

# Proposed Rules

Federal Register

Vol. 77, No. 91

Thursday, May 10, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### 31 CFR Chapter X

RIN 1506-AB15

#### Financial Crimes Enforcement Network: Customer Due Diligence Requirements for Financial Institutions; Extension of Comment Period

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Advance notice of proposed rulemaking; extension of comment period.

**SUMMARY:** FinCEN is extending the comment period for the referenced Advance Notice of Proposed Rulemaking (ANPRM) it published concerning customer due diligence requirements for financial institutions.

**DATES:** Written comments on the ANPRM must be received on or before June 11, 2012.

**ADDRESSES:** Comments may be submitted, identified by Regulatory Identification Number (RIN) 1506-AB15, by any of the following methods:

- *Federal E-rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Include RIN 1506-AB15 in the submission. Refer to Docket Number FINCEN-2012-0001.

- *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include 1506-AB15 in the body of the text. Please submit comments by one method only. All comments submitted in response to this ANPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

*Inspection of comments:* Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905-5034 (not a toll free call). In general, FinCEN will make all comments publicly

available by posting them on <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

FinCEN: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949-2732 and select option 6.

**SUPPLEMENTARY INFORMATION:** On March 5, 2012, FinCEN issued an ANPRM seeking comments from interested parties on customer due diligence requirements for financial institutions.<sup>1</sup> FinCEN received several comments on the ANPRM, including several requesting that FinCEN extend the deadline for comments in order to allow interested parties more time in which to comment on the specific issues and questions raised in the ANPRM.

In light of the fact that an extension of the comment period will not impede any imminent rulemaking and will allow additional interested parties to provide comments, FinCEN has determined that it is appropriate in this instance to extend the comment period for an additional thirty (30) days. Thus, comments on the ANPRM may be submitted on or before June 11, 2012.

Dated: May 3, 2012.

**Jamal El-Hindi,**

*Associate Director, Financial Crimes Enforcement Network.*

[FR Doc. 2012-11227 Filed 5-9-12; 8:45 am]

**BILLING CODE 4810-02-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2012-0331]

RIN 1625-AA00

#### Safety Zone; Newport High School Graduation Fireworks, Newport, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a safety zone at the entrance of Yaquina Bay in Newport, OR, for a local fireworks event. The safety zone is necessary to help ensure the safety of

the maritime public during the display and would do so by prohibiting persons and vessels from entering the safety zone unless authorized by the Captain of the Port Columbia River or his designated representative.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 11, 2012.

**ADDRESSES:** You may submit comments identified by docket number USCG-2012-0331 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 four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email ENS Ian McPhillips, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503-240-9319, email [Ian.P.McPhillips@uscg.mil](mailto:Ian.P.McPhillips@uscg.mil). 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-2012-0331),

<sup>1</sup> See 77 FR 13046 (March 5, 2012), available at [http://www.regulations.gov/#:documentDetail;D=FINCEN\\_FRDOC\\_0001-0017](http://www.regulations.gov/#:documentDetail;D=FINCEN_FRDOC_0001-0017).

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 via <http://www.regulations.gov> or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone 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>, type the docket number USCG-2012-0331 in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking. 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 comments 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>, type the docket number USCG-2012-0331 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit 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. 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 plan to hold a public meeting at this time, but you may submit a request for one on or before June 11, 2012 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting 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**.

#### Basis and Purpose

Fireworks displays create hazardous conditions for the maritime public due to loud noises, falling debris, and explosions, as well as the heavy vessel traffic congregating near the displays. The establishment of a safety zone helps ensure the safety of the maritime public by prohibiting persons and vessels from risks associated with fireworks displays.

#### Discussion of Proposed Rule

This proposed rule would establish a temporary safety zone at the entrance of Yaquina Bay in Newport, OR. This event will be held on Saturday, June 9, 2012 from 9 p.m. to 11 p.m. The safety zone would extend 300 feet in all directions from the discharge site which is located on the south side of the channel at 44-36°46.86" N 124-04°10.68" W.

Geographically this safety zone would cover all waters of Yaquina Bay extending 300 feet in all directions from the discharge site. All persons and vessels would be prohibited from entering the safety zone during the date and time this proposed rule is effective unless authorized by the Captain of the Port Columbia River 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. The Coast Guard has made this determination based on the fact that the safety zone created by this rule will not significantly affect the maritime public because the federal navigation channel will remain open and vessels may still proceed around the perimeter of the 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 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 may be small entities: the owners and operators of vessels intending to operate in the area covered by the safety zone. The safety zone would not have a significant economical impact on a substantial number of small entities because the federally maintained navigation channel would remain open for use during the display and the safety zone would only be in effect for 2 hrs in the evening when vessel traffic is low. We will send out a broadcast to notify mariners 2 hrs before the effective period and the Coast Guard will also publish advisories in the Local Notice to Mariners. Maritime traffic will be able to schedule their transits around this 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 ENS Ian

McPhillips, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503-240-9319, email *Ian.P.McPhillips@uscg.mil*. 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 (adjusted for inflation) 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 cause 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 (NTAA) (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 023-01 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 that this action is one of a category of

actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This rule is categorically excluded, under figure 2-1, paragraph (34) (g), of the instruction. This proposed rule involves the creation of a safety zone. 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. 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.T216 Safety Zone; Newport High School Graduation Fireworks Display; Newport, OR

#### § 165.T216 Safety Zone; Newport High School Graduation Fireworks Display; Newport, OR

##### Location

The safety zone will extend 300 feet in all directions from the discharge site which is located on the South Side of the Yaquina Bay channel at position 44-36'46.86" N 124-04'10.68" W. This event will be held on Saturday, June 9, 2012.

(a) *Regulations.* In accordance with the general regulations in 33 CFR part 165, subpart C, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative. The Captain of the Port may be assisted by other federal, state, or local agencies with the enforcement of the safety zone.

(b) *Effective Period.* The safety zone created by this section will be in effect from 9 p.m. through 11 p.m. on June 9, 2012.

Dated: April 19, 2012.

**B.C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port, Columbia River.*

[FR Doc. 2012-11239 Filed 5-9-12; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### 49 CFR Part 1333

[Docket No. EP 707]

#### Demurrage Liability

**AGENCY:** Surface Transportation Board (Board or STB), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Through this notice of proposed rulemaking (NPRM), the Board is proposing a rule establishing that a person receiving rail cars from a rail carrier for loading or unloading who detains the cars beyond the “free time” provided in the carrier’s governing tariff will generally be responsible for paying demurrage, if that person has actual notice, prior to rail car placement, of the demurrage tariff establishing such liability. The Board also clarifies that it intends to construe U.S. Code provisions titled “Liability for payment of rates,” as applying to carriers’ line-haul rates, but not to carriers’ charges for demurrage.

**DATES:** Comments are due by June 25, 2012. Reply comments are due by July 23, 2012.

**ADDRESSES:** Comments and replies may be submitted either via the Board’s e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board’s Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: EP 707, 395 E Street SW., Washington, DC 20423-0001. Copies of written comments and replies will be available for viewing and self-copying at the Board’s Public Docket Room, Room 131, and will be posted to the Board’s Web site.

**FOR FURTHER INFORMATION CONTACT:**

Craig Keats at (202) 245-0260. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

Demurrage is a charge for detaining railroad-owned rail freight cars for

loading or unloading beyond a specified amount of time (called “free time”). Demurrage has compensatory and penalty functions. It compensates rail carriers for the use of railroad equipment, and by penalizing those who detain rail cars for too long, it encourages prompt return of rail cars into the transportation network. Because of these dual roles, demurrage is statutorily recognized as an important tool in ensuring the smooth functioning of the rail system. See 49 U.S.C. 10746.

*Historical Regulation of Demurrage.* Since the earliest days of railroad regulation, parties have had disputes about who, if anyone, should have to pay demurrage. Certain principles for allocating the liability of intermediaries for holding carrier equipment became established over time and were reflected in agency and court decisions.<sup>1</sup> After reviewing recent court decisions, however, we believe that it is appropriate to revisit the matter and to consider whether the Board’s policies should be revised.

Demurrage collection cases may only be brought in court, and thus much of the law governing the imposition of demurrage liability has been established judicially. However, the Interstate Commerce Act, as amended by the ICC Termination Act of 1995, Public Law 104-88, 109 Stat. 803 (1995) (ICCTA), also provides that demurrage is subject to Board regulation. Specifically, 49 U.S.C. 10702 requires railroads to establish reasonable rates and transportation-related rules and practices, and 49 U.S.C. 10746 requires railroads to compute demurrage and to establish demurrage-related rules “in a way that fulfills the national needs related to” freight car use and distribution and that will promote an adequate car supply. In the simplest case, demurrage is assessed on the “consignor” (the shipper of the goods) for delays in loading cars at origin and on the “consignee” (the receiver of the goods) for delays in unloading cars and returning them to the carrier at destination.<sup>2</sup>

<sup>1</sup> See *Responsibility for Payment of Detention Charges, E. Cent. States (Eastern Central)*, 335 I.C.C. 537, 541 (1969) (involving liability of intermediaries for detention, the motor carrier equivalent of demurrage), *aff’d, Middle Atl. Conference v. United States (Middle Atlantic)*, 353 F. Supp. 1109, 1114-15 (D.D.C. 1972) (3-judge court sitting under the then-effective provisions of 28 U.S.C. 2321 *et seq.*).

<sup>2</sup> While the Interstate Commerce Act does not define “consignor” or “consignee,” the Federal Bills of Lading Act uses the term “consignor” to refer to “the person named in a bill of lading as the person from whom the goods have been received for shipment,” 49 U.S.C. 80101(2), and the term “consignee” to refer to “the person named in a bill

This agency has long been involved in resolving demurrage disputes, both as an original matter and on referral from courts hearing railroad complaints seeking recovery of charges.<sup>3</sup> The disputes between railroads and parties that originate or terminate rail cars can involve relatively straightforward application of the carrier’s tariffs to the circumstances of the case. Complications can arise, however, in cases involving warehousemen or other “third-party intermediaries” who handle the goods but have no property interest in them. A consignee that owned the property being shipped had common-law liability (for both freight charges and demurrage) when it accepted cars for delivery,<sup>4</sup> but warehousemen typically are not owners of the property being shipped (even though, by accepting the cars, they are in a position to facilitate or impede car supply). Under the legal principles that developed, in order for a warehouseman to be subject to demurrage or detention charges, there had to be some other basis for liability beyond the mere fact of handling the goods shipped.<sup>5</sup>

What became the most important factor under judicial and agency precedent was whether the warehouseman was named the consignee on the bill of lading.<sup>6</sup> Thus, our predecessor, the Interstate Commerce Commission (ICC), held that a tariff<sup>7</sup> may not lawfully impose such

of lading as the person to whom the goods are to be delivered,” 49 U.S.C. 80101(1).

<sup>3</sup> *E.g., Eastern Central; Springfield Terminal Ry.—Pet. for Declaratory Order—Reasonableness of Demurrage Charges*, NOR 42108 (STB served June 16, 2010); *Capitol Materials Inc.—Pet. for Declaratory Order—Certain Rates & Practices of Norfolk S. Ry.*, NOR 42068 (STB served Apr. 12, 2004); *R. Franklin Unger, Trustee of Ind. Hi-Rail Corp.—Pet. for Declaratory Order—Assessment & Collection of Demurrage & Switching Charges*, NOR 42030 (STB served June 14, 2000); *South-Tec Dev. Warehouse, Inc.—Pet. for Declaratory Order—III. Cent. R.R.*, NOR 42050 (STB served Nov. 15, 2000); *Ametek, Inc.—Pet. for Declaratory Order*, NOR 40663, *et al.* (ICC served Jan. 29, 1993), *aff’d, Union Pac. R.R. v. Ametek, Inc.*, 104 F.3d 558 (3d Cir. 1997).

<sup>4</sup> *Pittsburgh, Cincinnati, Chicago & St. Louis Ry. v. Fink*, 250 U.S. 577, 581 (1919); *Norfolk S. Ry. v. Groves (Groves)*, 586 F.3d 1273, 1278 (11th Cir. 2009), *cert. denied*, 131 S.Ct. 993 (2011).

<sup>5</sup> See, *e.g., Smokeless Fuel Co. v. Norfolk & W. Ry.*, 85 I.C.C. 395, 401 (1923).

<sup>6</sup> A bill of lading is the transportation contract between the shipper and the carrier for moving goods between two points. Its terms and conditions bind the shipper, the originating carrier, and all connecting carriers.

<sup>7</sup> Historically, carriers gave public notice of their rates and general service terms in tariffs that were publicly filed with the ICC and that had the force of law under the so-called “filed rate doctrine.” See *Maislin Indus., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 127 (1990). The requirement that rail carriers file rate tariffs at the agency was repealed in ICCTA. Nevertheless, although tariffs are no longer filed