

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this 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 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 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 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 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.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1 of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

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.

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

Energy Effects

We have analyzed this 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.

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 amends 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. A new temporary § 165.T09–034 is added to read as follows:

§ 165.T09–034 Safety Zone; Rochester Harbor, Rochester, NY.

(a) *Location.* The following area is a temporary safety zone: all waters of Rochester Harbor and the Genesee River encompassed by an area 400-yards around the West Jetty pier in approximate position: 43° 15′ 40″ N 077° 36′ 05″ W (NAD 83).

(b) *Effective time and date.* This section is effective from 9:30 p.m. (local) until 11:30 p.m. (local) on June 26, 2004.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

Dated: June 1, 2004.

P. M. Gugg,

Commander, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 04–14067 Filed 6–21–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–04–035]

RIN 1625–AA00

Safety Zone; Canal Fest, Tonowanda, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the navigable waters surrounding a barge moored on the Niagara River. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with fireworks displays. This safety zone is intended to restrict vessel traffic from a portion of the Niagara River, Tonowanda, New York.

DATES: This rule is effective from 9:30 p.m. (local) until 11:30 p.m. (local) on July 25, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD09–04–035) and are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd,

Buffalo, New York 14203, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Craig A. Wyatt, U.S. Coast Guard Marine Safety Office Buffalo, at (716) 843-9570.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Buffalo has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone consists of all navigable waters of the Niagara River within the following boundaries: 43°01'07" N, 078°53'53" W; to 43°01'00" N, 078°53'29" W; to 43°01'20" N, 078°53'03" W; to 43°01'30" N, 078°53'30" W; then following the shoreline back to the beginning (NAD 1983). The fireworks display will originate from a barge moored in the center of this zone at 43°01'16" N, 078°53'32" W. All Geographic coordinates are North American Datum of 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

The Coast Guard believes this regulation will not pose any new problems for commercial vessels transiting the area. In the unlikely event that shipping is affected by this regulation, commercial vessels may request permission from the Captain of the Port Buffalo to transit through the safety zone.

Regulatory Evaluation

This 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 (DHS) We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this 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 rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit within the activated safety zone on the Niagara River between 9:30 p.m. (local) and 11:30 p.m. (local) on July 25, 2004.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 9:30 p.m. (local) until 11:30 p.m. (local) on the day of the event. Vessel traffic can safely pass outside the safety zone during the event. In cases where traffic congestion is greater than expected and/or blocks shipping channels, traffic may be allowed to pass through the safety zone under Coast Guard or assisting agency escort with the permission of the Captain of the Port Buffalo.

Additionally, the Coast Guard has not received any negative reports from small entities affected during these displays in previous years.

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 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 Buffalo (*see ADDRESSES*.)

Small businesses may send comments on 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).

Collection of Information

This 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 rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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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.

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■ 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 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. A new temporary § 165.T09-035 is added to read as follows:

§ 165.T09-035 Safety Zone; Canal Fest, Tonowanda, NY.

(a) *Location.* The following area is a temporary safety zone: All navigable waters of the Niagara River within the following boundaries: Starting at 43° 01' 07" N, 078° 53' 53" W; then to 43° 01' 00" N, 078° 53' 29" W; then to 43° 01' 20" N, 078° 53' 03" W; then to 43° 01' 30" N, 078° 53' 30" W; then following the shoreline back to the beginning. The fireworks display will originate from a barge moored in the center of this zone at 43° 01' 16" N, 078° 53' 32" W (NAD 83).

(b) *Effective time and date.* This section is effective from 9:30 p.m. (local) until 11:30 p.m. (local) on July 25, 2004.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

Dated: June 1, 2004.

P.M. Gugg,

Commander, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 04-14065 Filed 6-21-04; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2001-6B]

Compulsory License for Making and Distributing Phonorecords, Including Digital Phonorecord Deliveries

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is amending its regulations governing the content and service of certain notices on the copyright owner of a musical work. The notice is served or filed by a person who intends to use a musical work to make and distribute phonorecords, including by means of digital phonorecord deliveries, under a compulsory license.

EFFECTIVE DATE: July 22, 2004.

FOR FURTHER INFORMATION CONTACT:

David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024-0977. Telephone: (202) 707-8380; telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION:

I. Background

Section 115 of the Copyright Act, 17 U.S.C., provides that "[w]hen phonorecords of a nondramatic musical work have been distributed to the public in the United States under the authority of the copyright owner, any other person * * * may, by complying with the provisions of this section, obtain a compulsory license to make and distribute phonorecords of the work." 17 U.S.C. 115(a)(1). The compulsory license set forth in section 115 permits the use of a nondramatic musical work in a phonorecord without the consent of the copyright owner if certain conditions are met and royalties are paid.

Section 115 was subsequently amended on November 1, 1995, with the enactment of the Digital Performance Right in Sound Recordings Act of 1995 ("DPRA"), Public Law 104-39 (1995). Among other things, this law expanded the section 115 compulsory license for making and distributing phonorecords to include not only the traditional use of the musical work to make an original sound recording, but also the distribution of a phonorecord of a nondramatic musical work by means of a digital phonorecord delivery