



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0167]

RIN 1625-AA00

Safety Zone; Fireworks, Hudson River, Rhinecliff, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of the Hudson River in the vicinity of Rhinecliff, NY for a fireworks display.

This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays. This rule is intended to restrict all vessels from a portion of the Hudson River before, during, and immediately after the fireworks event.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0167 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Ensign Kimberly Farnsworth, Coast Guard; Telephone (718) 354-4163, e-mail Kimberly.A.Farnsworth@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:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0167), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your

submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2012-0167" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2012-0167" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room

W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

Public meeting

We do not plan now to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting 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.

Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C

1226, 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

This proposed safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display. Based on the inherent hazards associated with fireworks, the Captain of the Port (COTP) New York has determined that fireworks launches in close proximity to water crafts pose a significant risk to public safety and property. The combination of increased number of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, and debris especially burning debris falling on passing or spectator vessels has the potential to result in serious injuries or fatalities. The proposed temporary safety zone will restrict vessel movement in the Hudson River around the location of the fireworks launch platform before, during, and after the fireworks display.

Discussion of Proposed Rule

Legion Fireworks is putting on a fireworks display for a wedding ceremony on the waters of the Hudson River in the vicinity of Rhinecliff, NY. The proposed safety zone is necessary to ensure the safety of spectators and vessels

from hazards associated with the fireworks display.

The fireworks display will occur from 10:00 p.m. until 10:15pm. In order to coordinate the safe movement of vessels within the area and to ensure that the area is clear of unauthorized persons and vessels before, during, and immediately after the fireworks launch, this zone will be enforced from 9:30 p.m. until 10:45 p.m. on June 23, 2012.

The proposed safety zone will include all navigable waters of the Hudson River within a 165-yard radius of the fireworks barge located in approximate position 41°55'13.83"N, 073°57'18.52"W, in the vicinity of Rhinecliff, NY, approximately 210 yards west of Rhinecliff Landing, Rhinecliff, NY. Vessels will still be able to transit the surrounding area and may be authorized to transit through the proposed safety zone with the permission of the COTP or the designated representative. The COTP does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on the proposed zone location, size, and length of time the zone will be activated.

The final rule will not be published 30 days before the event and the effective date of this proposed rule as is generally required by 5 U.S.C. 553(d)(3). The Coast Guard will accept comments on this shortened period and address them in the final rule.

Regulatory Analyses

We developed this proposed 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.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, as supplemented by Executive Order 13563, 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.

The Coast Guard's enforcement of this proposed safety zone will be of short duration, approximately 75 minutes. The proposed safety zone will restrict access to only a small portion of the navigable waters of the Hudson River. Vessels will be able to navigate around the proposed safety zone. Furthermore, vessels may be authorized to transit

through the proposed safety zone with the permission of the COTP or the designated representative.

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 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 small portion of the Hudson River during the effective period.

This proposed safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone would be activated and thus subject to enforcement, for only 75 minutes late at night when vessel traffic is low. Vessel traffic could pass safely around the safety zone. Before

the activation of the zone, the Coast Guard will issue maritime advisories widely available to users of the river.

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 Ensign Kimberly Farnsworth, Coast Guard Sector New York Waterways Management Division; telephone 718-354-4163, e-mail Kimberly.A.Farnsworth@uscg.mil. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

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

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 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 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 rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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. 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 Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide 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 one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. This proposed rule involves the establishment of a temporary safety zone on a portion of the Hudson River and appears to be categorically excluded, under figure 2-1, paragraph (34)(g), the Commandant Instruction.

We seek any comments or information that may lead to

the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and record keeping requirements, 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 AREA

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0167 to read as follows:

§165.T01-0167 Safety Zone; Fireworks, Hudson River, Rhinecliff, NY.

(a) Regulated Area. The following area is a temporary safety zone: all navigable waters of the Hudson River within a 165-yard radius of the fireworks barge located in approximate position 41°55'13.83"N, 073°57'18.52"W, in the vicinity of Rhinecliff, NY, approximately 210 yards west of Rhinecliff Landing, Rhinecliff, NY.

(b) Definitions. For purposes of this section "Designated representative" is any Coast Guard commissioned, warrant,

or petty officer who has been designated by the Captain of the Port New York (COTP) to act on the COTP's behalf.

(c) Effective Period. This rule will be effective from 9:30 p.m. to 10:45 p.m. on June 23, 2012.

(d) Regulations. (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for fireworks barge and accompanying vessels, will be allowed to transit the safety zone without the permission of the COTP or the designated representative.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated representative. 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.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated representative via VHF channel 16 or 718-354-4353 (Sector New York command center) to obtain permission to do so.

Dated: March 23, 2012

L. L. Fagan,
Rear Admiral, U.S. Coast Guard
Captain of the Port New York

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