

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C.804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 5, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03-17967 Filed 7-15-03; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09-03-233]

RIN 1625-AA00

Safety Zone; Head of the Cuyahoga Regatta, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone for the annual Head of the Cuyahoga Regatta in Cleveland, Ohio. This safety zone is necessary to control vessel traffic within the immediate location of the regatta and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of the Cuyahoga River.

DATES: Comments and related material must reach the Coast Guard on or before August 15, 2003.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Cleveland (CGD09-03-233), 1055 East Ninth Street, Cleveland, Ohio 44114. Marine Safety Office Cleveland 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 available for inspection or copying at Coast Guard MSO Cleveland between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, at (216) 937-0128.

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 (CGD09-03-233), 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 include 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 plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard MSO Cleveland 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 later notice in the **Federal Register**.

Background and Purpose

The Head of the Cuyahoga Regatta will take place annually on the Cuyahoga River. A permanent safety zone will be established on the Cuyahoga River to protect competitors and course markings from recreational and commercial vessels, and to prevent interference with the competition. The safety zone will only be activated during the regatta.

Discussion of Proposed Rule

The safety zone will be activated annually on the third Saturday of September from 8 a.m. until 5 p.m. The safety zone will encompass the Cuyahoga River from Collision Bend down river to the mouth of the confluence with the Old River. In order to minimize the impact on commercial waterway users, commercial vessels will be allowed to transit the safety zone between the hours of 11 a.m. and 1 p.m. Recreational vessels will be allowed to transit the safety zone during the regatta with an escort by the event sponsor or the Coast Guard.

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

This determination is based on the short amount of time that vessels will be restricted from the zones, and the actual location of the safety zones within the waterways.

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 the activated safety zone.

This safety zone 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 and there is a substantial break during the event to allow commercial vessel transits. Recreational vessels can safely pass through the proposed safety zones during the event under sponsor or Coast Guard escort. Before the activation of the safety zone, the Coast Guard will issue maritime advisories available to users who may be impacted through notification in the **Federal Register**, the Ninth Coast Guard District Local Notice to Mariners, and through Marine Information Broadcasts. Additionally, the Coast Guard has not received any reports from small entities negatively affected during previous events.

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 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 Cleveland (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.

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

The Coast Guard has 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.

Environment

We have considered the environmental impact of this proposed rule under Commandant Instruction M16475.1C, 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 categorical exclusion under Section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under Figure 2-1, paragraph 35(a) of the Instruction, from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping 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 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 § 165.920 to read as follows:

§ 165.920 Safety Zone; Head of the Cuyahoga Regatta, Cleveland, OH

(a) *Location.* The following area is a safety zone: All navigable waters of the Cuyahoga River between the positions 41°29'19" N, 081°42'30" W (Collision Bend) and 41°29'55" N, 081°42'24" W (confluence with the Old River). These coordinates are based upon North American Datum (NAD 1983).

(b) *Enforcement period.* This section will be enforced annually on the third Saturday of September from 8 a.m. until 5 p.m.

(c) *Regulations.* No vessel shall enter, transit through, or anchor within this Safety Zone unless authorized by the Captain of the Port, Cleveland or his designated on-scene representative. Commercial vessels may transit through the safety zone from 11 a.m. until 1 p.m. Recreational vessels may transit the safety zone during the event under escort by the event sponsor or the Coast Guard. Permission to deviate from the above rules must be obtained from the Captain of the Port or the Patrol Commander via VHF/FM radio, Channel 16 or by telephone at (216) 937-0111. All persons must comply with the instructions of the Captain of the Port or his or her designated representative.

Dated: June 30, 2003.

Lorne W. Thomas,

*Commander, Coast Guard, Captain of the Port
Cleveland.*

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01-03-066]

RIN 1625-AE84

Regulated Navigation Area; Arthur Kill, NY and NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a Regulated Navigation Area (RNA) to impose restrictions on vessels transiting to the North of Shooters Island Reach, Elizabethport Reach, and Gulfport Reach of the Arthur Kill during U.S. Army Corps of Engineers dredging operations in those areas. This action is necessary to provide for the safety of life and property on navigable waters during Army Corps of Engineers and Port Authority of New York/New Jersey dredging operations that impinge upon the navigable portion of the channel and require the temporary relocation of navigational aids. This action is intended to reduce the risks of collisions, groundings and other navigational mishaps.

DATES: Comments and related material must reach the Coast Guard on or before August 15, 2003.

ADDRESSES: You may mail comments and related material to Waterways Oversight Branch (CGD01-03-066), Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 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 room 204, 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 E. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354-4012.

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 (CGD01-03-066), 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 later notice in the **Federal Register**.

Background and Purpose

The Arthur Kill Channel is the proposed area to be designated as an RNA. This channel is located in the waters between Elizabeth, NJ and Staten Island, NY. The proposed RNA would enhance vessel safety during the extensive channel-deepening project being undertaken by the U.S. Army Corps of Engineers, which involves dredging and blasting in these areas. Current channel depths restrict the full economy of existing and future generations of deep draft vessels. Tankships arriving in the port with drafts approaching the 45 foot controlling depths of Ambrose and Anchorage Channels must lighten some of their cargo to barges in the deep New York Harbor Anchorage Grounds in order to safely transit the 35 foot Arthur Kill. This results in substantial lightering and delay costs.

Container vessels cannot lighten in the Anchorage Grounds and therefore must load to less than full drafts. This project, which is expected to last approximately five years, will deepen the existing 35-foot channels to 41 feet to accommodate deeper draft vessels. The dredging areas will continue to be available for use by the general public.

Proposed restrictions on vessel transits during this project are as

follows: (1) No vessel shall enter or transit any work area where drill barges and/or dredges are located without permission of Vessel Traffic Service New York (VTSNY). One-way traffic will be maintained during this project in the active work areas. Permission to transit the work area will normally not be given during blasting operations.

(2) Each vessel transiting in the vicinity of the work areas, where drill barges and/or dredges are located, is required to do so at "no wake" speed.

(3) No vessel shall enter the RNA when they are advised by the drilling barge or VTSNY that a misfire or hangfire has occurred. Vessels already underway in the RNA shall proceed to clear the impacted area immediately.

(4) Vessel Movement Reporting System users are prohibited from meeting or overtaking other vessels when transiting alongside an active work area.

(5) Vessel Movement Reporting System users transiting with the prevailing current (as measured from the Bergen Point current station) are regarded as the stand-on vessel.

(6) Prior to entering the RNA, the master, pilot or operator of each Vessel Movement Reporting System user shall ensure that they have sufficient propulsion and directional control to safely navigate the area under the prevailing conditions, and shall notify VTSNY as to their decision regarding the employment of assist tugs while transiting the RNA.

(7) Waiver. The Captain of the Port New York may, upon request, authorize a deviation from any regulation in this section if it is found that the proposed operations can be done safely. An application for deviation must be received not less than 24 hours before the intended operation and must state the need and describe the proposal.

(8) Tugs with tows includes a tug with a vessel or barge in tow, alongside, or being pushed.

(9) Tug requirements. All vessels 350 feet in length, or greater, excluding tugs with tows, require one assist tug. All vessels 700 feet in length, or greater, excluding tugs with tows, require a minimum of two assist tugs. All vessels 900 feet in length, or greater, excluding tugs with tows, require a minimum of three assist tugs.

(10) Tidal current restrictions. Vessels 700 feet in length, or greater, are restricted to movements within one hour before or after slack water, as measured from the Bergen Point current station.

(11) Astern tows. Hawser tows are not permitted unless an assist tug accompanies the tow.