

and conditions of approval in the July 30, 1982 **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

## II. Submission of the Request

By letter dated December 18, 2007, Pennsylvania sent us a request to remove a required amendment codified at 30 CFR 938.16(uuu). This required amendment pertains to regulatory exemptions for coal extraction incidental to the extraction of other minerals (Administrative Record Number PA-892.00) under SMCRA. Pennsylvania submitted the request because it maintained that its program was no less effective than the Federal requirements, and therefore, no amendment was necessary.

We announced receipt of the request in the April 1, 2008 **Federal Register** (73 FR 17268-17270). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the request (Administrative Record Number PA-892.03). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on May 1, 2008. We received comments from one organization, Citizens for Pennsylvania's Future (PennFuture).

In a letter dated December 11, 2008, Pennsylvania notified us that it was withdrawing the request at this time so that they can perform additional analysis on the issue and resubmit the amendment at a later date. The required amendment codified at 30 CFR 938.16(uuu) remains effective.

### List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mine.

Dated: January 8, 2009.

**Thomas D. Shope,**

*Regional Director, Appalachian Region.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-1219]

RIN 1625-AA00

**Safety Zone; Ironman 70.3 California; Oceanside Harbor, Oceanside, CA**

**AGENCY:** Coast Guard, DHS.

### ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes a temporary safety zone within the navigable waters of Oceanside Harbor for the Ironman 70.3 California. This temporary safety zone is necessary to provide safety for the swimmers, crew, spectators, vessels and other users of the waterway. 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.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before March 25, 2009 or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by docket number USCG-2008-1219 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *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.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below. **FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278-7262. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

### SUPPLEMENTARY INFORMATION:

#### 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.

### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-1219), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-2008-1219" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand 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 and may change the rule based on your comments.

### 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>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2008-1219 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility 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

North America Sports is sponsoring the Ironman 70.3 California. The event will consist of 2,200 participants. The waterside swim course consists of a 1.2 mile loop in the South Oceanside Harbor. The course requires a safety zone while the swimmers are on the course, thus restricting vessel traffic within the Oceanside Harbor for three hours. There will be 25 to 29 safety vessels provided by the sponsor to enforce the safety zone.

#### Discussion of Proposed Rule

The Coast Guard proposes to establish a safety zone from 6:40 a.m. to 9:30 a.m. on Saturday, April 4, 2009 for the Ironman 70.3 California. This temporary safety zone is necessary for the safety of the swimmers and staff and will affect the use of the waterway during the period of the event. The limits of this temporary safety zone are the waters of Oceanside Harbor encompassed by the following coordinates:

33°12.54' N, 117°24.12' W;  
33°12.52' N, 117°23.75' W;  
33°12.49' N, 117°23.66' W;  
33°12.37' N, 117°23.54' W;  
33°12.32' N, 117°23.55' W;  
33°12.43' N, 117°23.69' W;  
33°12.46' N, 117°23.79' W;  
33°12.41' N, 117°23.96' W;  
33°12.44' N, 117°23.98' W;  
33°12.45' N, 117°24.12' W;  
33°12.54' N, 117°24.12' W.

The Coast Guard will enforce the safety zone and may be assisted by other federal, state, or local agencies, including the Coast Guard Auxiliary. The safety zone is necessary to provide for the safety of the swimmers, spectators, vessels and other users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

#### Regulatory Analyses

We developed this proposed 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 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 size, location, and duration of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

#### 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 proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Oceanside Harbor from 6:40 a.m. to 9:30 a.m. on April 4, 2009.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for less than 3 hours early in the day when vessel traffic is low. Although the safety zone would apply to the entire width of the south harbor, traffic would be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine

channel 16 VHF before the safety zone is enforced.

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 Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. The Coast Guard will not retaliate against small entities that question or complain about this proposed 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 an 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

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 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 Department of Homeland Security Management Directive 5100.1 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 made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under ADDRESSES. 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, 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, 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 temporary safety zone § 165.T11–137 to read as follows:

#### § 165.T11–137 Safety Zone; Ironman 70.3 California; Oceanside Harbor, Oceanside, CA.

(a) *Location.* The limits of this temporary safety zone are the waters of

Oceanside Harbor encompassed by drawing a line from point to point along the following coordinates:

33°12.54' N, 117°24.12' W;  
33°12.52' N, 117°23.75' W;  
33°12.49' N, 117°23.66' W;  
33°12.37' N, 117°23.54' W;  
33°12.32' N, 117°23.55' W;  
33°12.43' N, 117°23.69' W;  
33°12.46' N, 117°23.79' W;  
33°12.41' N, 117°23.96' W;  
33°12.44' N, 117°23.98' W;  
33°12.45' N, 117°24.12' W;  
33°12.54' N, 117°24.12' W.

(b) *Enforcement Period.* This section will be enforced from 6:40 a.m. to 9:30 a.m. on April 4, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

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

#### (d) Regulations.

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

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

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

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

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

Dated: January 28, 2009.

T.H. Farris,

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

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