

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 165**

[CGD09-01-014]

RIN 2115-AA97

Safety Zone; Rochester Harborfest Fireworks Display, Genesee River, Rochester, New York**AGENCY:** Coast Guard, DOT.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone, encompassing the navigable waters of Rochester Harbor and the Genesee River in Rochester, New York. This rule is necessary to protect participants, vessels, and spectators from the hazards associated with the storage, preparation, and launching of fireworks. The rule is intended to restrict vessel traffic from a portion of the waters of Rochester Harbor and the Genesee River, Rochester, New York.

DATES: This rule is effective from 9 p.m. until 11 p.m. (EST) on August 11, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09-01-014 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant David Flaherty, U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203. The phone number is (716) 843-9574.

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), the Coast Guard finds good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule. Publication of an NPRM and delay of the effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property.

Background and Purpose

This safety zone is being established to ensure the safety of vessels, spectators and participants. All persons and vessels shall comply with the instructions of the Captain of the Port Buffalo or the designated on scene patrol personnel. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or the designated Patrol Commander. The designated Patrol Commander may be contacted via VHF/FM Marine Channel 16.

Regulatory Evaluation

This temporary rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulation 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 review it under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule will 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: the owners or operators of vessels intending to transit or anchor in a portion of Rochester Harbor from 9 p.m. to 11 p.m. (EST) on August 11, 2001.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only two hours late in the day when vessel traffic is low. Vessel traffic may enter or transit through the safety zone with the permission of Captain of the Port Buffalo or the

designated Patrol Commander. Before the effective period, we will issue maritime advisories, widely available to users of the harbor.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. 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 Marine Safety Office Buffalo (See **ADDRESSES**).

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 (44 U.S.C. 3501-3520).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, 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 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.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

Indian Tribal Governments

This temporary final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribe, 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 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.

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. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09-945 is added to read as follows:

§ 165.T09-945 Safety Zone; Rochester Harborfest Fireworks Display, Genesee River, Rochester, New York.

(a) *Location.* The following area is a temporary safety zone: all waters of Rochester Harbor and the Genesee River encompassed by an area 300-yards around the fireworks barge moored/anchored in approximate position: 43°15.8' N 077°36.0' W. These coordinates are based on North American Datum 1983 (NAD 83).

(b) *Effective time and date.* This section is effective from 9 p.m. through 11 p.m. (EST) on August 11, 2001.

(c) *Regulations.*

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

(2) All persons and vessels shall comply with the instructions of the Captain of the Port Buffalo or the designated on scene patrol personnel. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or the designated Patrol Commander. Coast Guard patrol personnel include commissioned, warrant or 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. The Captain of the Port Buffalo or the designated Patrol Commander may be contacted via VHF Channel 16.

Dated: June 21, 2001.

S.D. Hardy,

Commander, U.S. Coast Guard Captain of the Port Buffalo.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09-01-010]

RIN 2115-AA97

Safety Zone; Niagara River, Tonawanda, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone. The safety zone encompasses the navigable waters on the Niagara River in Tonawanda, New York. The action is necessary to protect participants and non-participants within the immediate area from the hazards associated with fireworks displays.

DATES: This rule is effective from 9:30 p.m. until 10:30 p.m. on July 22, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09-01-010] and are available for inspection of copying at U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, NY 14203, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant David Flaherty, U. S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, NY. The telephone number is (716) 843-9574.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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