

**SUMMARY:** This document corrects a correction to temporary regulations (TD 9186) which was published in the **Federal Register** on June 23, 2005 (70 FR 36345). The temporary regulations modify the rules relating to qualified amended returns by providing additional circumstances that end the period within which a taxpayer may file an amended return that constitutes a qualified amended return.

**DATES:** This correction is effective on March 2, 2005.

**FOR FURTHER INFORMATION CONTACT:** Nancy Galib, (202) 622-4940 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The temporary regulations (TD 9186) that is the subject of this correction is under section 6664 of the Internal Revenue Code.

**Need for Correction**

As published, the correction to the temporary regulations (TD 9186) contains an error that may prove to be misleading and is in need of clarification.

**Correction of Publication**

Accordingly, the publication of the correction to the temporary regulations (TD 9186) that is the subject of FR Doc. 05-12386, is corrected as follows:

On page 36345, column 2, in the preamble, under the paragraph heading "Background", line 3, the language "are under section 6227 of the Internal" is corrected to read "are under section 6664 of the Internal".

**Cynthia E. Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD13-05-030]

RIN 1625-AA11

**Safety Zone: Camp Rilea Offshore Small Arms Firing Range; Warrenton, OR**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone offshore of Camp Rilea, Warrenton, Oregon. Small arms training and fire will be conducted within this zone, and a safety zone is needed to ensure the safety of persons and vessels operating in this area during the specified periods. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his/her designated representative.

**DATES:** This rule is effective from 6 a.m. July 25, 2005 through 9 p.m. July 29, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD13-05-030 and are available for inspection or copying at Coast Guard Sector Portland, 6767 North Basin Avenue, Portland, OR 97217-3992 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Shadrack Scheirman, Chief Port Operations, USCG Sector, Portland, OR 97217, telephone number (503) 240-9310.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**.

In order to maintain an increased maritime security posture, the Coast Guard has increased training requirements for the carriage of weapons during homeland security operations. The crews required to carry out homeland security operations must be trained to perform their operational obligations. Crews from multiple units along the Oregon and Washington coasts are participating in this exercise. Unit operational schedules converged to make July 25-29 the only date to accommodate all parties.

Publishing an NPRM and delaying the effective date of this rule would be contrary to the public interest since immediate action is necessary to minimize potential danger to the public from small arms fire during the live fire training. Such training is necessary in order to ensure Coast Guard crews are qualified to carry Crew Served Weapons required to fulfill their Military and Homeland Security responsibilities.

**Background and Purpose**

Changes in Coast Guard policy and procedures require small boat crews to train on and fire crew served weapons from a vessel. In order to ensure the safety of persons and vessels operating in vicinity of this training from July 25, 2005 through July 29, 2005 a safety zone will be in effect during all small arms firing evolutions.

**Discussion of Rule**

This safety zone will be in effect to ensure the safety of persons and vessels in the vicinity of the live fire training. Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his/her designated representative. A Coast Guard vessel will be on scene to ensure that the public is aware that the firing exercises are in progress and that the firing area is clear of traffic before firing commences. All persons and vessels shall comply with the instructions of the Captain of the Port or his/her designated on-scene U.S. Coast Guard representative. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

**Regulatory Evaluation**

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. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). This rule only affects a small area for a limited duration. The proposed regulations have been tailored in scope to impose the least impact on maritime interests, yet provide the level of safety necessary for such an event.

**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 anchor, fish or transit through the zone during the periods of enforcement from July 25, 2005 through July 29, 2005. The Coast Guard expects a minimal economic impact on a substantial number of small entities because the zone is in effect essentially during day light hours only for 4 days, there is little commercial activity in this area during the month of July, and vessels will be able to freely transit the areas outside of the safety zone.

#### Assistance for Small Entities

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

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).

#### 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 Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. Categorical Exclusion is provided for temporary safety zones of less than one week in duration. A final "Environmental Analysis Check List" and a final "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, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A temporary § 165.T13-011 is added to read as follows:

#### § 165.T13-011 Safety Zone; Camp Rilea Offshore Small Arms Firing Range, Warrenton, Oregon

(a) *Location.* The following area is established as a safety zone: the waters bounded by the following coordinates:

46°09'00" N, 123°57'42" W following the shoreline to 46°10'24" N 124°07'06" W then south to 46°02'54" N 124°07'06" W following the shoreline to 46°06'30" N 123°56'36" W then back to the point of origin.

(b) *Regulations.* (1) In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

(2) A Coast Guard vessel will be on scene to ensure that the public is aware that the firing exercises are in progress and that the firing area is clear of traffic before firing commences.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port or his/her designated on-scene U.S. Coast Guard representative. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

(c) *Effective period.* This rule is effective from 6 a.m. July 25, 2005 through 9 p.m. July 29, 2005.

(d) *Enforcement period.* This rule will be enforced from 6 a.m. to 9 p.m. daily from July 25 through July 29, 2005.

(e) The Captain of the Port will notify the public of changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF Marine Band Radio Channel 22 (157.1 MHz) and **Federal Register Notice.**

Dated: July 19, 2005.

**Paul D. Jewell,**

*Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.*

[FR Doc. 05-14970 Filed 7-25-05; 3:49 pm]

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 171

[Docket No. PHMSA-04-19173 (HM-223A)]

RIN 2137-AE04

#### Applicability of the Hazardous Materials Regulations to a "Person Who Offers" a Hazardous Material for Transportation in Commerce

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** PHMSA is amending the Hazardous Materials Regulations to add

a definition for "person who offers or offeror." The definition adopted in this final rule codifies long-standing interpretations and administrative determinations on the applicability of those regulations.

**DATES:** This final rule is effective October 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Frazer C. Hilder, Office of the Chief Counsel, 202-366-4400.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On September 24, 2004, the Research and Special Programs Administration—the predecessor agency to the Pipeline and Hazardous Materials Safety Administration (PHMSA)—published a notice of proposed rulemaking (NPRM; 69 FR 57245) proposing to add a definition for "person who offers or offeror" to the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). Consistent with previously issued administrative determinations, as discussed in the NPRM (69 FR 57247-48) and placed in the docket for this rulemaking, we proposed to define "person who offers or offeror" to mean "[a]ny person who does either or both of the following: (i) Performs, or is responsible for performing, any pre-transportation function required under [the HMR] for transportation of the hazardous material [or] (ii) Tenders or makes the hazardous material available to a carrier for transportation in commerce." The proposed definition specifically excluded a carrier that transfers, interlines, or interchanges hazardous materials to another carrier for continued transportation when the carrier does not perform any pre-transportation functions associated with the shipment. We further proposed to clarify that an offeror or a carrier may rely on information provided by a prior offeror or carrier unless the offeror or carrier "knows, or in the exercise of reasonable care, should know" that the information provided is incorrect.

##### II. Summary of Final Rule

In this final rule, we are making the following revisions to the HMR:

- We are defining "person who offers or offeror" to mean any person who performs or is responsible for performing any pre-transportation function required by the HMR or who tenders or makes the hazardous material available to a carrier for transportation in commerce. A carrier is not an offeror when it performs a function as a condition of accepting a hazardous material for transportation in commerce or when it transfers a hazardous

material to another carrier for continued transportation without performing a pre-transportation function.

- We are clarifying that there may be more than one offeror of a hazardous material and that each offeror is responsible only for the specific pre-transportation functions that it performs or is required to perform.

- We are clarifying that each offeror or carrier may rely on information provided by a previous offeror or carrier unless the offeror or carrier knows or, a reasonable person acting in the circumstances and exercising reasonable care, would have knowledge that the information provided is incorrect.

##### III. Comments to the NPRM

We received 16 comments to the NPRM from industry associations and individual shippers and carriers. Most commenters are supportive of the goals of this rulemaking, but raise concerns related to the specific definition proposed and its impact on both offerors and carriers. These comments are discussed in detail below.

Several commenters raise issues that are beyond the scope of this rulemaking. For example, United Air Lines, and the Air Transport Association reiterate their objections to a formal interpretation, published February 23, 2003, that clarified the timing of "offer" and "acceptance" of passenger baggage; they request a comprehensive rulemaking on this subject. Because that issue is beyond the scope of this rulemaking, it is not addressed in this final rule.

##### A. Reasonable Reliance and Liability

As noted above, the NPRM proposed to clarify in § 171.2 that an offeror or carrier of a hazardous material may rely on information provided by a previous offeror or carrier in the absence of knowledge that the information is incorrect. Several commenters suggest that the language proposed in the NPRM is ambiguous and should be clarified. "The 'should know' standard should be interpreted as meaning that a carrier cannot rely on information given to the carrier when the carrier actually has credible information that the information provided by the offeror is incorrect." (Association of American Railroads) Several commenters object to the use of the phrase "should know" in the NPRM, noting that a "carrier must be permitted to rely upon [the shipper's certification] and conclude that pre-transportation functions have been performed in accordance with all hazardous materials regulations." (American Trucking Associations) These commenters suggest that we should more closely follow the statutory