

contrivance;" (2) "in connection with the purchase or sale of crude oil gasoline or petroleum distillates at wholesale;" (3) that violates a rule or regulation that the FTC "may prescribe as necessary or appropriate in the public interest or for the protection of United States citizens."⁵

On August 13, 2008, the FTC issued an NPRM seeking public comments on a proposed rule prohibiting market manipulation in the petroleum industry.⁶ The proposed Rule would make it unlawful for any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale:

(a) To use or employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

The comment period on the proposed Rule closes on October 17, 2008. The Commission has scheduled a public workshop for Thursday, November 6, 2008, to allow interested parties to discuss the proposed Rule and comments filed in response to the NPRM.

II. Issues for Discussion at the Workshop

The workshop will address the desirability and scope of the Commission's proposed Rule prohibiting market manipulation in wholesale petroleum markets. The Commission will consider the views expressed at the workshop, along with previously submitted comments, in determining the desirability of promulgating a market manipulation rule and the contours of any such rule. The issues that will be discussed include the basis for and the contours of the proposed Rule; the element of scienter and the recklessness standard proposed by the Commission to satisfy the scienter element; and the Commission's decision not to require a showing of price effects in order to

establish a violation of the proposed Rule.

The Commission based its proposed Rule on Securities and Exchange Commission ("SEC") Rule 10b-5.⁷ The proposed Rule would prohibit fraud and deception in wholesale petroleum markets. At the workshop, staff will examine support for and opposition to this approach, as well as any alternatives raised in response to the NPRM. Staff will also explore the Rule 10b-5 concept of fraud and deception, including the contours of fraud and deception under securities law, and how such concepts might apply to wholesale petroleum markets.

The NPRM makes clear that the Commission anticipates requiring a showing of intent in determining whether there has been a violation of any final market manipulation rule. In the NPRM, the Commission indicated that a showing of recklessness may satisfy the intent requirement. At the workshop, staff will examine the types of evidence that could establish the requisite level of intent, with a particular focus on the evidentiary proof used to establish intent under securities law precedent. In addition, staff will explore the potential costs and benefits to industry and consumers of permitting a showing of recklessness to satisfy the intent element.

In the NPRM, the Commission noted that it does not anticipate requiring a showing of price effects as an element of a violation of any final market manipulation rule. At the workshop, staff will explore whether a showing of price effects should be required, and the advantages and disadvantages of requiring evidence of such effects. Staff also anticipates examining the kinds of direct or indirect evidence that would demonstrate price effects from manipulative or deceptive conduct in wholesale petroleum markets, including the treatment of such evidence under relevant securities law precedent.

III. Requests to Participate as Panelists

As noted earlier, parties interested in participating as panelists must submit written comments addressing the issues raised in the NPRM, in addition to a formal written request to participate in the form and manner described above. Parties must include in their request a brief statement setting forth their expertise or knowledge of the issues on which the workshop will focus, as well as their contact information, including, if available: a telephone number, facsimile number, and e-mail address to

enable the FTC to notify requesters if they have been selected to participate.

FTC staff will select panelists based on the following criteria: 1) the party has expertise in or knowledge of the issues that are the focus of the workshop; 2) the party's participation would promote a balance of interests represented at the workshop; and 3) the party has been designated by one or more interested parties (who timely file requests to participate) as a party who shares the interests of the designator(s). Members of the general public who attend the workshop may have an opportunity to make brief oral statements presenting their views on issues raised in the NPRM. Oral statements by members of the general public will be limited on the basis of the time available and the number of persons who wish to make statements.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8-21604 Filed 9-15-08; 8:45 am]

BILLING CODE 6750-01-S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2008-0809]

RIN 1625-AA00

Safety Zone; St. Croix Coral Reef Swim, Buck Island Channel, USVI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone on the navigable waters of Buck Island Channel, St. Croix, USVI. This proposed regulation is necessary to provide for the safety of participants, marine spectators, and recreational and professional mariner traffic during the St. Croix Coral Reef Swim event. This zone is intended to restrict vessels from entering into, transiting through, or anchoring within the waters where the event will be held unless authorized by the Captain of the Port (COTP) San Juan or a designated representative.

DATES: Comments and related material must reach the Coast Guard on or before October 16, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2008-0809 to the Docket Management Facility at the U.S. Department of Transportation. To avoid

⁵ 42 U.S.C 17301.

⁶ The Commission previously issued an Advance Notice of Proposed Rulemaking ("ANPR") in this proceeding. FTC, *Prohibitions On Market Manipulation and False Information in Subtitle B of The Energy Independence and Security Act of 2007*, 73 FR 25614 (May 7, 2008). The ANPR was announced in a press release on May 1, 2008, available at (<http://www.ftc.gov/opa/2008/05/anpr.shtm>).

⁷ 17 CFR 240.10b-5.

duplication, please use only one of the following methods:

(1) *Online*: <http://www.regulations.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*: 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.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. John Reyes of Sector San Juan, Prevention Operations Department at (787) 729-5381. 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-0809), 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 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. 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.

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. Enter the docket number for this rulemaking (USCG-2008-0809) in the Search box, and click "Go >>." 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 Juan, 5 Calle La Puntilla Street, San Juan, Puerto Rico 00901-1800 between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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 a Privacy Act, system of records 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

This rule is required to provide for the safety of life in the Buck Island Channel during an organized swimming event. Buck Island Channel is frequented by both recreational and commercial vessels and a safety zone is necessary to maintain a safe distance between the swimmers and other users of the waterway. This rule creates a temporary regulation that will prohibit any non-participating vessel from entering the swim area without the authorization of the COTP San Juan or a designated representative.

Discussion of Proposed Rule

The proposed rule establishes a temporary safety zone on the north

shore of St. Croix in Buck Island Channel. The zone includes all waters bound by a line connecting the following points: Beginning at Point 1 in position 17-44°42'N, 064-41°48'W; then north to Point 2 on Scotch Bank in position 17-45°36'N, 064-41°48'W; then east to Point 3 at Buck Island Reef National Monument Special Purpose Buoy "J" (LLNR 33112.1) in position 17-46°41'N, 064-38°17'W; then northeast to Point 4 on Buck Island Reef in position 17-47°24'N, 064-37°36'W; then east to Point 5 at Buck Island in position 17-47°24'N, 064-37°30'W; then south and east along the Buck Island shoreline to Point 6 in position 17-47°06'N, 064-37°24'W; then southwest to Point 7 at Coakley Bay in position 17-45°36'N, 064-38°24'W; then west along the St. Croix shoreline to origin. All non-participating persons and vessels are prohibited from entering the regulated area without permission from the COTP San Juan or a designated representative. This proposed rule would be effective from 6 a.m. through 1 p.m. on October 19, 2008.

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.

This rule may have an impact on the marine public, but these potential impacts will be minimized for the following reason: There is ample room for vessels to navigate around the proposed safety zone. Also, the Captain of the Port San Juan may, on a case-by-case basis, allow persons or vessels to enter the proposed safety zone.

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 would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit Buck Island Channel, St. Croix, USVI. This proposed regulation will not have a significant impact on a substantial number of small entities for the following reasons: (1) the event will occur on a Sunday, when no or small numbers of vessels transit Buck Island Channel, St. Croix, USVI; (2) small vessel traffic would be able to safely transit around 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.

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 Mr. John Reyes of Sector San Juan, Prevention Operations Department at (787) 729–5381. 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, 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, 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 § 165.T07-0809 to read as follows:

§ 165.T07-0809 Safety Zone; St. Croix Coral Reef Swim, Buck Island Channel, USVI.

(a) *Regulated Area.* The Coast Guard is establishing a temporary safety zone on the navigable waters of Buck Island Channel for the annual St. Croix Coral Reef Swim. The zone includes all waters bound by a line connecting the following points: Beginning at Point 1 in position 17-44'42"N, 064-41'48"W; then north to Point 2 on Scotch Bank in position 17-45'36"N, 064-41'48"W; then east to Point 3 at Buck Island Reef National Monument Special Purpose Buoy "J" (LLNR 33112.1) in position 17-46'41"N, 064-38'17"W; then northeast to Point 4 on Buck Island Reef in position 17-47'24"N, 064-37'36"W; then east to Point 5 at Buck Island in position 17-47'24"N, 064-37'30"W; then south and east along the Buck Island shoreline to Point 6 in position 17-47'06"N, 064-37'24"W; then southwest to Point 7 at Coakley Bay in position 17-45'36"N, 064-38'24"W; then west along the St. Croix shoreline to origin. Reference Datum is NAD 1983.

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

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels and federal, state, and local officers designated by or assisting the Captain of the Port (COTP) San Juan in the enforcement of the safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entering, anchoring, mooring or transiting in this zone is prohibited unless specifically authorized by the COTP San Juan or a designated representative. Coast Guard Sector San Juan will issue broadcast notice to mariners to advise mariners of this zone. Persons and vessels may request permission to enter the safety zone on VHF-FM Channel 16 or via telephone at (787) 289-2041.

(d) *Dates.* This rule is effective from 6 a.m. through 1 p.m. on October 19, 2008.

Dated: August 14, 2008.

J.M. Nunan,

Captain, U.S. Coast Guard, Acting Captain of the Port San Juan.

[FR Doc. E8-21555 Filed 9-15-08; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2008-0912]

RIN 1625-AA00

Safety Zone; Fireworks Display, Potomac River, National Harbor, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone upon specified waters of the Potomac River. This action is necessary to provide for the safety of life on navigable waters during a fireworks display launched from a discharge barge located at National Harbor, in Prince Georges County, Maryland. This safety zone is intended to protect the maritime public in a portion of the Potomac River.

DATES: Comments and related material must reach the Coast Guard on or before October 16, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2008-0912 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.regulations.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:* 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.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. Ronald L. Houck, Coast Guard Sector Baltimore, at 410-576-2674 or 410-576-2693. 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

www.regulations.gov and will include any personal information you have provided. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2008-0912), 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 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. 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.

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. Enter the docket number for this rulemaking (USCG-2008-0912) in the Search box, and click "Go >>." 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 Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226-1791, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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 a Privacy Act, system of records notice regarding