

Vessels, including ships and barges carrying petroleum products, chemicals, or other hazardous cargo will be recognized by the requirement to fly the Bravo flag (red international signal pennant) from the outermost halyard (above the pilot house) where it can most easily be seen. Designated Vessels carrying government officials, dignitaries, or other passengers requiring protection, and passenger vessels authorized to carry more than 400 passengers and are less than 200 feet in length will be recognizable by their being escorted by a federal, state or local law enforcement or security vessel. The law enforcement or security vessel will be identifiable by flashing light, siren, flags, markings and/or through other means that clearly identify the vessel as engaged in law enforcement or security operations.

(16) *134th Street Pipeline Metering and Regulating Station.*—(i) *Location.* All waters of the Hudson River within 25 yards of the 134th Street Pipeline Metering and Regulating Station.

(ii) *Regulations.* (A) Vessels not actively engaged in facility maintenance or inspection operations authorized in advance by the Pipeline Security Officer or designated representative, or authorized docking or undocking operations, must not enter within any part of a zone described in paragraph (a)(16) of this section without the express permission of the Coast Guard Captain of the Port, a designated representative or designated on-scene patrol personnel.

(B) Persons seeking Captain of the Port permission to enter within a particular zone for official business other than authorized passenger, cargo, provision, facility maintenance or inspection, bunker transfer operations or authorized docking or undocking operations may request such authorization by contacting: Commander Coast Guard Sector New York, via the Sector Command Center (SCC), at: 212 Coast Guard Drive, Staten Island, NY 10305, or via fax to (718) 354-4125 or by contacting the Sector Command Center Duty Officer by phone at: (718) 354-4353. Before authorization to enter the zone, the Coast Guard will evaluate available information, which may vary depending on on-scene and operational conditions. Vessels requesting permission to enter the zone should be prepared to communicate with the Coast Guard while this evaluation process occurs. Information the Coast Guard will evaluate in making its determination may include the manifest of all equipment and personnel to be granted access to the area, dates and times of access, the purpose for

which access is requested, and on-scene contact information for personnel or equipment that will occupy the zone.

(17) *Waterfront Heliports.*—(i) *Location.* All waters of the East River within 25 yards of the East 34th Street and Wall Street Heliports, and all waters of the Hudson River within 25 yards of the West 30th Street Heliport and the Jersey City/Newport Helistop, areas of land or water under and in immediate proximity to them; buildings on such structures or contiguous to them; and equipment and materials on such structures and in such buildings. When a barge, ferry, or other commercial vessel is conducting transfer operations at a waterfront heliport, the 25-yard zone is measured from the outboard side of the commercial vessel.

(ii) *Regulations.* (A) Vessels not actively engaged in passenger, cargo, provision, facility maintenance or inspection, bunker transfer operations, or docking or undocking operations, authorized in advance by the Facility Security Plan, Facility Security Officer or designated representative, must not enter within any part of a zone described in paragraph (a)(17) of this section without the express permission of the Coast Guard Captain of the Port, a designated representative, or designated on-scene patrol personnel.

(B) Persons seeking Captain of the Port permission to enter within a particular zone for official business other than authorized passenger, cargo, provision, facility maintenance or inspection, bunker transfer operations or authorized docking or undocking operations may request such authorization by contacting: Commander Coast Guard Sector New York, via the Sector Command Center (SCC), at: 212 Coast Guard Drive, Staten Island, NY 10305, or via fax to (718) 354-4125 or by contacting the Sector Command Center Duty Officer by phone at: (718) 354-4353. Before authorization to enter the zone, the Coast Guard will evaluate available information, which may vary depending on on-scene and operational conditions. Vessels requesting permission to enter the zone should be prepared to communicate with the Coast Guard while this evaluation process occurs. Information the Coast Guard will evaluate in making its determination may include the manifest of all equipment and personnel to be granted access to the area, dates and times of access, the purpose for which access is requested, and on-scene contact information for personnel or equipment that will occupy the zone.

(C) Vessels entering or departing the marina north of the Newport Helistop are authorized to transit through the

safety/security zone around the Newport Helistop during their transit, provided that helicopters are not taking off or landing. No loitering or unnecessary delay is authorized during these transits.

\* \* \* \* \*

Dated: April 25, 2008.

**Michael S. Gardiner,**

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

[FR Doc. E8-10000 Filed 5-5-08; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-0326]

RIN 1625-AA00

#### Safety Zone; Rochester Harborfest, Lake Ontario at the Genesee River, Rochester, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes establishment of a safety zone for a fireworks event in the Captain of the Port Buffalo zone. This proposed rule is intended to restrict vessels from portions of water and shore areas during events that pose a hazard to public safety. The safety zone established by this proposed rule is necessary to protect spectators, participants, and vessels from the hazards associated with fireworks displays.

**DATES:** Comments and related materials must reach the Coast Guard on or before June 5, 2008.

**ADDRESSES:** You may mail comments and related material to Commander, U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Boulevard, Buffalo, NY 14203. Sector Buffalo Prevention Department maintains the public docket for this rulemaking. 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 will be available for inspection or copying at Coast Guard Sector Buffalo between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have further questions on this rule, contact Lieutenant Tracy Wirth, U.S. Coast Guard Sector Buffalo, at (716) 843-9573.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [USCG–2008–0326], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Coast Guard Sector Buffalo at the address under **ADDRESSES** explaining why one 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**.

### Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port zones, and the explosive hazards of fireworks, the Captain of the Port Buffalo has determined fireworks launches in close proximity to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation 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 location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

### Discussion of Proposed Rule

The proposed rule is necessary to ensure the safety of vessels and people during the Rochester Harborfest Fireworks. The proposed safety zone is described in subparagraphs (1) of this regulation. The proposed safety zone will be enforced only immediately before and during the event which poses hazard to the public and only upon notice by the Captain of the Port. The Captain of the Port Buffalo will cause

notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the **Federal Register** in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

### Regulatory Evaluation

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard’s use of this safety zone will be of short duration and designed to minimize the impact on navigable waters. This safety zone will only be enforced immediately before and during the time the event occurs. Furthermore, this safety zone has been designed to allow vessels to transit unrestricted to portions of the waterway not affected by the safety zone. The Coast Guard expects insignificant adverse impact to mariners from the activation of this 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 proposed rule would 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 of operators of vessels intending to transit or anchor in the area designated as the safety zone in subparagraph (1) during the date and time the safety zone is being enforced. This safety zone would

not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone in this proposed rule will be in effect only for a short period of time. The safety zone has been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zone with the permission of the Captain of the Port.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Tracy Wirth, Prevention Department, Coast Guard Sector Buffalo, Buffalo, NY at (716) 843–9573. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### 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 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 or more in any one year.

Though this proposed rule will not result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule will not effect the 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 proposed 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

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these special local regulations and fishing rights protection need not be incompatible. We have also determined that this Proposed 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Proposed Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

#### 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 (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 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 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 made a preliminary determination that this action is not likely to have a significant impact on the human environment. A preliminary "Environmental Analysis Check List" is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from the proposed rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and 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. 1226, 1231; 46 U.S.C. Chapter 701; 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.T09–005 to read as follows:

#### § 165.T09–005 Safety Zone; Rochester Harborfest, Lake Ontario at the Genesee River, Rochester, NY.

(a) *Location.* The following area is a temporary safety zone: All waters of Lake Ontario at Genesee River, Rochester, NY within a five hundred foot radius of position 43°15'21" N, 077°36'19" W. [DATUM: NAD 83]. Located on the Ontario Beach West pier.

(b) *Effective Period.* This regulation is effective from 9:30 p.m. to 10 p.m. on June 21, 2008.

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

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. 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) Commercial vessels may request permission from the Captain of the Port Buffalo 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 U.S. Coast Guard Sector Buffalo on Channel 16, VHF–FM.

Dated: April 14, 2008.

**S.J. Ferguson,**

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

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#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2008–0328]

RIN 1625–AA11

#### Safety Zone; Thunder on Niagara, Niagara River, North Tonawanda, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.