

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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

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.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "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 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 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.T05-016 to read as follow:

§ 165.T05-016—Security Zone: Military Ocean Terminal Sunny Point and Lower Cape Fear River, NC.

(a) *Location.* The following area is a security zone: the area and waters bound by the following points: beginning at a point located at 34°02.03' N, 077°56.60' W near Cape Fear River Channel Lighted Buoy 9 (LLNR 30355), extending south along the shore to 34°00.00' N, 077°57.25' W, proceeding south to 33°59.16' N, 077°57.00' W at then proceeding north to 34°00.65' N, 077°56.41' W at Cape Fear River Channel Lighted Buoy 31 (LLNR 30670 & 39905) back to the point of origin at 34°02.03' N, 077°56.60' W.

(b) *Captain of the Port.* As used in this section, *Captain of the Port* means the Commanding Officer of the Marine Safety Office Wilmington, NC, or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on his or her behalf.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in 33 CFR 165.33.

(2) Persons or vessels with a need to enter into or pass through the security zone, must first request authorization from the Captain of the Port. The Captain of the Port's representative enforcing the zone can be contacted on VHF marine band radio, channel 16. The Captain of the Port can be contacted at (910) 772-2000 or toll free (877) 229-0770.

(d) *Enforcement.* The Captain of the Port may be assisted by the U.S. Army in the patrol and enforcement of this security zone.

Dated: April 8, 2004.

Jane M. Hartley,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, North Carolina.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01-03-102]

RIN 1625-AA00

Safety Zones; Coast Guard Activities New York Fireworks Displays

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish five permanent safety zones for fireworks displays located in Pierhead Channel, NJ; Lower New York Bay; Raritan Bay; Long Island Sound; the Hudson River; and revise the section title. This action is necessary to protect the life and property of the maritime public from the hazards posed by these events. Entry into or movement within these proposed zones during the effective periods is prohibited without approval of the Captain of the Port (COTP), New York.

DATES: Comments and related material must reach the Coast Guard on or before May 27, 2004.

ADDRESSES: You may mail comments and related material to Waterways Oversight Branch (CGD01-03-102), Coast Guard Activities New York, 212 Coast Guard Drive, room 203, Staten Island, NY 10305. The Waterways Oversight Branch of Coast Guard Activities New York 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 the Waterways Oversight Branch, room 203, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354-4191.

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 for this rulemaking (CGD01-03-102), indicate the specific section of this document to which each comment applies, and give the reason for each

comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material 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 submit a request for a meeting by writing to the Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish five permanent safety zones that will be enforced for fireworks displays occurring throughout the year that are not held on an annual basis but are normally held in one of these five locations. The five locations are in Pierhead Channel, NJ, north of the Kill Van Kull Channel; Lower New York Bay, southeast of Midland Beach; Raritan Bay east of Wolfes Pond Park; Long Island Sound, east of Orchard Beach; and the Hudson River, east of Newburgh, NY. The Coast Guard received 14 applications for fireworks displays in these new areas between June and September 2003. There were no fireworks displays at these sites in calendar year 2000. A temporary safety zone was established for each display, with limited notice for preparation by the U.S. Coast Guard and limited opportunity for public comment. Establishing five permanent safety zones by notice and comment rulemaking would provide the public the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active. The Coast Guard has not received notice of any impact to waterway traffic resulting from the enforcement of the zones. Marine traffic would still be able to pass safely around the proposed safety zones because the zone prohibits vessels from entering only the actual zone. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the proposed safety zones.

This proposed rule would revise 33 CFR 165.168 by adding five permanent safety zones to the 34 existing ones and would revise the section's title to

identify the Coast Guard Captain of the Port zone where the safety zones are located instead of listing all affected waterways.

We also propose to remove the four figures in the regulation showing the overview of the safety zone locations. These will be made available in the "USCG Notices" section online at: <http://www.harborops.com>. Mariners are also able to plot these positions on their own navigation charts.

This proposed rule and the current safety zones in 33 CFR 165.168 are for fireworks displays using 12" shells. We will enforce a smaller safety zone for displays in these locations that use fireworks shells smaller than 12". However, the boundary will still be located within the listed safety zone boundary of this regulation for fireworks displays using shells smaller than 12".

Discussion of Proposed Rule

Pierhead Channel, NJ Safety Zone

The proposed safety zone includes all waters of Pierhead Channel and the Kill Van Kull within a 360 yard radius of the fireworks barge in approximate position 40°39'18.8"N, 074°04'39.1"W (NAD 1983), about 315 yards north of the Kill Van Kull Channel. The proposed safety zone prevents vessels from transiting a portion of Pierhead Channel and the Kill Van Kull and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic would still be able to pass safely through the eastern 175 yards of the 460-yard wide Pierhead Channel, and the southern 360 yards of the 400-yard wide Kill Van Kull.

Midland Beach, Staten Island Safety Zone

The proposed safety zone includes all waters of Lower New York Bay within a 500-yard radius of the fireworks barge in approximate position 40°34'12.0"N, 074°04'29.6"W (NAD 1983), about 800 yards southeast of Midland Beach. The proposed safety zone prevents vessels from transiting a portion of Lower New York Bay and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic would still be able to pass safely around the safety zone. The size of this proposed zone would be 500 yards to allow for the vessels involved to be closer to shore if the Tides and Currents are favorable the night of the display. The size of the zone to be enforced during any fireworks display would be within 360 yards of the fireworks barge. This 360-yard safety zone would be wholly contained within this proposed 500-yard safety zone.

Wolfes Pond Park, Staten Island Safety Zone

The proposed safety zone includes all waters of Raritan Bay within a 500 yard radius of the fireworks barge in approximate position 40°30'52.1"N 074°10'58.8"W (NAD 1983), about 540 yards east of Wolfes Pond Park. The proposed safety zone would prevent vessels from transiting a portion of Raritan Bay and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic would still be able to pass safely around the safety zone. The size of this proposed zone would be 500 yards to allow for the vessels involved to be closer to shore if the Tides and Currents are favorable the night of the display. The size of the zone to be enforced during any fireworks display would be within 360-yards of the fireworks barge. This 360-yard safety zone would be wholly contained within this proposed 500-yard safety zone.

Orchard Beach, The Bronx, Safety Zone

The proposed safety zone includes all waters of Long Island Sound in an area bound by the following points: 40°51'43.5"N 073°47'36.3"W; thence to 40°52'12.2"N 073°47'13.6"W; thence to 40°52'02.5"N 073°46'47.8"W; thence to 40°51'32.3"N 073°47'09.9"W (NAD 1983), thence to the point of origin. The proposed safety zone prevents vessels from transiting a portion of Long Island Sound and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic would still be able to pass safely around the safety zone. This safety zone is shaped to allow the sponsor the flexibility to use one or two barges per display.

Newburgh, NY, Safety Zone

The proposed safety zone includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 41°30'01.2"N 073°59'42.5"W (NAD 1983), about 930 yards east of Newburgh, NY. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic would still be able to pass safely around the safety zone.

The proposed size of these safety zones was determined using National Fire Protection Association and New York City Fire Department standards for 12 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area. Proposed barge

locations and mortar sizes were adjusted to try and ensure the proposed safety zone locations would not interfere with any known marinas or piers.

The Coast Guard does not know the actual dates that these safety zones will be enforced at this time. Coast Guard Activities New York will give notice of the enforcement of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners, electronic mail distribution, and on the Internet at <http://www.harborops.com>. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public. The Coast Guard expects that the notice of the enforcement of each permanent safety zone in this rulemaking will normally be made between thirty and twenty one days before the zone is actually enforced. Fireworks barges used in the locations stated in this rulemaking will also have a sign on the port and starboard side of the barge labeled "FIREWORKS—STAY AWAY". This will provide on-scene notice that the safety zone is or will be enforced on that day. This sign will consist of 10" high by 1.5" wide red lettering on a white background. There will also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 15 minutes after its completion to enforce the safety zone.

The effective period for these proposed safety zones is from 6 p.m. to 1 a.m. However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present.

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 locations, size, and length of time the zone will be active.

Regulatory Evaluation

This proposed 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 expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This finding is based on the short amount of time that vessels would be restricted from the zones, and the small zone sizes positioned in low vessel traffic areas. Vessels may still transit through all Traffic Lanes to, and from, the Port of New York/New Jersey. Vessels may also still transit through Pierhead Channel, the Kill Van Kull, Lower New York Bay, Raritan Bay, western Long Island Sound, and the Hudson River during these events. Vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zones. Advance notifications would also be made to the local maritime community by the Local Notice to Mariners, electronic mail distribution, and on the Internet at <http://www.harborops.com>. Marine information and facsimile broadcasts may also be made to notify the public. Additionally, the Coast Guard anticipates that these safety zones will only be enforced 18–20 times per year.

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 would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Pierhead Channel, the Kill Van Kull, Lower New York Bay, Raritan Bay, western Long Island Sound, and the Hudson River, during the times these proposed zones are enforced.

These proposed safety zones would not have a significant economic impact

on a substantial number of small entities for the following reasons: Vessel traffic could pass safely around the safety zones. Vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zones. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present. Before the effective period, we would issue maritime advisories widely available to users of the Port of New York/New Jersey by Local Notice to Mariners, electronic mail distribution, and on the Internet at <http://www.harborops.com>. Marine information and facsimile broadcasts may also be made.

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 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 Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4191.

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 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

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.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(g) as it would establish five safety zones.

A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available in the docket where indicated under ADDRESSES. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

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 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 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. In § 165.168—
 - a. Revise the section heading;
 - b. Revise paragraph (a) introductory text, and add paragraphs (a)(10), (a)(11) and (a)(12);
 - c. Revise paragraph (b) introductory text, and add paragraph (b)(11);
 - d. Revise paragraph (c) introductory text;
 - e. Revise paragraph (d) introductory text, and add paragraph (d)(12); and
 - f. Remove figures 1 through 4 at the end of the section.

g. In paragraph (f), remove the word "Effective" from the paragraph heading and add in its place the word "Enforcement" and in the first sentence of the paragraph remove the words "is effective" and add in their place the words "will be enforced".

The revisions, removals, and additions read as follows:

§ 165.168 Safety Zones; Coast Guard Activities New York Fireworks Displays.

(a) *New York Harbor.* The following areas are safety zones:

* * * * *

(10) *Pierhead Channel, NJ Safety Zone:* All waters of Pierhead Channel and the Kill Van Kull within a 360-yard radius of the fireworks barge in approximate position 40°39'18.8" N 074°04'39.1" W (NAD 1983), approximately 315 yards north of the Kill Van Kull Channel.

(11) *Midland Beach, Staten Island Safety Zone:* All waters of Lower New York Bay within a 500-yard radius of the fireworks barge in approximate position 40°34'12.0" N 074°04'29.6" W (NAD 1983), approximately 800 yards southeast of Midland Beach.

(12) *Wolfe Pond Park, Staten Island Safety Zone:* All waters of Raritan Bay within a 500-yard radius of the fireworks barge in approximate position 40°30'52.1" N 074°10'58.8" W (NAD 1983), approximately 540 yards east of Wolfe Pond Park.

(b) *Western Long Island Sound.* The following areas are safety zones:

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(11) *Orchard Beach, The Bronx, Safety Zone:* All waters of Long Island Sound in an area bound by the following points: 40°51'43.5" N 073°47'36.3" W; thence to 40°52'12.2" N 073°47'13.6" W; thence to 40°52'02.5" N 073°46'47.8" W; thence to 40°51'32.3" N 073°47'09.9" W (NAD 1983), thence to the point of origin.

(c) *East River.* The following areas are safety zones:

* * * * *

(d) *Hudson River.* The following areas are safety zones:

* * * * *

(12) *Newburgh, NY, Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 41°30'01.2" N 073°59'42.5" W (NAD 1983), approximately 930 yards east of Newburgh, NY.

* * * * *

Dated: April 13, 2004.

C.E. Bone,

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

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