that the advertising is not visible from outside the facility and that it is affixed to a wall or fixture in the facility; or

(2) Appearing in any publication (whether periodic or limited distribution) that the manufacturer, distributor, or retailer demonstrates is an adult publication. For the purposes

of this section, an adult publication is a newspaper, magazine, periodical, or other publication:

(i) Whose readers younger than 18 years of age constitute 15 percent or less of the total readership as measured by competent and reliable survey evidence; and

(ii) That is read by fewer than 2 million persons younger than 18 years of age as measured by competent and reliable survey evidence.

(b) Labeling and advertising in an audio or video format shall be limited as follows:

(1) Audio format shall be limited to words only with no music or sound effects.

(2) Video formats shall be limited to static black text only on a white background. Any audio with the video shall be limited to words only with no music or sound effects.

**§ 1140.34 Sale and distribution of nontobacco items and services, gifts, and sponsorship of events.**

(a) No manufacturer and no distributor of imported cigarettes or smokeless tobacco may market, license, distribute, sell, or cause to be marketed, licensed, distributed, or sold any item (other than cigarettes or smokeless tobacco or roll-your-own paper) or service, which bears the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco.

(b) No manufacturer, distributor, or retailer may offer or cause to be offered any gift or item (other than cigarettes or smokeless tobacco) to any person purchasing cigarettes or smokeless tobacco in consideration of the purchase thereof, or to any person in consideration of furnishing evidence, such as credits, proofs-of-purchase, or coupons, of such a purchase.

(c) No manufacturer, distributor, or retailer may sponsor or cause to be sponsored any athletic, musical, artistic, or other social or cultural event, or any entry or team in any event, in the brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco. Nothing in this paragraph prevents a manufacturer, distributor, or retailer from sponsoring or causing to be sponsored any athletic, musical, artistic, or other social or cultural event, or team

or entry, in the name of the corporation which manufactures the tobacco product, provided that both the corporate name and the corporation were registered and in use in the United States prior to January 1, 1995, and that the corporate name does not include any brand name (alone or in conjunction with any other word), logo, symbol, motto, selling message, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarettes or smokeless tobacco.

Dated: March 11, 2010.

**Margaret A. Hamburg,**  
*Commissioner of Food and Drugs.*

Dated: March 11, 2010.

**Kathleen Sebelius,**  
*Secretary of Health and Human Services.*  
[FR Doc. 2010-6087 Filed 3-18-10; 8:45 am]

BILLING CODE 4160-01-S

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

[Docket No. USCG-2009-1031]

RIN 1625-AA00

**Safety Zone; Lake Mead Intake Construction, Lake Mead, Boulder City, NV**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the navigable waters of Lake Mead in support of the construction project for Lake Mead's Intake #3. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during blasting, excavating, and any other general construction work. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port (COTP) or his designated representative.

**DATES:** *Effective Date:* This rule is effective in the CFR on March 19, 2010 through December 31, 2010. This rule is effective with actual notice for purposes of enforcement prior to publication.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-1031 and are available online by going to <http://www.regulations.gov>, inserting

USCG–2009–1031 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 MST3 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 immediate action is necessary to ensure the safety of commercial and recreational vessels in the vicinity of any construction on the dates and times this rule will be in effect and delay would be contrary to the public interest.

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**. Delay in the effective date will be contrary to the public interest, since immediate action is needed to ensure the public’s safety.

##### **Background and Purpose**

Vegas Tunnel Construction will be conducting intermittent blasting, excavating, and other general construction operations for the placement of an Intake Pipe from Lake Mead throughout 2010. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the construction operations.

##### **Discussion of Rule**

The Coast Guard is establishing a safety zone that will be enforced intermittently from January 1, 2010 through December 31, 2010. The limits of the safety zone will include the navigable waters within a 1,300 foot radius around the construction vessels during transit and while at blast site located at approximately 36°05′23.677501” N, 114°45′59.925819” W. The safety zone will be enforced only during construction operations. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the blasting activities. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

##### **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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial and recreational vessels will not be allowed to transit through the designated safety zone during the specified times while construction operations are being conducted.

##### **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 Lake Mead from January 1, 2010 through December 31, 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 when blasting, excavating, or other general work is actively being progressed. Vessel traffic can pass safely around the zone. Before the effective period, the Coast Guard will publish Local Notice to Mariners (LNM) and the construction company will issue Broadcast Notice to Mariners (BNM).

##### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

##### **Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

##### **Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not

require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves 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.

■ 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, and 160.5; Pub. L. 107–295; 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new section § 165.T11–281 to read as follows:

### § 165.T11–281 Safety Zone; Lake Mead Intake Construction; Lake Mead, Boulder City, NV.

(a) *Location.* The limits of the safety zone will include the navigable waters of Lake Mead within a 1300 foot radius around the construction vessels located at approximately 36°05′24″ N, 114°45′60″ W.

(b) *Enforcement Period.* This section will be enforced from March 15, 2010 through December 31, 2010 during construction operations. The safety zone will only be enforced during blasting, excavation, and other general construction operations. General public boating will be notified prior to commencement of construction operations by construction crew via Broadcast Notice to Mariners. If the construction concludes prior to the scheduled termination time, the COTP will cease enforcement of this safety zone.

(c) *Definitions.* The following definitions apply to this section:

(1) *Designated representative* means any Commissioned, Warrant, or Petty Officers of the Coast Guard, Coast Guard Auxiliary, or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the COTP.

(2) *Non-authorized personnel and vessels*, means any civilian boats, fishermen, divers, and swimmers.

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

(2) Non-authorized personnel and vessels requesting permission to transit through the safety zone may request authorization to do so from the COTP San Diego or his designated representative. They may be contacted on VHF–FM Channel 16, or at telephone number (619) 278–7033.

(3) Vessels involved in the construction operations are allowed in the confines of the established safety zone.

(4) All persons and vessels must comply with the instructions of the Coast Guard COTP or his designated representative.

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

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

Dated: February 22, 2010.

**D.L. LeBlanc,**

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

[FR Doc. 2010-6029 Filed 3-18-10; 8:45 am]

**BILLING CODE 9110-04-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 63

[WC Docket No. 04-36; FCC 09-40]

#### IP-Enabled Services

**AGENCY:** Federal Communications Commission

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** The Commission amended part 63 in order to extend to providers of interconnected Voice over Internet Protocol (VoIP) service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under section 214 of the Communications Act. The amendments to the rules in § 63.60 required Office of Management and Budget approval and the Commission stated previously in its **Federal Register** publication that it would announce the effective date of the rules when approved. This document announces the effective date of the rules.

**DATES:** The amendments to 47 CFR 63.60(a) and (f), published on August 7, 2009 (74 FR 39551), were approved by the Office of Management and Budget on December 1, 2009 and are effective March 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** Rodney McDonald, (202) 418-7513, Wireline Competition Bureau.

**SUPPLEMENTARY INFORMATION:** The FCC published a document in the **Federal Register**, 74 FR 39551, August 7, 2009, that sets forth an effective date of September 8, 2009, except for the amendments to §§ 63.60(a) and (f) which affect information collection requirements that are not effective until approved by the Office of Management and Budget (OMB). The document stated that the Commission will publish a document in the **Federal Register** announcing the effective date of these rules. On December 1, 2009, OMB approved the information collection requirements contained in these rules pursuant to OMB Control No. 3060-0149. Accordingly, the information collection requirements contained in these rules are now effective. The expiration date for the information collection is December 31, 2012.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2010-6093 Filed 3-18-10; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 10-275; MB Docket No. 09-187; RM-11576]

#### FM Table of Allotments, Buffalo and Centerville, Texas

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division grants a rulemaking petition filed by Kaherine Pyeatt, the permittee of Station KKL(B)(FM), Madisonville, Texas, to substitute FM Channel 278A for vacant Channel 299A at Buffalo, Texas, and Channel 267A for vacant Channel 278A at Centerville, Texas.

**DATES:** Effective April 5, 2010.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Rhodes, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MB Docket No. 09-187, adopted February 17, 2010, and released February 19, 2010. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, 800-378-3160 or via the company's Web site, <<http://www.bcpiweb.com>>.

The Notice of Proposed Rule Making stated that Pyeatt's rulemaking petition was filed as part of a hybrid application and rulemaking proceeding. See 74 FR 57281, published November 5, 2009. In the application (File No. BMPH-20090831.ADM), Pyeatt proposes the substitution of FM Channel 299A for Channel 267A at Madisonville, Texas, and the modification of the construction permit for Station KKL(B)(FM), Madisonville, to specify operation on Channel 299A.

The Report and Order states that the channel substitutions at Buffalo and

Centerville, Texas, serve the public interest because they will accommodate grant of the hybrid application, enabling Station KKL(B)(FM) to change channels at a tower site located closer to its community of license. The reference coordinates for Channel 278A at Buffalo, Texas, are 31-21-09 NL and 95-59-47 WL. The reference coordinates for Channel 267A at Centerville, Texas, are 31-14-17 NL and 96-05-34 WL. The Report and Order also grants Pyeatt's hybrid application.

Currently, Channel 278A is not listed in the FM Table of Allotments under Centerville, Texas, but is a vacant FM allotment at that community. Channel 278A was allotted at Centerville in MM Docket No. 99-257. See 64 FR 59124, published November 2, 1999. A construction permit for Channel 278A at Centerville was issued to Station KKEV(FM). See File No. BNPH-20060310AA1. As a result of the issuance of the construction permit, Channel 278A at Centerville was removed from the FM Table of Allotments in MB Docket 05-210. See 71 FR 76208, published December 20, 2006. However, the Station KKEV(FM) construction permit was cancelled on May 24, 2009, making the Channel 278A allotment vacant. As stated above, we are substituting Channel 267A for vacant Channel 278A at Centerville to accommodate the Station KKL(B)(FM) hybrid application.

This document does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows: