

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions or Federal, State, or local government agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 9, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

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DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 165**

[COTP Western Alaska 02-003]

RIN 2115-AA97

Safety Zone; Ouzinkie Harbor, Ouzinkie, AK

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish two temporary safety zones in Ouzinkie Harbor, Ouzinkie, Alaska. One safety zone would surround the barge SWINIMOSH which will be conducting dredging and blasting operations in the navigable waters of Ouzinkie Harbor. The second safety zone would close all of Ouzinkie Harbor when the barge SWINIMOSH conducts blasting operations. These safety zones are necessary to protect vessels transiting the area from the potential hazards associated with the dredging and blasting operations conducted by the barge SWINIMOSH.

DATES: Comments must be received on or before February 21, 2002. While our proposed rule may change based on comments received, we plan to make our final rule effective starting March 1, 2002.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office, 510 L Street, Suite 100, Anchorage, AK 99501. Coast Guard Marine Safety Office Anchorage maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Marine Safety Office Anchorage between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Matt Jones, USCG Marine Safety Detachment Kodiak, at (907) 486-5918 or Lieutenant Commander Chris Woodley, USCG Marine Safety Office Anchorage, at (907) 271-6700.

SUPPLEMENTARY INFORMATION:**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Western Alaska 02-003), indicate the specific section of

this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, 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.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Marine Safety Office Anchorage 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

The U.S. Army Corps of Engineers, through its contractor Western Marine Construction, Inc., will be conducting dredging and blasting operations on portions of Ouzinkie Harbor (Army Corps of Engineers project number DACW85-01-C-0010). This dredging project will help maintain safe navigation within Ouzinkie Harbor. A 500-yard safety zone around the barge SWINIMOSH and a safety zone closing the harbor during blasting operations is necessary to ensure the safety of the maritime community from the potential hazards associated with dredging and blasting operations.

Because we received the request late, we find that good cause exists, under 5 U.S.C. 553(d)(3), for making this rule effective less than 30 days after publication in the **Federal Register**. We have limited the comment period to 21 days so that the final rule can go into effect on March 1, 2002 in order to meet our obligation to protect the maritime community.

Discussion of Proposed Rule

The proposed safety zones would include the navigable waters of Ouzinkie Harbor within a 500-yard radius of the barge SWINIMOSH in Ouzinkie, AK, Lat. 57°55'10" N, Long. 152°29'45" W, and all waters of Ouzinkie Harbor, shoreline of a line drawn from 57°54'58" N, 152°29'35" W to 57°55'04" N, 152°30'00" W and ending at 57°55'12" N, 152°30'10" W when blasting operations occur. The blasting operations could occur any time during daylight hours starting March 1, 2002 through April 15, 2002.

These proposed safety zones are necessary to protect the maritime community from the hazards of the dredging and blasting operations. The Coast Guard will announce via broadcast notice to mariners when the blasting operations will occur. Vessels must contact the tug WALDO immediately upon entering and before transiting Ouzinkie Harbor.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12886, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the fact that the safety zone around the barge SWINIMOSH will not restrict vessels from transiting through the harbor. Also, the safety zone closing Ouzinkie Harbor during blasting operations will be well announced so as to allow vessels ample time to plan ahead and the actual blasting operations will be short in duration. The areas will not affect maritime vessel traffic transiting the shipping channel at Ouzinkie Narrows. Vessel traffic at this time of the year is minimal.

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 will not have a significant economic impact on a substantial number of small entities.

This proposed 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 vicinity of Ouzinkie

Harbor during the time this zone is activated.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone area around the barge SWINIMOSH will not restrict vessels from transiting Ouzinkie Harbor and vessels could pass safely around it. Also, the safety zone closing Ouzinkie Harbor during blasting operations will be well announced so as to allow vessels ample time to plan ahead and the actual blasting operations will be short in duration. Limited vessel traffic occurs in this area during these months. Before and during the effective period, we would issue a broadcast notice to mariners to warn maritime vessel traffic of the safety zones and operations occurring within the safety zone.

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.

Collection of Information

This proposed 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 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 will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed 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 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 does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Consultation and Coordination With Indian Tribal Governments

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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A “Categorical Exclusion Determination” is available in the docket for inspection or copying 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 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. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.T17–002 to read as follows:

§ 165.T17–002 Safety Zone; Ouzinkie Harbor Dredging and Blasting Operations, Ouzinkie, Alaska.

(a) *Location.* The following areas are temporary safety zones: (1) *SWINIMOSH Barge safety zone:* All navigable waters in Ouzinkie Harbor within a 500-yard radius of the barge SWINIMOSH while it is engaged in dredging and blasting operations.

(2) *Ouzinkie Harbor safety zone:* All waters in Ouzinkie Harbor, excluding the SWINIMOSH Barge safety zone, shoreward from a line drawn from 57°54'58" N, 152°29'35" W to 57°55'04" N, 152°30'00" W and ending at 57°55'12" N, 152°30'10" W.

(b) *Effective period.* This section is effective from 12:01 a.m. March 1, 2002, until 9 p.m. April 15, 2002. During this effective period, blasting operations will occur in daylight hours only.

(c) *Regulations.*

(1) The general regulations contained in § 165.23 apply. The attending tug WALDO will be standing by on channels 16 and 13 to provide traffic advisories. All vessels must have permission of the Captain of the Port to enter the safety zones defined in this section. Vessels in the Ouzinkie Harbor safety zone must contact the tug WALDO before transiting Ouzinkie Harbor to determine if blasting is scheduled. If it is scheduled, no

transiting in either safety zone is permitted unless authorized by the Captain of the Port.

Dated: January 16, 2002.

H.M. Hamilton,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Western Alaska.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 255

[Docket No. RM 2000–7B]

Mechanical and Digital Phonorecord Delivery Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The Copyright Office of the Library of Congress is extending the time period for filing additional comments on its Notice of Inquiry concerning the interpretation and application of the copyright laws to certain kinds of digital transmissions of prerecorded musical works in light of an agreement between the Recording Industry Association of America, Inc., the National Music Publishers Association, and The Harry Fox Agency. The due date for reply comments remains unchanged.

DATES: Comments are due no later than February 6, 2002. Reply comments are due February 27, 2002.

ADDRESSES: If sent by mail, an original and ten copies of the reply comments should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If hand delivered, the reply comments, they should be brought to: Office of the General Counsel, James Madison Building, Room LM–403, First and Independence Ave., SE, Washington, D.C. 20559–6000.

FOR FURTHER INFORMATION CONTACT:

David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 2001, the Copyright Office published a Notice of Inquiry in which it requested comments on the

interpretation and application of the copyright law to certain kinds of digital transmissions of musical works. 66 FR 14099 (March 9, 2001). Subsequently, the Recording Industry of America, Inc. (“RIAA”), the National Music Publishers Association (“NMPA”) and The Harry Fox Agency (“HFA”) negotiated a private agreement which addressed the application of the mechanical compulsory license, as set forth in the Copyright Act, 17 U.S.C. 115, to two specific types of services discussed in the initial Notice of Inquiry and filed the agreement with the Copyright Office as part of this proceeding.

On December 14, 2001, the Copyright Office published a request for additional comments on its March 9 Notice of Inquiry in light of the RIAA/NMPA/HFA agreement (67 FR 64783). On January 28, 2002, the date comments were due, RIAA and NMPA filed a joint request for more time to fill the requested comments. These parties stated that at the last moment they identified questions that had not been fully appreciated or addressed in their respective comments. They expressed concern that failure to address these issues could be misinterpreted and asked for a two week extension to draft more comprehensive comments. Moreover, as the parties to the Agreement that is the subject of the request for additional comments, these parties argue that “it would benefit the record, any other commenting parties, and the public—and narrow the range of issues to be presented to the Copyright Office—if [they] were afforded an opportunity to address these questions.”

Although it is not uncommon for the Office to grant extensions when a party has made a showing of need, it is reluctant to do so when the request is made on the day of the filing deadline, since it is very disruptive and unfair to those who have met the deadline. However, because NMPA and RIAA are the parties to the agreement that is the subject of the request for additional comments, the Office believes it is important to obtain their comments in the first round. Therefore, the date for filing the requested comments has been extended. Comments are now due no later than Wednesday, February 6, 2002. There shall be no further extension of this deadline. The date for filing reply comments remains unchanged. Reply comments shall be due on Wednesday, February 27, 2002.