

Dated: November 7, 2022.

**J.W. Spittler,**

*Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2022-0197]

RIN 1625-AA00

#### Safety Zone: Macy's July 4th Fireworks, East River, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is removing the safety zone established by the Captain of the Port Sector New York on April 11, 2001, that can be found under [Docket CGD01-00-242], titled "Safety Zone: Macy's July 4th Fireworks, East River, NY." The safety zone was established to protect persons and vessels from potential hazards associated with the annual 4th of July fireworks display and high concentration of spectator vessels. The Coast Guard has since established a Special Local Regulation that regulates marine traffic in conjunction with the annual marine event, eliminating the need for the safety zone established in 2001. This action removes the existing regulations related to the initial safety zone.

**DATES:** This rule is effective February 17, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0197 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email MSTC S. Stevenson, Waterways Management Division, U.S. Coast Guard; telephone 718-354-4197, email [D01-SMB-SecNY-Waterways@uscg.mil](mailto:D01-SMB-SecNY-Waterways@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations

COTP Captain of the Port New York

DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

##### II. Background Information and Regulatory History

On April 11, 2001, the Coast Guard established the initial safety zone in a final rule, titled "Safety Zone: Macy's July 4th Fireworks, East River, NY" (66 FR 20403). The safety zone was established to protect people and vessels from the potential hazards associated with the annual 4th of July fireworks display and the high concentration of spectator vessels on the East River and Upper Bay during the show. The final rule established a permanent safety zone on the East River and Upper Bay. It contained a spectator area on the East River between the Williamsburg Bridge and North 9th Street, Brooklyn, NY.

On June 21, 2005, the Coast Guard published another final rule, "Safety Zone: Macy's July 4th Fireworks, East River and Upper New York Bay, NY" (70 FR 35534). This final rule modified the parameters of the safety zone to accommodate an added fireworks discharge site near Liberty Island.

Since approximately 2015, the safety zone that this action is removing has not been actively enforced. Instead, temporary safety zones were established to better accommodate the fireworks display and the vessel congestion on the waterway.

On June 21, 2022, the Coast Guard established a new permanent special local regulation, titled "Special Local Regulation; East River 4th of July Fireworks, New York, NY" (87 FR 36763). This action included creating a moving protection zone for the loaded fireworks barges, a buffer zone, and four separate spectator areas that separate vessels based on size. This new special local regulation mirrored the temporary final rules used in recent years, effectively replacing the initial safety zone.

The Coast Guard is issuing this final rule without prior notice and opportunity to comment per 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 a good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b), the Coast Guard finds good cause for not publishing a notice of proposed rulemaking (NPRM) concerning this rule.

Sufficient time has passed since the establishment of the special local regulation and the last enforcement of this safety zone for the Coast Guard to receive any adverse public implications. In addition, during the initial NPRM process of establishing the safety zone, no adverse comments were received that pertained to the Coast Guard modifying the safety zone appropriately. Therefore the Coast Guard has determined that it is unnecessary and contrary to the public interest to publish an NPRM because this action is merely removing a regulatory restriction that is no longer needed.

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 safety zone is no longer needed and has not been enforced since 2015, since temporary safety zones were established to accommodate the fireworks display and amount of spectator vessels on the waterway. This rule requires an administrative change to the **Federal Register** to relieve a regulatory restriction that is no longer applicable or necessary. Therefore, a delayed effective date is unnecessary and contrary to the public interest.

##### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port New York (COTP) has determined that the potential hazards associated with the annual fireworks display and high concentration of spectator's vessels are better managed by the permanent special local regulation established on June 21, 2022. Therefore, the safety zone that this action is removing is no longer necessary.

##### IV. Discussion of the Rule

On April 11, 2001, the Coast Guard published a final rule titled "Safety Zone: Macy's July 4th Fireworks, East River, NY" in the **Federal Register** (66 FR 20403). At the time, the safety zone was necessary to protect people and vessels from potential hazards with the annual 4th of July fireworks display on the East River, NY. The initial final rule establishing this safety zone was later modified to expand the parameters. However, since approximately 2015, several temporary special local regulations effectively substituted the safety zone. The Coast Guard has since established a permanent special local regulation that better manages the hazards associated with the annual fireworks display. therefore the safety

zone that this action removes is no longer needed.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the fact that actions taken to disestablish a safety zone are not considered a significant regulatory action.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above this final rule would not have a significant economic impact on any vessel owner or operator.

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. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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.

### E. 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.

### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and

Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that 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 involves removing a safety zone that was established to manage vessel traffic immediately before, during, and after a fireworks display. It is categorically excluded from further review under paragraph L60(b) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### 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:** 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

### § 165.166 [Removed]

- 2. Remove § 165.166.

Dated: January 31, 2023.

### Z. Merchant,

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

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