

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[CGD01-05-027]

RIN 1625-AA00

**Safety Zone; New York Super Boat Race, Hudson River, NY**

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to temporarily alter the effective period of the safety zone defined in 33 CFR 165.162 for the annual New York Super Boat Race. This temporary rule would change the effective date for this safety zone from Sunday, September 11, 2005 to Saturday, September 10, 2005 to permit the race sponsors to avoid interfering with various 9-11 memorial activities scheduled for the currently regulated date. This action is proposed to protect life on navigable waters during the event. No other changes to the original regulation are proposed.

**DATES:** Comments and related material must reach the Coast Guard on or before August 29, 2005.

**ADDRESSES:** You may mail comments and related material to Waterways Management Division (CGD01-05-027), Coast Guard Sector New York, 212 Coast Guard Drive, Staten Island, NY 10305. The Waterways Management Division of Coast Guard Sector 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 Management Division, Coast Guard Sector New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Commander B. Willis, Waterways Management Division, Coast Guard Sector New York at (718) 354-4220.

**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 (CGD01-05-027), 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 received the annual application to hold the New York Super Boat Race on the waters of the Hudson River. With this application, the event sponsor requested that the event be permitted to take place on Saturday, September 10, 2005, rather than the usual Sunday following Labor Day, which falls on September 11, 2005. The temporary deviation from the permanent regulation was requested to avoid interfering with the events scheduled in the area associated with the observance of 9-11.

**Discussion of Proposed Rule**

This rule would change the effective date for the safety zone established in 33 CFR 165.162 for the New York Super Boat Race for the current year only, and no other substantive regulatory changes are proposed. The proposed safety zone would be in effect from 10 a.m. until 4 p.m. on Saturday, September 10, 2005, and is needed to protect the waterway users from the hazards associated with high-speed powerboats racing in confined waters.

**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).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory

evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary. Although this regulation prevents traffic from transiting a portion of the Lower Hudson River during the race, the effect of this regulation will not be significant for several reasons: It is an annual event with local support, the volume of commercial vessel traffic transiting the Lower Hudson River on a Saturday is similar to that on a Sunday and less than half of the normal weekday traffic volume; pleasure craft desiring to view the event will be directed to designated spectator viewing areas outside the safety zone; pleasure craft can take an alternate route through the East River and the Harlem River; the duration of the event is limited to six hours; extensive advisories will be made to the affected maritime community by Local Notice to Mariners, Safety Voice Broadcast, and facsimile notification. Additionally, commercial ferry traffic will be authorized to transit around the perimeter of the safety zone for their scheduled operations at the direction of the Patrol Commander.

**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 the Hudson River from 10 a.m. to 4 p.m. on September 10, 2005. This rule would not have a significant economic impact on a substantial number of small entities for the reasons stated in the Regulatory Evaluation section above.

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 Commander B. Willis, Waterways Management Division, Coast Guard Sector New York at (718) 354-4220. 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 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.

### 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.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 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 rule fits the category selected from paragraph (34)(g), as it would modify the effective period of an existing safety zone regulation.

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 temporarily 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. From 10 a.m. to 4 p.m. on September 10, 2005, suspend § 165.162(c) and add § 165.162(d) to read as follows:

#### § 165.162 Safety Zone; New York Super Boat Race, Hudson River, New York.

\* \* \* \* \*

(d) *Effective Period.* This section is in effect from 10 a.m. until 4 p.m. on Saturday, September 10, 2005.

Dated: June 30, 2005.

**Glenn A. Wiltshire,**

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

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**BILLING CODE 4910-15-P**