

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0349]

RIN 1625–AA00

Safety Zone; Flagship Niagara Mariners Ball Fireworks, Presque Isle Bay, Erie, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Presque Isle Bay, Erie, PA. This zone is intended to restrict vessels from a portion of Presque Isle Bay during the Flagship Niagara Mariners Ball Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a firework display.

DATES: This rule will be effective from 9:30 p.m. until 11:00 p.m. on June 2, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2012–0349 and are available online by going to <http://www.regulations.gov>, inserting USCG–2012–0349 in the “Keyword” box, and then clicking “Search.” This material is 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 email LT Christopher Mercurio, Chief of Waterway Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email SectorBuffaloMarineSafety@uscg.mil. If you have questions on viewing or submitting material to 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 doing so would be impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and because it would inhibit the Coast Guard’s ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below. 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**. For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period run would be impracticable.

Background and Purpose

Between 10:00 p.m. and 10:20 p.m. on June 2, 2012, a fireworks display will be held on Presque Isle Bay near Erie, PA. The Captain of the Port Buffalo has determined that fireworks launched proximate to watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Flagship Niagara Mariners Ball Fireworks. This zone will be effective and enforced from 9:30 p.m. until 11:00 p.m. on June 2, 2012. This zone will encompass all waters of Presque Isle Bay, Erie, PA within a 420 FT radius of position 42°08’22.2” N and 80°05’15.9” W (NAD 83).

Entry into, transiting, or anchoring within the 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 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. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

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 temporary final rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Presque Isle Bay, Erie, PA between 9:30 p.m. to 11:00 p.m. on June 2, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities because of the minimal amount of time in which the safety zone will be enforced. This safety zone will only be enforced for 90 minutes in a low commercial vessel traffic area. Vessel traffic can pass safely around the zone.

Before the effective period, maritime advisories will be issued, which include a Broadcast Notice to Mariners.

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 this 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.

If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Christopher Mercurio, Chief of Waterway Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email SectorBuffaloMarineSafety@uscg.mil. 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 will not create an environmental risk to health or risk to safety that might 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 will 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, because it involves the establishment of a safety zone. A final environmental analysis checklist and a preliminary 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. 1231; 46 U.S.C. Chapters 701, 3306, 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. Add § 165.T09–0349 to read as follows:

§ 165.T09-0349 Safety Zone; Flagship Niagara Mariners Ball, Presque Isle Bay, Erie, PA.

(a) *Location.* The safety zone will encompass all waters of the Presque Isle Bay, Erie, PA within a 420 FT radius of position 42°08'22.2" N and 80°05'15.9" W (NAD 83).

(b) *Effective and Enforcement Period.* This regulation will be enforced on June 2, 2012, from 9:30 p.m. until 11:00 p.m.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, 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.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: May 3, 2012.

S.M. Wischmann,

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

[FR Doc. 2012-12315 Filed 5-21-12; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO-T-2010-0073]

RIN 0651-AC49

Changes in Requirements for Specimens and for Affidavits or Declarations of Continued Use or Excusable Nonuse in Trademark Cases

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: In order to help assess and ensure the accuracy of the trademark register, the United States Patent and Trademark Office ("USPTO") is revising the Trademark Rules of Practice and the Rules of Practice for Filings Pursuant to the Madrid Protocol to allow the USPTO to: Upon request, require any additional specimens, information, exhibits, and affidavits or declarations deemed reasonably necessary to examine a post registration affidavit or declaration of continued use or excusable nonuse in trademark cases, and for a two-year period, conduct a pilot program for the USPTO to assess the accuracy and integrity of the register; and upon request, require more than one specimen in connection with a use-based trademark application, an allegation of use, or an amendment to a registered mark. These revisions aim to ensure the ability to rely on the trademark register as an accurate reflection of marks that are actually in use in the United States for the goods/services identified in the registration, and thereby reduce costs and burdens on the public.

DATES: This rule is effective on June 21, 2012.

FOR FURTHER INFORMATION CONTACT: Contact Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, by telephone at (571) 272-8742.

SUPPLEMENTARY INFORMATION:

General Information

To benefit the public, the USPTO is revising the Trademark Rules of Practice (37 CFR part 2) and the Rules of Practice for Filings Pursuant to the Madrid Protocol ("Madrid Rules") (37 CFR part 7) to allow the USPTO to: (1) Upon request, require any specimens, information, exhibits, and affidavits or declarations deemed reasonably necessary to examine a post registration affidavit or declaration of continued use in trademark cases, and assess the accuracy and integrity of the register; and (2) upon request, require more than one specimen in connection with a use-based trademark application, an allegation of use, or an amendment to a registered mark.

The revisions will facilitate the USPTO's ability to verify the accuracy of identifications of goods/services. The accuracy of the trademark register as a reflection of marks that are actually in use in the United States for the goods/services identified in the registration serves an important purpose for the public. The public relies on the register to clear trademarks that they may wish to adopt or are already using. Where a

party searching the register uncovers a similar mark, registered for goods or services that may result in confusion of consumers, that party may incur a variety of resulting costs and burdens, such as changing plans to avoid use of the mark, investigative costs to determine how the similar mark is actually used and assess the nature of any conflict, or cancellation proceedings or other litigation to resolve a dispute over the mark. If a registered mark is not actually in use in the United States, or is not in use on all the goods/services recited in the registration, these types of costs and burdens may be incurred unnecessarily. Thus, accuracy and reliability of the trademark register help avoid such needless costs and burdens, and thereby benefit the public.

Specimens of use in use-based trademark applications illustrate how the applicant is using the proposed mark in commerce on particular goods/services identified in the application. Post registration affidavits or declarations of use and their accompanying specimens demonstrate a trademark owner's continued use of its mark in commerce for the goods/services in the registration. As part of a pilot program to assess the accuracy of the identifications of goods/services of currently registered marks, the USPTO anticipates issuing requirements for additional proof of use in conjunction with the review of post-registration maintenance filings for approximately 500 registrations.

Background

On April 26, 2010, the USPTO and the George Washington University Law School hosted a roundtable discussion on the topic of "The Future of the Use-Based Register." Panelists and audience members explored the implications of the decision of the Court of Appeals for the Federal Circuit in *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009), clarifying the high standard for fraud on the USPTO in connection with trademark cases.

A "brainstorming" session at the conclusion of the roundtable resulted in a list of suggestions for how to improve the accuracy of identifications of goods/services. These suggestions were not focused on fraud, as was the *Bose* decision, but rather on the accuracy of the register. Several participants made the suggestion that the USPTO require additional specimens, or a specific type of proof of use of a mark, for all, or more than one, of the identified goods/services. Such additional requirements could help provide information regarding the extent to which a problem