

adopted by voluntary consensus standards bodies.

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

## Environment

We have analyzed this 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 concluded 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, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” will be available in the docket where indicated under **ADDRESSES**.

## 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 amends 33 CFR part 165, subpart C 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 temporary § 165.T07–003 is added to read as follows:

### § 165.T07–003 Safety Zone, Hog Island Channel, Grace Memorial and Silas Pearman Bridges, Charleston, SC.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone around the Grace Memorial and Silas Pearman Bridges on the Cooper River on Hog Island Reach, in the City of Charleston and Mt. Pleasant, SC. The following area is a safety: All waters within the area bounded by the following coordinates: 32°48.566' N, 079°55.211' W to 32°48.389' N, 079°54.256' W to 32°47.824' N, 079°54.401' W thence to 32°47.994' N, 079°55.359' W.

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

*Designated representative* means Coast Guard Patrol Commanders

including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Charleston in the enforcement of the regulated area.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entering, anchoring, mooring or transiting in the Regulated Area is prohibited, except as provided for herein, or unless authorized by the Coast Guard Captain of the Port Charleston, South Carolina, or his designated representative. Persons and vessels may request permission to enter the safety zone on VHF–FM channel 16 or via phone at (843) 724–7616.

(d) *Enforcement Period.* This regulation will only be enforced at times immediately preceding an explosive detonation on the Grace Memorial or Silas Pearman Bridges, and for a short period after the detonation during debris removal operations. Coast Guard Sector Charleston will announce the start date and expected duration of each enforcement period through broadcast notice to mariners, marine safety information bulletins, through local media press releases and on-scene patrol assets. Additionally, anyone wishing to inquire as to the status of the safety zone may contact Coast Guard Sector Charleston at (843) 724–7616.

(e) *Dates.* This rule is effective from 7:30 a.m. EDT on May 25, 2006 until 8:01 a.m. EDT on December 31, 2006.

Dated: January 6, 2006.

**John E. Cameron,**

*Captain, U.S. Coast Guard, Captain of the Port Charleston, SC.*

[FR Doc. E6–8073 Filed 5–24–06; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[CGD09–06–029]

RIN 1625-AA00

### Safety Zone; Thunder on the Niagara, the Niagara River at Gratwick Riverside Park, North Tonawanda, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of the upper Niagara River by Gratwick Riverside Park in North Tonawanda,

NY. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with a boat race. This safety zone restricts vessel traffic from a portion of the Niagara River at Gratwick Riverside Park, North Tonawanda, NY.

**DATES:** This rule is in effect from 11 a.m. on June 3, 2006 until 5 p.m. on June 4, 2006. This rule will be enforced from 11 a.m. until 5 p.m. on June 3, 2006, and from 12 p.m. until 5 p.m. on June 4, 2006. All times are local.

**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 the docket (CGD09–06–029), and are available for inspection or copying at U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203 between 7 a.m. and 4 p.m. (local), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Tracy Wirth, U.S. Coast Guard Sector Buffalo, at (716) 843–9573.

### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This safety zone will only be in effect for two days and there was insufficient time to publish an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest since immediate action is needed to minimize potential danger to the public during the fireworks demonstration.

#### Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with powerboat races. Based on recent accidents that have occurred in other Captain of the Port zones, the Captain of the Port Buffalo has determined powerboat races pose significant risks to public safety and property.

In the absence of a safety zone, the likely combination of large numbers of recreational vessels, congested waterways, and alcohol use, could easily result in serious injuries or fatalities.

#### Discussion of Rule

The proposed safety zone consists of all navigable waters of the Upper

Niagara River located at 42°03'36" N, 078°54'45" W to 43°03'09" N, 078°55'21" W to 43°03'00" N, 078°53'42" W to 43°02'42" N, 078°54'09" W. All Geographic coordinates are North American Datum of 1983 (NAD 83). The size of this proposed zone was determined using the location of the race course approved by the Captain of the Port Buffalo and local knowledge concerning wind, waves, and currents.

All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated patrol representative. The designated on-scene patrol representative will be the patrol commander. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

#### Regulatory Evaluation

This 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 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 the regulatory policies and procedures of DHS is unnecessary.

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

#### Small Entities

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

This rule may affect the following entities, some of which might be small entities: The owners or operators of

commercial vessels intending to transit a portion of an activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect for two short periods of time. Vessel traffic can safely pass outside the safety zone during the event. In cases where traffic congestion is greater than expected 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.

#### 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.

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 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 1–800–REG–FAIR (1–888–734–3247).

#### Collection of Information

This rule calls 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 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not affect 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

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 will not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 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.

#### 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. 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 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 concluded 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. A preliminary “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES**.

## 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 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. Add temporary § 165.T09–029 to read as follows:

### § 165.T09–029 Safety Zone; Thunder on the Niagara, Gratwick Riverside Park, North Tonawanda, NY.

(a) **Location.** The following area is a temporary safety zone: all waters of the upper Niagara River located at 42°03'36" N, 078°54'45" W to 43°03'09" N, 078°55'21" W to 43°03'00" N, 078°53'42" W to 43°02'42" N, 078°54'09" W. All

Geographic coordinates are North American Datum of 1983 (NAD 83).

(b) **Regulations.** (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo.

(2) 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.

(c) **Effective time and date.** This rule is in effect from 11 a.m. (local) on June 3, 2006 until 5 p.m. (local) on June 4, 2006. This rule will be enforced from 11 (local) a.m. until 5 p.m. (local) on June 3, 2006 and from 12 p.m. (local) until 5 p.m. (local) on June 4, 2006.

Dated: May 12, 2006.

**S.J. Furgason,**

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

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apply to the Secretary of Transportation for a determination as to whether the requirement is preempted. 49 U.S.C. 5125(d)(1). The statutory criteria for preemption of a non-Federal requirement are set forth in section 5125(a), (b), (c), and (f). Section 5125(e) authorizes the Secretary of Transportation to waive preemption on a finding that the non-Federal requirement is not an unreasonable burden on commerce and provides the public at least as much protection as the requirements of Federal hazardous material transportation law and regulations.

The Secretary of Transportation has delegated authority to PHMSA to decide all requests for preemption determinations and waivers of preemption under 49 U.S.C. 5125, except those concerning highway routing (which have been delegated to the Federal Motor Carrier Safety Administration (FMCSA)). 49 CFR 1.53(b)(2), 1.73(d)(2). PHMSA's procedural regulations implementing this authority (49 CFR part 107, subpart C (107.201–107.227)) currently designate PHMSA's Associate Administrator for Hazardous Materials Safety to receive applications, conduct proceedings, and make decisions on applications for preemption determinations and waivers.

PHMSA is transferring these functions to its Chief Counsel and amending its procedural regulations accordingly. This change is made effective upon publication.

PHMSA also is amending its procedural regulations to provide that decisions on applications under 49 U.S.C. 5125(d) and (e), and decisions on petitions for reconsideration of these administrative actions, are final upon publication of the decision in the **Federal Register**. Accordingly, the filing of a petition for reconsideration will not postpone the 60-day period for filing a petition for judicial review of the decision under 49 U.S.C. 5127.

## Rulemaking Analyses and Notices

### A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of 49 U.S.C. 5125 and 49 CFR 1.53(b)(2), and amends previously issued regulations relating to PHMSA's authority to issue Federal preemption determinations and waivers of preemption.

### B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under