

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.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. This rule fits the category selected from paragraph (34)(g), as it would establish a safety zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be 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 measure, 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 temporary section 165.T05–052 to read as follows:

§ 165.T05–052 Safety Zone: Celebrate the Fourth/Salem Fireworks—Salem, Massachusetts.

(a) *Location.* The following area is a safety zone:

All waters of Salem Harbor in a four hundred yard radius of the fireworks launch site located on Derby Wharf.

(b) *Effective Date.* This section is effective from 8:30 p.m. EDT until 10 p.m. EDT on July 4, 2005.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and Federal law enforcement vessels.

Dated: June 9, 2005.

James L. McDonald,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–05–017]

RIN 1625–AA00

Safety Zone: Macy's July 4th Fireworks, East River and Upper New York Bay, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the permanent safety zone for the annual Macy's July 4th fireworks display found at 33 CFR 165.166 to accommodate an added fireworks discharge site near Liberty Island. This action is necessary to provide for the safety of life on navigable waters during the event. This will restrict vessel traffic in portions of the East River, Hudson River, and Upper New York Bay during the duration of the Macy's July 4th fireworks event.

DATES: This rule is effective June 21, 2005.

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 (CGD01–05–017) and are available for inspection or copying at room 203, Coast Guard Sector New York, 212 Coast Guard Drive, Staten Island, New York 10305 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander E. Morton, Waterways Management Division, Coast Guard Sector New York (718) 354–4191.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 11, 2005, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone: Macy's July 4th Fireworks, East River and Upper New York Bay, NY" in the **Federal Register** (70 FR 18343). We received no letters commenting on the proposed rule. No public meeting 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**. This rule governs an annual July 4th event and is necessary to provide for the safety of life and property on navigable waters during a large-scale fireworks display.

Background and Purpose

The Coast Guard is revising 33 CFR 165.166, the permanent safety zone for the annual Macy's July 4th fireworks displays in the East River and Upper New York Bay, to protect a third fireworks discharge location near Liberty Island, which was not anticipated by the original regulation. The safety zone previously encompassed a portion of the East River from Roosevelt Island to Governor's Island and was defined as all waters of the East River east of a line drawn from the Fireboat Station Pier, Battery Park City, in approximate position 40°42'15.4" N 074°01'06.8" W (NAD 1983) to Governors Island Light (2) (LLNR 35010), in approximate position 40°41'34.4" N 074°01'10.9" W (NAD 1983); north of a line drawn from Governors Island, in approximate position 40°41'25.3" N 074°00'42.5" W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn from East 47th Street, Manhattan through the southern point of Roosevelt Island to 46 Road, Brooklyn, and all waters of Newtown Creek west of the Pulaski Bascule Bridge. The revised regulation increases the size of the safety zone to include all waters of the Upper New York Bay south of a line drawn from Pier A (Fireboat Station Pier), Battery Park City, in approximate position 40°42'15.4" N 074°01'06.8" W (NAD 1983) to the easternmost corner of the Ellis Island Security Zone, in approximate position 40°41'57.6" N 074°02'06.7" W (NAD 1983); and north of a line drawn from Pier 7, Jersey City, NJ, in approximate position 40°41'26.4" N 074°03'17.3" W (NAD 1983) to Liberty Island Lighted Gong Buoy 29 (LLNR 34995), in approximate position 40°41'02.2" N 074°02'24.7" W (NAD 1983), on to Governor's Island Extension Light (LLNR 35000), in approximate position 40°41'08.3" N 074°01'35.4" W (NAD 1983).

The activation period for this expanded safety zone remains unchanged from the previous regulation. The expanded safety zone will remain effective from 6:30 p.m. until 11:30 p.m. on July 4th. If the event is cancelled due to inclement weather, then this safety zone will be effective from 6:30 p.m. until 11:30 p.m. on July 5th. The expanded safety zone prevents vessels from transiting these portions of

the East River, Hudson River, and Upper New York Bay, and is needed to protect mariners from the hazards associated with fireworks launched from 6 barges in the area. No vessel may enter the safety zone without permission from the Captain of the Port, New York.

This safety zone covers the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels and the fireworks handlers aboard the barges.

Public notifications will be made prior to the event via the Local Notice to Mariners, marine information broadcasts, facsimile, and Macy's waterways telephone hotline. In previous years this telephone hotline has been established in early June.

Discussion of Comments and Changes

One minor change will be made to the description of the northern boundary of the safety zone on the East River. The regulation text currently indicates the eastern reference point for this boundary as "46 Road, Brooklyn," and is changed to properly identify this reference point as "46 Road, Queens."

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 safety zone temporarily closes a major portion of the East River and Upper New York Bay to vessel traffic. There is a regular flow of traffic through this area; however, the impact of this regulation is expected to be minimal for the following reasons: the limited duration of the event; the extensive, advance advisories that will be made to allow the maritime community to schedule transits before and after the event; the event takes place at a late hour on a national holiday; the event has been held for twenty-three years in succession and is therefore anticipated annually; small businesses may experience an increase in revenue due to the event; advance notifications will be made to the local maritime community by the Local Notice to Mariners, marine information broadcasts, facsimile, and the event sponsor establishes and advertises a telephone hotline which waterways users may call prior to the event for details of the safety zone. This

telephone number will be published via the Local Notice to Mariners and facsimile. The number is normally activated in early June each year.

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 proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the East River or Upper New York Bay during the times these zones are activated.

This safety zone would not have a significant economic impact on a substantial number of small entities for the same reasons that the impact is expected to be minimal, listed under Regulatory Evaluation.

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. No such assistance was requested.

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 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

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.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. This rule fits paragraph 34(g) as it increases the size of an existing safety zone. 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. Revise § 165.166(a) to read as follows:

§ 165.166 Safety Zone: Macy’s July 4th Fireworks, East River and Upper New York Bay, NY.

(a) *Regulated Area.* The following area is a safety zone: All waters of the Upper New York Bay south of a line drawn from Pier A (Fireboat Station Pier), Battery Park City, in approximate position 40°42′15.4″ N 074°01′06.8″ W (NAD 1983) to the easternmost corner of the Ellis Island Security Zone, in approximate position 40°41′57.6″ N 074°02′06.7″ W (NAD 1983); north of a line drawn from Pier 7, Jersey City, NJ, in approximate position 40°41′26.4″ N 074°03′17.3″ W (NAD 1983) to Liberty Island Lighted Gong Buoy 29 (LLNR 34995), in approximate position 40°41′02.2″ N 074°02′24.7″ W (NAD 1983), on to Governor’s Island Extension Light (LLNR 35000), in approximate position 40°41′08.3″ N 074°01′35.4″ W (NAD 1983); all waters of the East River north of a line drawn from Governors Island, in approximate position 40°41′25.3″ N 074°00′42.5″ W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn from East 47th Street, Manhattan through the southern point of Roosevelt Island to 46 Road, Queens; and all waters of Newtown Creek west of the Pulaski Bascule Bridge.

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Dated: June 8, 2005.

Glenn A. Wiltshire,

Captain, U.S. Coast Guard, Captain of the Port, New York.

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