

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09-02-009]

RIN 2115-AA97

Safety Zones: Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish safety zones for annual fireworks displays located in the Captain of the Port Buffalo Zone. This action is necessary to provide for the safety of life and property on navigable waters during each event. This action is intended to restrict vessel traffic in a portion of the Captain of the Port Buffalo Zone.

DATES: Comments must be received on or before **[30 days from publication in the FEDERAL REGISTER]**

ADDRESSES: Comments may be mailed or delivered to:
Commanding Officer, U.S. Coast Guard Marine Safety Office
Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203. Marine Safety Office Buffalo 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 MSO Buffalo between 7:30 a.m. and 4 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander David Flaherty, U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203, (716) 843-9574.

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 on this rulemaking (CGD09-02-009), indicate the specific section of this proposal to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format, no larger than 8 ½ by 11 inches, suitable for photocopying and electronic filing. If you would like to know your comments have reached us, please enclose a stamped, self-addressed envelope or postcard. This unit will mail the envelope or postcard by the following workday.

The Coast Guard will consider all comments 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 request a public meeting by writing to MSO Buffalo at the address listed under ADDRESSES explaining why one would be beneficial. If we determine that one would aid this rulemaking, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the Federal Register.

Background and Purpose

The Coast Guard proposes to establish 14 permanent safety zones that will be activated for marine events occurring annually at the same location. The 14 proposed locations are: the waters of the Niagara River within 300 yards of a fireworks barge moored/anchored with its center in approximate position 43 01' 52" N, 078 53' 16" W; all navigable waters of Sodus Bay Channel between a line drawn from buoy R4 to buoy G5 and the West Pier; all waters of the Black Rock Canal between a line drawn bulkhead to bulkhead at Buoy #5 extended to a line drawn bulkhead to bulkhead at Buoy # 12 and the Black Rock Canal Entrance Channel within 1000 feet of the fireworks display located

at position 42-52'39" N, 078-53'42" W.; all waters of Rochester Harbor and the Genesee River encompassed by an area 300-yards around the fireworks barge moored/anchored in approximate position: 43°15.8' N, 077°36.0' W.; the waters of the Niagara River within 300 yards of the fireworks barge moored/anchored with its center in approximate position 43° 01' 06" N, 078° 53' 13" W.; the navigable waters of the Niagara River between Grand Island and Tonawanda, NY.; all waters of Oswego Harbor in Lake Ontario within 300-yards of a fireworks barge moored/anchored in approximate position 43° 28'25" N, 076° 31'01" W.; all waters of Oswego Harbor within an 800-foot radius around the fireworks barge located at 43° 28'0" N, 076° 31'9" W; all waters of Oswego Harbor within a line from West Pierhead Light at 43° 28'25" N, 076° 31' W to the East Pierhead light at 43° 28'22" N, 076° 30'51" W, then along a line extending southeast to 43° 28'08" N, 076° 30'57" W, west along the shore to 43° 27'57" N, 076° 30'45" W, then along a line west to Oswego Harbor Buoy #2, and then following a line back to the West Pierhead Light.; all navigable waters of Presque Isle Bay within an 800-foot arc around the fireworks launch platform located at the end of Dobbins Landing in approximate position 42° 08'19" N, 080°

05'30" W; all waters of Lake Ontario within Port Bay 500 feet around a barge located at approximate position 42° 17'46" N, 076° 50'02" W; St. Lawrence River within Wheathouse Bay, St Lawrence River; a 300 yd radius around Heart Island.

Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard associated with these events, the Captain of the Port has determined that fireworks launches in close proximity to watercraft pose a significant risk to public safety and property. The likely combination of large numbers of inexperienced recreational boaters, 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 in the vicinity of these marine event locations will help ensure the safety of persons and property at these events and help minimize the associated risk.

Establishing permanent safety zones by notice and comment rulemaking gives the public the opportunity to comment on the proposed zones, provides better notice than promulgating temporary rules annually, and decreases the amount of annual paperwork required for these events. The

Coast Guard has not previously received notice of any impact caused by these events.

Discussion of Proposed Rule

The proposed size of these safety zones was determined using National Fire Protection Association and local area fire department standards, combined with the Coast Guard's knowledge of waterway conditions in these areas.

The Coast Guard believes these new regulations will not pose any new problems for commercial vessels transiting the area. In the unlikely event that shipping is affected by these new regulations, commercial vessels may request permission from the Captain of the Port Buffalo to transit through the safety zone. No commercial shipping lanes will be impacted as a result of this rulemaking.

The Coast Guard will announce the exact times and dates for these events by publishing a Notice of Implementation in the FEDERAL REGISTER as well as in the Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and, for those who request it from Marine Safety Office Buffalo, by facsimile (fax).

Regulatory Evaluation

This proposed 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 Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 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 or operators of commercial vessels intending to transit a portion of an activated safety zone.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect for a few hours on the day of the event on an **annual** basis. Vessel traffic can safely pass outside the proposed safety zones during the events. In cases where traffic congestion is greater than expected and blocks shipping channels, traffic may be allowed to pass through the safety zone under Coast Guard escort with the permission of the Captain of the Port Buffalo. Before the effective period, the Coast Guard will issue maritime advisories widely available to users who might be in the affected area by publication in the Federal Register, the Ninth Coast Guard District Local Notice to Mariners, Marine Information Broadcasts and facsimile broadcasts. Additionally, the Coast Guard has not received any negative reports from

small entities affected during these displays in previous years.

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 (Public Law 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 Marine Safety Office Buffalo (see ADDRESSES.)

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed 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 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

The Coast Guard has analyzed this proposed 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.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph 32(g) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under ADDRESSES.

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 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. 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.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, 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. 1231; 50 U.S.C. 191, 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. Add §165.914 to read as follows:

§165.914 Safety Zones: Annual fireworks events in the Captain of the Port Buffalo Zone.

(a) Safety Zones. The following areas are designated safety zones:

(1) Canal Fest, Tonawanda, NY:

(i) Location. All waters of the Niagara River within 300 yards of a fireworks barge moored/anchored with its center in approximate position 43 01' 52" N, 078 53' 16" W (NAD 1983).

(ii) Expected Date. One day in mid July.

(2) Carnival on the Bay, Sodus Point, NY

(i) Location. All navigable waters of Sodus Bay Channel between a line drawn from buoy R4 to buoy G5 and the West Pier.

(ii) Expected Date. One day in the last week of June.

(3) Friendship Festival, Buffalo, NY:

(i) Location. All waters of Lake Erie, the Black Rock Canal between a line drawn bulkhead to bulkhead at Buoy #5 extended to a line drawn bulkhead to bulkhead at Buoy # 12 and the Black Rock Canal Entrance Channel within 1000 feet of the fireworks display located at position 42-52'39" N 078-53'42" W (NAD 1983).

(ii) Expected Date. One day in the first week of July.

(4) Friendship Festival Air Show, Buffalo, NY:

(i) Location. The waters the Niagara River and Lake Erie between Fort Erie, Ontario, CA and Buffalo, NY.

(ii) Expected Date. One day in the first week of July.

(5) Rochester Harbor Fest, Rochester, NY:

(i) Location. All waters of Rochester Harbor and the Genesee River encompassed by an area 300-yards around the fireworks barge moored/anchored in approximate position: 43°15.8' N 077°36.0' W (NAD 1983).

(ii) Expected Date. One day in early August.

(6) Tonawanda/North Tonawanda Fireworks Display:

(i) Location. The waters of the Niagara River within 300 yards of the fireworks barge moored/anchored with its center in approximate position 43° 01' 06" N, 078° 53' 13" W (NAD 1983).

(ii) Expected Date. One day in the first week of July.

(7) Hydromania Power Boat Races, Tonawanda, NY:

(i) Location. All the navigable waters of the Niagara River between Grand Island and Tonawanda, NY.

(ii) Expected Date. Two days in late June.

(8) Oswego Independence Day Fireworks, Oswego, NY:

(i) Location. All waters of Oswego Harbor, in Lake Ontario, within 300-yards of a fireworks barge moored/anchored in approximate position 43° 28'25" N, 076° 31'01" W (NAD 1983).

(ii) Expected Date. One day in the first week of July.

(9) Oswego Harborfest Fireworks Display, Oswego, NY:

(i) Location. All waters of Oswego Harbor within an 800-foot radius around the fireworks barge located at 43° 28'0" N, 076° 31'9" W (NAD 1983).

(ii) Expected Date. One day in the last week of July.

(10) Oswego Harborfest Tall Ship Battle Demo, Oswego, NY:

(i) Location. All waters of Oswego Harbor within a line from West Pierhead Light at 43° 28'25"N, 076° 31' W to East Pierhead light at 43° 28'22" N, 076° 30'51" W, then along a line extending southeast to 43° 28'08"N, 076° 30'57" , west along the shore to 43° 27'57"N, 076° 30'45"W, then following a line west to Oswego Harbor Buoy #2, and along a line back to the West Pierhead Light (NAD 1983).

(ii) Expected Date. One day in the last week of July.

(11) We Love Erie Days Fireworks Display, Erie, PA:

(i) Location. All navigable waters of Presque Isle Bay within an 800-foot arc around the fireworks launch platform located at the end of Dobbins Landing in approximate position 42° 08'19" N, 080° 05'30" W (NAD 1983).

(ii) Expected Date. One day in mid August.

(12) Thom Graves Memorial Fireworks Display, Wolcott, NY:

(i) Location. All waters of Lake Ontario within Port Bay, 500 feet around a barge located at approximate position 42° 17'46" N, 076° 50'02" W. (NAD 1983).

(ii) Expected Date. One day in the first week of July.

(13) Thunder on Wheathouse Bay Power Boat Races, Ogdensburg, NY:

(i) Location. All waters of St Lawrence River within Wheathouse Bay.

(ii) Expected Date. Three days in mid June.

(14) Fireworks Over Boldt Castle, Alexandria Bay, NY:

(i) Location. All waters of the St Lawrence River within a 300-yard radius of the fireworks display on Heart Island.

(ii) Expected Date. One day in the first week of July.

(b) Regulations.

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

(2) All persons and vessels shall 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) The safety zones in this regulation are outside navigation channels and will not adversely affect shipping. In cases where shipping is affected, 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 Group Buffalo on Channel 16, VHF-FM.

(c) Effective Period. The Captain of the Port Buffalo will publish at least 10 days in advance a Notice of Implementation in the FEDERAL REGISTER as well as in the Ninth Coast Guard District Local Notice to Mariners the dates and times this section is in effect.

DATED: _____

S. D. HARDY

Captain, U.S. Coast Guard

Captain of the Port Buffalo