expanding the list of eligible activities to include the following: Painting programs and preventative maintenance for off-system structures, scour countermeasures on all bridges, safety improvements, additional sets of load posting signs, activities related to load rating and analysis, activities for development and implementation of bridge management systems, and specific preventative maintenance activities. Ionia County, Michigan, suggested the removal of historical inventory activities from eligibility. The Wyoming DOT, NACE, Ionia County and Alcona County suggested the removal or clarification of calcium magnesium acetate and other deicing chemicals from eligibility.

Many State DOTs recommended that activities be made applicable for all structures irrespective of eligibility. The California and Iowa DOTs also suggested clarifying and specifically restricting HBP funds for structures carrying automobile traffic. The Virginia DOT and AASHTO suggested applicability of the funds for safety improvements irrespective of bridge eligibility. The Wyoming and Illinois DOT's, and NACE suggested applicability of funds for load posting signs irrespective of eligibility criteria. The AASHTO and the Kansas DOT recommended that historic bridge activities should be eligible regardless of bridge eligibility status.

County agencies and trade associations expressed concerns that the additional flexibility added through the alternate program favored State agencies at the expense of local agency bridge owners. Concerns focused on whether the alternate program would divert funds from localities. The NACE and IACE urged that the proposed regulation be amended to ensure that the alternate program be applicable for State and local agencies independently and that additional flexibility be given to localities independent of the policies of State bridge owning agencies. The AASHTO, Kansas DOT, and Delaware County, New York also suggested addressing issues that are not currently part of the regulation, including the ten-year rule [1] and the sufficiency rating formula.[2] The California DOT, Wyoming DOT and AASHTO also suggested removing FHWA approval of bridge management systems and systematic processes, requirements for conformance of preventative maintenance with design standards, requirements of funds to be used on Federal-aid structures, modification of the unit cost criteria, and sufficiency rating eligibility assessment.

The Advocates for Highway and Automotive Safety (AHAS) expressed concern as to whether the alternate program proposed violated the provisions of 23 U.S.C. 144, which it states ''was established to ensure that funds are dedicated to improving the nation's aging bridge infrastructure * * * [limiting] the use of funds for the replacement or rehabilitation of bridges.'' The AHAS argued that FHWA does not have the legal authority to approve the expenditure of HBRRP funds for activities involving routine maintenance and repair, deck repaving, safety improvements and preventative maintenance activities determined using a BMS. The authority for preventive maintenance activities is set forth in 23 U.S.C.§ 116(d). Preventive maintenance activities shall be eligible for Federal assistance under title 23 if the State demonstrates that the activity is a cost-effective means of extending the useful life of a Federal aid highway. The agency has interpreted that the authority of § 116(d) extends to all formula funding programs, including the HBRRP program to the extent that the activity funded extends the useful life of a Federal aid highway, including bridges, on the Federal-aid system. The alternate program applied preventive maintenance to both Federal-aid bridges and non Federal-aid bridges. The legal authority of 23 U.S.C. 116(d) does not apply to the off-system structures and the proposed rulemaking contravened current provision of law. If pursued, the alternate program would have to be constrained to Federal-aid bridges only, which constitutes roughly half of the bridges in the national inventory.

The FHWA has evaluated AHAS's concerns. The authority for preventive maintenance is clearly established in 23 U.S.C. 116(d) for highways (which by definition includes bridges) on the Federal-aid system. Permitting the application of the alternate program for these bridges does not violate the legal authority of the FHWA. The NPRM, however, proposed to apply the provisions of the alternate program to both the Federal-aid and non Federal-aid system.

Determination

The NPRM proposed to clarify ambiguous language, incorporate long-standing FHWA policies and, through the alternate program, include flexibility provided to the States through the Intermodal Surface Transportation Efficiency Act (ISTEA) and the Transportation Equity Act for the 21st Century (TEA–21).

While the FHWA is aware of the benefits that would result from the alternate program proposed in the NPRM, there is no quantitative information to validate this assumption. With a proven record, benefits can be clearly demonstrated. Therefore, further evaluation of the issues raised by the NPRM comments, along with the collection of quantitative information, is warranted.

Conclusion

For the reasons stated above, the FHWA withdraws the NPRM and closes the docket for this rulemaking. The FHWA intends to consider the establishment of a special experimental program to document the benefits of the alternative program. The program will likely evaluate a small sample of States participating on a voluntary, experimental basis in order to gather data necessary to determine the success and need for innovative bridge management solutions, such as the alternate bridge program. The FHWA plans to initiate a separate rulemaking to include language that would eliminate ambiguities and incorporate long-standing policies after the reauthorization of the surface transportation program.

Authority: 23 U.S.C. 144 and 315; 49 CFR 1.48.

Issued on: March 31, 2005.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 05–7210 Filed 4–8–05; 8:45 am]

BILLING CODE 4910–22–P

[1] The FHWA ''10-year rule'' policy prevents a bridge from remaining eligible for HBRRP funding for a period of 10 years after construction or major reconstruction has taken place.

[2] The sufficiency rating is a method of evaluating highway bridge data considering structural condition, functionality and essentiality for public use to obtain a numeric value which is indicative of bridge sufficiency to remain in service.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–05–017]

RIN 2115–AA97

Safety Zone; Macy's July 4th Fireworks, East River and Upper New York Bay, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the permanent safety zone for the annual Macy's July 4 fireworks

display. The modification is required to accommodate an added fireworks discharge site near Liberty Island, and necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the East River, Hudson River, and Upper New York Bay during the duration of the Macy's July 4 fireworks event.

DATES: Comments and related material must reach the Coast Guard on or before May 11, 2005.

ADDRESSES: You may mail comments and related material to Waterways Management Division (CGD01–05–017), Coast Guard Activities New York, 212 Coast Guard Drive, room 203, Staten Island, New York 10305. The Waterways Management Division 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 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 E. Morton, Waterways Management Division, Coast Guard Activities New York (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 (CGD01–05–017), 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 Management Division 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 Coast Guard proposes to revise 33 CFR 165.166, the permanent safety zone for the annual Macy's July 4 fireworks displays in the East River and Upper New York Bay. The revision is designed to protect a third fireworks discharge location near Liberty Island, which was not anticipated by the original regulation. The safety zone now encompasses a portion of the East River from Roosevelt Island to Governor's Island and is defined as all waters of the East River east of a line drawn from the Fireboat Station Pier, Battery Park City, in approximate position 40°42′15.4″ N 074°01′06.8″ W (NAD 1983) to Governors Island Light (2) (LLNR 35010), in approximate position 40°41′34.4″ N 074°01′10.9″ W (NAD 1983); north of a line drawn from Governors Island, in approximate position 40°41′25.3″ N 074°00′42.5″ W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn from East 47th Street, Manhattan through the southern point of Roosevelt Island to 46 Road, Brooklyn, and all waters of Newtown Creek west of the Pulaski Bascule Bridge. The proposed change would increase the size of the safety zone to include all waters of the Upper New York Bay south of a line drawn from Pier A (Fireboat Station Pier), Battery Park City, in approximate position 40°42′15.4″ N 074°01′06.8″ W (NAD 1983) to the easternmost corner of the Ellis Island Security Zone, in approximate position 40°41′57.6″ N 074°02′06.7″ W (NAD 1983); and north of a line drawn from Pier 7, Jersey City, NJ, in approximate position 40°41′26.4″ N 074°03′17.3″ W (NAD 1983) to Liberty Island Lighted Gong Buoy 29 (LLNR 34995), in approximate position 40°41′02.2″ N 074°02′24.7″ W (NAD 1983), on to Governor's Island Extension Light (LLNR 35000), in approximate position 40°41′08.3″ N 074°01′35.4″ W (NAD 1983).

The proposed enforcement period for this expanded safety zone would remain unchanged from the previous regulation. The proposed expanded safety zone would continue to be enforced from 6:30 p.m. (e.s.t.) until 11:30 p.m. (e.s.t.) on July 4 each year. If the event is cancelled due to inclement weather, then this proposed safety zone would be enforced from 6:30 p.m. (e.s.t.) until 11:30 p.m. (e.s.t.) on July 5. The proposed expanded safety zone prevents vessels from transiting these portions of the East River, Hudson River, and Upper New York Bay, and is needed to protect mariners from the hazards associated with fireworks launched from 6 barges in the area. No vessel may enter the safety zone without permission from the Captain of the Port, New York.

This safety zone covers the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels and the fireworks handlers aboard the barges.

Public notifications will be made prior to the event via the Local Notice to Mariners, marine information broadcasts, facsimile, and Macy's waterways telephone hotline. In previous years this telephone hotline has been established in early June.

Discussion of Proposed Rule

The proposed amendment to the Macy's July 4 fireworks display is needed to reflect an additional fireworks discharge location near Liberty Island. The sponsor has indicated that the City of Jersey City, NJ and the State of New Jersey will continue to request this location for future annual events. This expanded zone was delineated on July 4, 2004 as a Coast Guard Vessel Traffic Service (VTS) Measure, as contemplated in 33 CFR 161.11.

No changes to the existing regulation 33 CFR 165.166, other than the geographical expansion of the safety zone, are proposed in this notice. This event is held annually on July 4. If the event is cancelled due to inclement weather, then this event will be held on July 5.

This rule is being proposed to provide for the safety of life on navigable waters during the event, to give the marine community the opportunity to comment on this expanded safety zone, and to ensure that the permanent regulations reflect the event specifications.

The proposed size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 8 to 12 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in this area.

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 safety zone temporarily closes a major portion of the East River and Upper New York Bay to vessel traffic. There is a regular flow of traffic through this area; however, the impact of this regulation is expected to be minimal for the following reasons: The limited duration of the event; the extensive, advance advisories that will be made to allow the maritime community to schedule transits before and after the event; the event is taking place at a late hour on a national holiday; the event has been held for twenty-three years in succession and is therefore anticipated annually; small businesses may experience an increase in revenue due to the event; advance notifications will be made to the local maritime community by the Local Notice to Mariners, marine information broadcasts, facsimile, and the event sponsor establishes and advertises a telephone hotline which waterways users may call prior to the event for details of the safety zone. This telephone number will be published via the Local Notice to Mariners and facsimile. The number is normally activated in early June each year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 the East River or Upper New York Bay during the times these zones are activated.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: The limited duration of the event; the extensive, advance advisories that will be made to allow the maritime community to schedule transits before and after the event; the event is taking place at a late hour on a national holiday; the event has been held for twenty-three years in succession and is therefore anticipated annually; small businesses may experience an increase in revenue due to the event; advance notifications will be made to the local maritime community by the Local Notice to Mariners, marine information broadcasts, facsimile, and the event sponsor establishes and advertises a telephone hotline which waterways users may call prior to the event for details of the safety zone. This telephone number will be published via the Local Notice to Mariners and facsimile. The number is normally activated in early June each year.

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 E. Morton, Waterways Management Division, Coast Guard Activities New York (718) 354–4191. 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.

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 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

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.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides 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 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph 34(g), of the Instruction, from further environmental documentation. This proposed rule fits paragraph 34(g) as it increases the size of an existing safety zone. A preliminary ''Environmental Analysis Check List'' is 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.166(a) to read as follows:

§ 165.166 Safety Zone; Macy's July 4th Fireworks, East River and Upper New York Bay, NY.

(a) *Regulated Area.* The following area is a safety zone: All waters of the Upper New York Bay south of a line drawn from Pier A (Fireboat Station Pier), Battery Park City, in approximate position 40°42′15.4″ N 074°01′06.8″ W (NAD 1983) to the easternmost corner of the Ellis Island Security Zone, in approximate position 40°41′57.6″ N 074°02′06.7″ W (NAD 1983); north of a line drawn from Pier 7, Jersey City, NJ, in approximate position 40°41′26.4″ N 074°03′17.3″ W (NAD 1983) to Liberty Island Lighted Gong Buoy 29 (LLNR 34995), in approximate position 40°41′02.2″ N 074°02′24.7″ W (NAD 1983), on to Governor's Island Extension Light (LLNR 35000), in approximate position 40°41′08.3″ N 074°01′35.4″ W (NAD 1983); all waters of the East River north of a line drawn from Governors Island, in approximate position 40°41′25.3″ N 074°00′42.5″ W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn from East 47th Street, Manhattan through the southern point of Roosevelt Island to 46 Road, Brooklyn; and all waters of Newtown Creek west of the Pulaski Bascule Bridge.

* * * * *

Dated: March 25, 2005.

Glenn A. Wiltshire,

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

[FR Doc. 05–7209 Filed 4–8–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0007; FRL–7896–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Locally Enforced Idling Prohibition Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision for the state of Texas. This revision adds new Division 2, Locally Enforced Motor Vehicle Idling Limitations, in Subchapter J, Operational Controls For Motor Vehicles. The rule allows local governments to voluntarily enter into an agreement with the State to enforce vehicle idling restrictions on vehicles over 14,000 pounds within their jurisdiction, with some exceptions.

DATES: Written comments must be received on or before May 11, 2005.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7367; fax number 214–665–7263; e-mail address *rennie.sandra@epa.gov.* Alternate contact: Bill Deese (214) 665–7253, *deese.william@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register,** EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.