



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2015-0492]

RIN 1625-AA00

Safety Zone; Lower Niagara River at Niagara Falls, New York

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

---

SUMMARY: The Coast Guard proposes to establish regulations for a permanent safety zone within the Captain of the Port Zone Buffalo on the Lower Niagara River, Niagara Falls, NY.

This proposed rule is intended to restrict vessels from a portion of the Lower Niagara River considered not navigable as listed in the United States Coast Pilot Book 6 - Great Lakes: Lake Ontario, Erie, Huron, Michigan and Superior and St. Lawrence River and more specifically as described below. The safety zone to be established by this proposed rule is necessary to protect the public and vessels from the hazards associated with the heavy rapids in the narrow waterway of the Lower Niagara River.

DATES: Comments and related materials must be received by the Coast Guard on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2015-0492 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) Delivery: At the 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 email LTJG Amanda Garcia, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716-843-9322, e-mail [SectorBuffaloMarineSafety@uscg.mil](mailto:SectorBuffaloMarineSafety@uscg.mil). If you have questions on viewing or submitting material to the docket,

call Barbara Hairston, Program Manager, Docket Operations,  
telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule

A. 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.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2015-0492), 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 at <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, it will be considered received by the Coast Guard when the comment is successfully transmitted. If you fax, hand

deliver, or mail your comment, it will be considered received by the Coast Guard when the comment 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>, type the docket number [USCG-2015-0492] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

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.

## 2. 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>, type the docket number (USCG-2015-0492) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. 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.

### 3. 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).

### 4. Public meeting

We do not now plan to hold a separate public meeting on this subject. You may submit a request for an additional and/or separate meeting using one of the methods specified under ADDRESSES. Any subsequent meetings held where public comment is sought to aid this rulemaking will be held at a time and place announced by a later notice in the Federal Register.

## B. Regulatory History and Information

The Coast Guard has already established a permanent safety zone in the Upper Niagara River per 33 CFR 165.902(a) to protect the boating public from the dangers of the waters above and at Niagara Falls. These waters include the United States waters of

the Niagara River from the crest of the American and Horseshoe Falls, Niagara Falls, New York to a line drawn across the Niagara River from the downstream side of the mouth of Gill Creek to the upstream end of the breakwater at the mouth of the Welland River.

The heavy rapids in the section of the Lower Niagara River downstream of Niagara Falls have not historically been subject to regular navigation of vessels. In early 2014, the Captain of the Port Zone Buffalo received reports of vessels transiting this section of the Niagara River. These reports prompted further evaluation of the safety of the entire waterway. This NPRM was not preceded by an Advance Notice of Proposed Rulemaking (ANPRM), and thus no public comments have yet to be received.

### C. Basis and Purpose

Due to the reports of vessels transiting this section of the Lower Niagara River an evaluation of the safety of navigation on the heavy rapids was undertaken by federal, state, and local agencies that have cognizance over the waterway. These agencies include the United States Coast Guard, the New York Office of Parks, Recreation, and Historic Preservation (OPRHP), and the New York State Park Police (NYSPP).

The purpose of the evaluation was to determine what, if any, rescue capability exists that would be able to respond to

vessels and/or passengers in distress in the heavy rapids of the river south of the whirlpool rapids to the International Railroad Bridge.

Currently, the only agencies that could possibly provide response capabilities include the United States Coast Guard and the New York State Park Police (NYSPP). The NYSP, per a Memorandum of Agreement between the New York State Office of Parks, Recreation and Historic Preservation (OPRHP), the NYSP, and the Coast Guard, is the Search and Rescue Mission Coordinator (SMC) in the proposed area.

The NYSP does not have search and rescue capabilities in these waters beyond shore-based rescue and recovery. Additionally, applicable New York state law prohibits launching a vessel in these areas. The United States Coast Guard similarly is limited in its ability to respond to any vessel casualty that may occur in these waters, as there are neither vessel capabilities nor adequate air support in the area.

Accordingly, the Captain of the Port Zone Buffalo has determined that no feasible rescue capability exists for vessels in distress or persons in the water in the heavy rapids south of the whirlpool rapids to the International Railroad Bridge. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231

D. Discussion of Proposed Rule

With the aforementioned hazards and lack of adequate rescue capability, the Captain of the Port Zone Buffalo proposes to establish a permanent safety zone that will ensure the safety of the public.

(a) The proposed safety zone will encompass all waters of the Lower Niagara River, Niagara Falls, NY from a straight line drawn from position 43° 07'10.70" N, 079°04'02.32" W (NAD 83) and 43° 07'09.41" N, 079°04'05.41" W (NAD 83) just south of the whirlpool rapids from the east side of the river to the international border of the United States, to a straight line drawn from position 43° 06'34.01" N, 079°03'28.04" W (NAD 83) and 43° 06'33.52" N, 079°03'30.42" W (NAD 83) at the International Railroad Bridge. Entry into, transiting, or anchoring within the proposed safety zone is prohibited unless authorized by the Captain of the Port Zone Buffalo.

#### E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

##### 1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving

Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed 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 proposed rule will be relatively small and is designed to minimize its impact on navigable waters.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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 proposed rule will not have a significant economic impact on a

substantial number of small entities. This proposed rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit in the portion of American waters at the whirlpool rapids.

This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: there have not been a substantial number of small entities attempting navigation on this section of the river.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 proposed rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), the Coast Guard wants to assist small entities in understanding this proposed 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 contact the person listed in the FOR FURTHER INFORMATION

CONTACT, above. The Coast Guard will not retaliate against small entities that comment on this proposed rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

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

#### 5. Federalism

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 proposed rule under that Order and determined that this rulemaking does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact 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.

#### 7. 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 an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### 8. 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.

#### 9. 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.

#### 10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed 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.

#### 11. 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.

#### 12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. 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. This proposed rule is categorically excluded, under figure 2-1, paragraph (34) (g), of the Commandant Instruction because it involves the establishment of a safety zone.

A preliminary environmental analysis checklist and a preliminary categorical exclusion determination are available in the docket where indicated under ADDRESSES. 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**

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, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.902(b) to read as follows:

**§ 165.902 Niagara River at Niagara Falls, New York—safety zone.**

\* \* \* \* \*

(b) The following is a safety zone - The United States waters of the Lower Niagara River, Niagara Falls, NY from a straight line drawn from position 43° 07'10.70" N, 079°04'02.32" W (NAD 83) and 43° 07'09.41" N, 079°04'05.41" W (NAD 83) just south of the whirlpool rapids from the east side of the river to the international border of the United States, to a straight line drawn from position 43° 06'34.01" N, 079°03'28.04" W (NAD 83) and 43° 06'33.52" N, 079°03'30.42" W (NAD 83) at the International Railroad Bridge.

Dated: June 15, 2016.

B. W. Roche  
Captain, U. S. Coast Guard  
Captain of the Port Buffalo  
[FR Doc. 2016-14620 Filed: 6/20/2016 8:45 am; Publication Date: 6/21/2016]