



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0208]

RIN 1625-AA00

Safety Zone; XA The Experimental Agency Fireworks, Pier 34, East River, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the East River in the vicinity of Pier 34, Manhattan, NY. 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 East River before, during, and immediately after the fireworks event.

DATES: This rule is effective on May 16, 2013 from 8:00 p.m. until 9:15 p.m.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0208]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ensign Kimberly Beisner, Sector New York, Waterways Management, U.S. Coast Guard; Telephone (718) 354-4163, E-Mail Kimberly.A.Beisner@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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to 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 good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because sufficient information about the event was not received in time to publish a NPRM followed by a final rule before the effective date, thus making the publication of a NPRM impractical. The Coast Guard received the information about the event on February 20, 2013. The event sponsor was unwilling to delay the event since the event is being held in correlation with a film premiere event. Any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest, since immediate action is needed to provide for the safety of life and property on navigable waters from the hazards associated with fireworks including unexpected detonation and burning debris.

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 for the same reasons specified above

B. Basis and Purpose

The legal basis for this rule is 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.

This temporary safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display.

C. Discussion of the Final Rule

This rule establishes a temporary safety zone on the navigable waters of the East River, in the vicinity of Pier 34, Manhattan, NY. All persons and vessels shall comply with the instructions of the Captain of the Port (COTP) New York or the designated representative during the enforcement of the temporary safety zone. Entering into, transiting through, or anchoring within the temporary safety zone is prohibited unless authorized by the COTP, or the designated representative.

Based on the inherent hazards associated with fireworks, the 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. This temporary safety zone will restrict vessels from a portion of the East River around the location of the fireworks launch platform before, during, and immediately after the fireworks display.

The Coast Guard has determined that this regulated area will not have a significant impact on vessel traffic due to its temporary nature and limited size and the fact that vessels are allowed to transit the navigable waters outside of the regulated area.

Advanced public notifications may also be made to the local mariners through appropriate means, which may include, but are not limited to, the Local Notice to Mariners as well as Broadcast Notice to Mariners.

D. Regulatory Analyses

We developed this 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.

1. Regulatory Planning and Review

This 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.

The Coast Guard's implementation of this temporary safety zone will be of short duration and is designed to minimize the

impact to vessel traffic on the navigable waters. This temporary safety zone will only be enforced for a short period, in the late evening. Due to the location, vessels will be able to transit around the zone in a safe manner.

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 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.

(1) This 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 portion of the navigable waters in the vicinity of the marine event during the effective period.

(2) This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect a short period; late at night when vessel traffic is low, vessel traffic could pass safely around the safety zone, and the Coast Guard will notify mariners before activating the zone by appropriate means which may include but are not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

3. 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. 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.

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.

4. 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).

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 rule under that Order and determined that this rule 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 INTFORMATION 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will 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 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

We have analyzed this 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 create an environmental risk to health or risk to safety that may disproportionately affect children.

11. 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.

12. Energy Effects

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

14. Environment

We have analyzed this 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 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 the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a 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 rule.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and record keeping 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 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.T01-0208 to read as follows:

§165.T01-0208 Safety Zone; XA The Experimental Agency Fireworks, Pier 34, East River, NY.

(a) Regulated Area. The following area is a temporary safety zone: all navigable waters of East River within a 180-yard radius of the fireworks barge located in approximate position 40°42'28.5"N, 073°59'9.9"W, approximately 182 yards south east of Pier 34, Manhattan, NY.

(b) Effective Dates and Enforcement Periods. This rule is effective and will be enforced on May 16, 2013 from 8:00 p.m. until 9:15 p.m.

(c) Definitions. The following definitions apply to this section:

(1) Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) Regulations.

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

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

(3) All spectators given permission to enter or operate in the regulated area 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, vessel spectator shall proceed as directed.

(4) Spectators 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: April 10, 2013

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

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Date: 04/26/2013]