

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 would not create an environmental risk to health or risk to safety that might 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 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 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.

### Environment

We have analyzed this rule under Commandant Instruction M16475.ID, 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 because this rule is not expected to result in any significant adverse environmental impact as

described in the National Environmental Policy Act of 1969 (NEPA).

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, Security measures, 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 new temporary § 165.T08-033 is added to read as follows:

#### § 165.T08-033 Safety Zone; Lower Mississippi River Mile Marker 778.0 to 781.0, Osceola, AR.

(a) *Location.* The following area is a safety zone: all waters of Lower Mississippi River from mile 778.0 and to mile 781.0, extending the entire width of the channel.

(b) *Effective date.* This section is effective from 6 a.m. on August 1, 2004 until 6 p.m. on September 30, 2004.

(c) *Periods of enforcement.* This rule will be enforced from 6 a.m. until 6 p.m. on each day that it is effective. The Captain of the Port Memphis or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone by vessels other than those contracted by the U.S. Army Corps of Engineers and operating in support of the bendway weir construction project is prohibited unless authorized by the Captain of the Port Memphis.

(2) During non-enforcement hours all vessels will be allowed to transit through the safety zone without permission from the Captain of the Port Memphis or a designated representative. The Captain of the Port Memphis or a designated representative would inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

(3) The Captain of the Port Memphis may permit vessels to navigate during work hours if conditions allow for safe transit. A broadcast notice to mariners would be issued announcing those times when it is safe to transit.

(4) Persons or vessels requiring entry into or passage through the zone at times other than those specified in section (d)(2) and (d)(3) of this rule must request permission from the Captain of the Port Memphis or a designated representative. The Captain of the Port Memphis may be contacted by telephone at (901) 544-3912, extension 2124. Coast Guard Group Lower Mississippi River may be contacted on VHF-FM Channel 13 or 16.

(5) All persons and vessels shall comply with the instructions of the Captain of the Port Memphis and designated representatives. Designated representatives include Coast Guard Group Lower Mississippi River.

Dated: July 8, 2004.

### D.C. Stalfort,

*Commander, U.S. Coast Guard, Captain of the Port Memphis.*

[FR Doc. 04-16650 Filed 7-21-04; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD09-03-202]

RIN 1625-AA00

#### Safety Zones; Northeast Ohio

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing safety zones for annual fireworks displays located in Northeast Ohio. These regulations are needed to manage vessel traffic in Northeast Ohio during each event to protect life and property.

**DATES:** This rule is effective from July 1, 2004.

**ADDRESSES:** 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 available for inspection or copying at Coast Guard MSO Cleveland between 8 a.m. (local) and 3:30 p.m. (local), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, at (216) 937-0128.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

On April 1, 2003, we published a notice of public rulemaking entitled *Safety Zones: Northeast Ohio* in the **Federal Register** (68 FR 62). No comments on the proposed rule were received. No public hearing was requested, and none was held. 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** since we received no public comment, and the zones are needed immediately to protect life and property.

**Background and Purpose**

A total of eight permanent safety zones are being established in Northeast Ohio for annual firework displays. The safety zones will be enforced only during a firework display at their respective location. There are a total of ten separate annual firework events in Northeast Ohio.

**Discussion of Rule**

The safety zones will be enforced around the launch site in the following areas:

- (1) Cleveland Harbor and Lake Erie, north of Voinovich Park;
- (2) Rocky River and Lake Erie, west of the river entrance;
- (3) Lake Erie, North of Lakewood Park;
- (4) Black River (2 locations);
- (5) Mentor Harbor Beach, west bank of harbor entrance;
- (6) Ashtabula, north of Walnut Beach Park; and
- (7) Fairport Harbor, east of harbor entrance.

The size of each safety zone was determined using National Fire Protection Association and local fire department standards.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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 this rule under that order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the short amount of time that vessels will be restricted from the zones, and the actual

location of the safety zones within the waterways.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant 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 may affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of a safety zone.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The zones will only be enforced for a few hours on the day of the event. Vessel traffic can safely pass outside the safety zones during the events. In cases where recreational boat traffic congestion is greater than expected and consequently obstructs shipping channels, the Captain of the Port or the Patrol Commander may permit commercial traffic to pass through the safety zone. Before the enforcement period, the Coast Guard will issue maritime advisories available to users who may be impacted through notification in the **Federal Register**, the Ninth Coast Guard District Local Notice to Mariners, Marine Information Broadcasts and posted signs on barges or at launch sites labeled "FIREWORKS–STAY AWAY". Additionally, the Coast Guard has not received any reports from small entities negatively affected during previous events.

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 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule

will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Cleveland (*see ADDRESSES*).

**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**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**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 does not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule does 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**

The Coast Guard has 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 concern 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

The Coast Guard has 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. 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 rule is categorically excluded from further environmental documentation. A written 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 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. Add § 165.202 to read as follows:

#### § 165.202 Safety Zones: Annual fireworks Events in the Captain of the Port Cleveland Zone.

(a) *Safety zones.* The following areas are designated safety zones:

(1) *City of Cleveland 4th of July Fireworks Display, Cleveland, OH:* All navigable waters of Cleveland Harbor and Lake Erie beginning at 41°30.823' N, 081°41.620' W (the northwest corner of

Burke Lakefront Airport); continuing northwest to 41°31.176' N, 081°41.884' W; then southwest to 41°30.810' N, 081°42.515' W; then southeast to 41°30.450' N, 081°42.222' W (the northwest corner of dock 28 at the Cleveland Port Authority) then northeast back to the starting point at 41°30.443' N, 081°41.620' W. All geographic coordinates are based upon North American Datum 1983 (NAD 1983).

(2) *Dollar Bank Jamboree Fireworks Display, Cleveland, OH:* All navigable waters of Cleveland Harbor and Lake Erie beginning at 41°30.823' N, 081°41.620' W (the northwest corner of Burke Lakefront Airport); continuing northwest to 41°31.176' N, 081°41.884' W; then southwest to 41°30.810' N, 081°42.515' W; then southeast to 41°30.450' N, 081°42.222' W (the northwest corner of dock 28 at the Cleveland Port Authority) then northeast back to the starting point at 41°30.443' N, 081°41.620' W (NAD 1983).

(3) *Browns Football Halftime Fireworks Display, Cleveland, OH:* All navigable waters of Cleveland Harbor and Lake Erie beginning at 41°30.823' N, 081°41.620' W (the northwest corner of Burke Lakefront Airport); continuing northwest to 41°31.176' N, 081°41.884' W; then southwest to 41°30.810' N, 081°42.515' W; then southeast to 41°30.450' N, 081°42.222' W (the northwest corner of dock 28 at the Cleveland Port Authority) then northeast back to the starting point at 41°30.443' N, 081°41.620' W (NAD 1983).

(4) *Lakewood City Fireworks Display, Lakewood, OH:* All waters and adjacent shoreline of Lake Erie bounded by the arc of a circle with a 500-yard radius with its center approximate position 41°29.755' N, 081°47.780' W (off of Lakewood Park) (NAD 1983).

(5) *Cleveland Yachting Club Fireworks Display, Rocky River, OH:* All waters and adjacent shoreline of the Rocky River and Lake Erie bounded by the arc of a circle with a 200-yard radius with its center at Sunset Point on the western side of the mouth of the Rocky River in approximate position 41°29.428' N, 081°50.309' W (NAD 1983).

(6) *Lorain 4th of July Celebration Fireworks Display, Lorain, OH:* The waters of Lorain Harbor bounded by the arc of a circle with a 300-yard radius with its center east of the harbor entrance on the end of the break wall near Spitzer's Marina in approximate position 41°28.591' N, 082°10.855' W (NAD 1983).

(7) *Lorain Port Fest Fireworks Display, Lorain, OH:* All waters and adjacent shoreline of Lorain Harbor bounded by the arc of a circle with a 250-yard radius with its center at approximate position 41°28.040' N, 082°10.365' W (NAD 1983).

(8) *Mentor Harbor Yacht Club Fireworks Display, Mentor, OH:* All waters and adjacent shoreline of Lake Erie and Mentor Harbor bounded by the arc of a circle with a 200-yard radius with its center in approximate position 41°43.200' N, 081°21.400' W (west of the harbor entrance) (NAD 1983).

(9) *Fairport Mardi Gras Fireworks Display, Fairport Harbor, OH:* All waters and adjacent shoreline of Fairport Harbor and Lake Erie bounded by the arc of a circle with a 300-yard radius with its center east of the harbor entrance at Fairport Harbor Beach in approximate position 41°45.500' N, 081°16.300' W (NAD 1983).

(10) *Ashtabula Area Fireworks Display, Ashtabula, OH:* All waters and adjacent shoreline of Lake Erie and Ashtabula Harbor bounded by the arc of a circle with a 300-yard radius with its center west of the harbor in approximate position 41°54.167' N, 080°48.416' W (NAD 1983).

(b) *Notification.* Captain of the Port Cleveland will cause notice of the enforcement of these safety zones to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including publication on the local notice to mariners, marine information broadcasts, and facsimile. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled "FIREWORKS-STAY AWAY". This sign will consist of 10" high by 1.5" wide red lettering on a white background. Shore sites used in these locations will display a sign labeled "FIREWORKS-STAY AWAY" with the same dimensions.

(c) *Enforcement period.* This section will be enforced from 6 p.m. (local) to 1 a.m. (local) each day a barge with "FIREWORKS-STAY AWAY" sign on the port and starboard side is on-scene or a "FIREWORKS-STAY AWAY" sign is posted in a location listed in paragraph (a) of this section. Vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port Cleveland or the designated Coast Guard Patrol Commander on scene.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the

designated on scene Patrol Commander. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) Several of the safety zones in this regulation encompass portions commercial navigation channels but are not expected to adversely affect shipping. In cases where shipping is affected, commercial vessels may request permission from the Patrol Commander or Captain of the Port to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via the U.S. Coast Guard Patrol Commander (PAT COM) on Channel 16, VHF-FM.

Dated: June 21, 2004.

**Lorne W. Thomas,**

*Commander, U.S. Coast Guard, Captain of the Port Cleveland.*

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Parts 1 and 2

[Docket No. 2004-C-032]

RIN 0651-AB74

#### Elimination of Credit Cards as Payment for Replenishing Deposit Accounts

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) is amending its rules of practice to eliminate acceptance of credit cards as payment for replenishing deposit accounts. Deposit account customers may still submit payments to replenish their deposit accounts by electronic funds transfer (EFT) through the Federal Reserve Fedwire System or over the Office's Internet Web site (<http://www.uspto.gov>), and by check or money order sent through the mail. The Office will continue to accept credit cards as payment for all other products and services for which fees are required.

**DATES:** *Effective Date:* August 23, 2004.

**FOR FURTHER INFORMATION CONTACT:** Matthew Lee by e-mail at

[matthew.lee@uspto.gov](mailto:matthew.lee@uspto.gov), or by fax at (703) 308-5077 marked to the attention of Matthew Lee.

**SUPPLEMENTARY INFORMATION:** The Office is revising 37 CFR 1.23(b), 1.25(c)(2), 2.207(b), and 2.208(c)(2) to eliminate acceptance of credit cards as payment for replenishing deposit accounts.

The Office participates in the Plastic Card Network (PCN), which is a Government-wide network that allows Federal agencies to accept nationally branded credit and debit cards for collecting receipts due to the Government. This network promotes the efficient electronic collection of receipts from the public sector while providing a convenient and widely used payment option for remitters. The Department of the Treasury Financial Management Service (FMS) manages the PCN and pays the transaction fees incurred for processing credit and debit card payments.

The Office was notified by the FMS of excessive transaction fees resulting from high dollar credit card charges processed by the agency. Nearly all of the high dollar credit card charges were payments made by customers to replenish deposit accounts. Although credit cards are an efficient means for individuals to use in replenishing deposit accounts, they are an expensive option that is not cost-effective. It is much more cost-effective to process high dollar payments by EFT or by check for the Government. This is because the Government is charged a percent fee based on the total dollar amount of the charge. Under the PCN, the Office is not allowed to establish minimum or maximum single transaction amounts or to charge a transaction fee for a specific group of transactions as conditions for accepting credit cards.

Deposit account customers who replenished their deposit accounts with a credit card may be inconvenienced, but the vast majority of customers who pay for products and services with a credit card will continue to enjoy the convenience and will not be impacted by this final rule. Customers will continue to have a means of replenishing their deposit accounts electronically by EFT, and through the mail by check or money order.

This final rule supports the FMS in controlling the PCN costs, and ensures the Office can continue participating in the PCN and provide the credit card payment option to customers for all other products and services.

To ensure clarity in the implementation of this final rule, a discussion of specific sections is set forth below.

## Discussion of Specific Rules

### 37 CFR 1.23 Method of Payment

Section 1.23, paragraph (b), is revised to exclude credit cards as payment for replenishing a deposit account.

### 37 CFR 1.25 Deposit Accounts

Section 1.25, paragraph (c)(2), is revised by removing the reference to credit cards for replenishing a deposit account over the Office's Internet Web site.

### 37 CFR 2.207 Method of Payment

Section 2.207, paragraph (b), is revised to exclude credit cards as payment for replenishing a deposit account.

### 37 CFR 2.208 Deposit Accounts

Section 2.208, paragraph (c)(2), is revised by removing the reference to credit cards for replenishing a deposit account over the Office's Internet Web site.

## Other Considerations

This final rule contains no information collection requirements within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act, or any other statute or regulation, for this rule. This rule is exempted from the notice and comment because it involves a rule of agency practice or procedure. As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), are inapplicable.

## Lists of Subjects

### 37 CFR Part 1

Administrative practice and procedure, Patents.

### 37 CFR Part 2

Administrative practice and procedure, Trademarks.

■ For the reasons set forth in the preamble, title 37 of the Code of Federal Regulations, parts 1 and 2, are being amended as set forth below.