

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[CGD09-06-038]

RIN 1625-AA00

**Safety Zone; Rochester Harbor and Carousel Festival, Rochester, NY**

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of Lake Ontario in Rochester, NY. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with firework displays. This safety zone restricts vessel traffic from a portion of Lake Ontario in Rochester, NY.

**DATES:** This rule is in effect from 9:30 p.m. (local) until 10:30 p.m. (local) on June 24, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of the docket [CGD09-06-038], and are available for inspection or copying at U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, New York 14203 between 8 a.m. and 4 p.m. (local), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Tracy Wirth, U.S. Coast Guard Sector Buffalo, at (716) 843-9573.

**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 that good cause exists for not publishing an NPRM. This safety zone is temporary in nature and limited time existed for an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and contrary to public interest since immediate action is needed to minimize potential danger to the public during the fireworks demonstration.

**Background and Purpose**

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with firework displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the

explosive hazard of fireworks, the Captain of the Port Buffalo has determined firework launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone consists of all navigable waters of Oneida Lake in a 500-foot radius around a point at approximate position: 43°15'47" N, 077°36'00" W (NAD 1983) in Rochester, NY. The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated on-scene representative. The designated on-scene representative will be the patrol commander. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

**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 minimal time that vessels will be restricted from the zone, and the zone is in areas where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we 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 would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: This safety zone is only in effect from 9:30 p.m. (local) until 10:30 p.m. (local) on June 24, 2006.

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 rule so that they can better evaluate its effects 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 U.S. Coast Guard Sector 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 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 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## Taking of Private Property

This rule would 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

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. 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.

## 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 and Department of Homeland Security Management Division 5100.0, 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.

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. Add new temporary § 165.T09–038 to read as follows:

### § 165.T09–038 Safety Zone; Rochester Harbor and Carousel Festival, Rochester, NY.

(a) *Location.* The following area is a temporary safety zone: All navigable waters of Lake Ontario in a 500-foot radius around a point at approximate position: 43°15'47" N, 077°36'00" W (NAD 1983) in Rochester, NY. All Geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Definitions.* The following definitions apply to this section:

*Designated representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP), Buffalo, New York, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Buffalo.

(2) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

(d) *Effective time and date.* This section is effective from 9:30 p.m. (local) until 10:30 p.m. (local) on June 24, 2006.

Dated: June 7, 2006.

### P.R. Dowden,

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

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