

## Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and 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 this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), promulgation of operating regulations or procedures for drawbridges, of the Instruction. Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

### List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.755 to read as follows:

#### § 117.755 Shrewsbury River.

The draw of the Monmouth County highway bridge at mile 4.0, across the Shrewsbury River at Sea Bright, New Jersey, shall operate as follows:

(a) The draw shall open on signal at all times; except that, from May 15 through September 30, on Saturday, Sunday, and holidays, between 9 a.m. and 7 p.m., the draw need open only on the hour and half hour.

(b) The draw need not be opened at any time for a sail boat unless it is operating under auxiliary power or is being towed by a powered vessel.

(c) The owners of the bridge shall keep in good legible condition two clearance gages with figures not less than eight inches high, designed, installed, and maintained according to the provisions of § 118.160 of this chapter.

Dated: June 18, 2010.

#### Daniel A. Neptun,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0492]

RIN 1625-AA00

#### Safety Zone; Macy's Fourth of July Fireworks Display, Hudson River, New York, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the Hudson River for the Macy's Fourth of July Fireworks Display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays. This zone is intended to restrict vessel traffic from a portion of the Hudson River during the event.

**DATES:** This rule is effective from 7 p.m. on July 4, 2010 until 11 p.m. on July 5, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0492 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0492 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail LTJG Eunice James, Sector New York Waterways Management Division, Marine Events Branch, Coast Guard; telephone (718) 354-4163, e-mail [Eunice.A.James@uscg.mil](mailto:Eunice.A.James@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to

comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because sufficient information regarding the event was not received in time to publish a NPRM followed by a final rule before the effective date, thus making the publication of a NPRM impractical. The Coast Guard did not receive final details regarding the location of the fireworks launch barges and proposed locations for spectator vessel viewing areas necessary to ensure the safety of the event participants and spectators until the Macy's Fireworks Interagency meeting held on May 12, 2010. Immediate action is necessary to prevent vessel traffic from transiting a navigable portion of the Hudson River and to protect the maritime public from the inherent hazards associated with this fireworks event. A delay or cancellation of the event in order to allow for a notice and comment period is contrary to the public interest in having this event occur on July 4 as scheduled.

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**. The rule needs to become effective on the date specified above in order to provide for the safety of the public including spectators and vessels operating in the area near the fireworks display. Delaying the effective date of this rule until after 30 days have elapsed since publication is impractical and a delay or cancellation of the fireworks event to accommodate the 30 day notice period is contrary to the public's interest in having the event occur on July 4th 2010.

##### Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with the inherent explosive and flammable nature of a large 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 New York has determined that fireworks launches proximate to watercrafts pose significant risk to public safety and property. The combination of increased numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, and debris falling into the water has the potential to result in serious injuries or fatalities. This

temporary safety zone is intended to restrict vessels entering the area around the launch platforms to reduce the risk associated with the launch of fireworks.

#### Discussion of Rule

The 34th Annual Macy's Fourth of July Fireworks is scheduled to occur on the waters of the Hudson River. This temporary safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display.

The fireworks display is scheduled to occur from 9:20 p.m. until 9:50 p.m. In order to ensure the area is clear of persons and vessels before the display begins, and to allow sufficient time after the fireworks end to ensure no explosive hazards remain, this rule is effective and will be enforced from 7 p.m. until 11 p.m. on July 4, 2010.

If the event is cancelled due to inclement weather, then this regulation will be effective from 7 p.m. until 11 p.m. on July 5, 2010.

The temporary safety zone will encompass all navigable waters of the Hudson River bounded by a line drawn east from approximate position 40°46'35.43" N, 074°00'37.53" W in New Jersey; to a point in approximate position 40°46'16.98" N, 073°59'52.34" W in New York; thence south along the Manhattan shoreline to approximate position 40°44'48.98" N, 074°00'41.06" W; then west to approximate position 40°44'55.91" N, 074°01'24.94" W; then north along the New Jersey shoreline and back to the point of origin. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port New York or the designated on-scene representative. Entry into, transiting, or anchoring within the regulated area is prohibited unless authorized by the Captain of the Port New York, or the designated on-scene representative. The Captain of the Port New York or the on-scene representative may be contacted via VHF Channel 16.

Public notifications will be made prior to the event via the Local Notice to Mariners, and marine information broadcasts.

#### Regulatory Analyses

We developed this 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 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.

This determination is based on the limited time that vessels will be restricted from the zone. The temporary safety zone will only be in effect for approximately four hours during the evening. The Coast Guard expects insignificant adverse impact to mariners from the zone's activation as the event has been extensively advertised in the public. Also, affected mariners may request authorization from the Captain of the Port New York or the designated on-scene representative to transit the zone.

#### 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 rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the Hudson River, in the vicinity of New York City, NY from 7 p.m. to 11 p.m. on July 4th, 2010.

This temporary 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 four hours on a single-day during the late evening. The event is well-known and extensive advertisement has allowed for public notification. Although the temporary safety zone will apply to the entire width of the river, traffic will be allowed to pass through the area with the permission of the Captain of the Port New York or the designated on-scene representative. Before the effective period, we will issue maritime advisories widely available to users of the waterway.

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 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.

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). 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 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 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 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 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.

### 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 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 concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone on a portion of the Hudson River during the launching of fireworks. An environmental analysis checklist and a 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, and 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, 33306, 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. A new temporary § 165.T01-0492 is added as follows:

#### § 165.T01-0492 Safety Zone; Macy's Fourth of July Fireworks Display, Hudson River, NY, New York

(a) *Regulated area.* The following area is a temporary safety zone: All navigable waters of the Hudson River bounded by a line drawn east from approximate position 40°46'35.43" N, 074°00'37.53" W in New Jersey, to approximate position 40°46'16.98" N, 073°59'52.34"

W in New York, thence south along the Manhattan shoreline to approximate position 40°44'48.98" N, 074°00'41.06" W, then west to approximate position 40°44'55.91" N, 074°01'24.94" W, then north along the New Jersey shoreline and back to the point of origin. (NAD 83).

(b) *Effective period.* This regulation is effective from 7 p.m. until 11 p.m. on July 4th, 2010, and if the fireworks display is postponed, it will be effective from 7 p.m. until 11 p.m. on July 5, 2010.

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

(d) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port New York.

(e) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port New York or the designated on-scene-patrol personnel. These designated on-scene-patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means the operator of a vessel shall proceed as directed.

Dated: June 14, 2010.

**R.R. O'Brien, Jr.,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0602]

RIN 1625-AA00

#### Safety Zone; Vietnam Veterans of America Fireworks Display, Brookings, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the waters of Pelican Bay and the Pacific Ocean for the Vietnam Veterans of America Fireworks Display near Brookings, Oregon. This action is necessary to ensure the safety of the maritime public during the display and will do so by prohibiting all persons and vessels from entering the safety zone