

petition as a wine industry marketing effort. A local resident states that the proposed Paso Robles Westside viticultural area “includes a wide diversity of land, climate, geology and soils as to be a completely arbitrary division.” Other commenters contend, similar to the PRAVAC, that the recognized “west side” of the Paso Robles region encompasses only a western portion of the City of Paso Robles and the Adelaida District, not the significantly larger proposed Paso Robles Westside viticultural area.

Dr. Thomas Rice, a certified professional soil scientist who provided soil information for the Paso Robles Westside viticultural area petition, submitted two comments opposing Notice No. 71 (comments 94 and 129). In his opposing comments, Dr. Rice states that some of his soils information “has been inaccurately quoted” and that “some erroneous conclusions regarding the soils in the Paso Robles AVA have been stated in the final petition.” He adds that “not a single soil series mapped by the USDA that occurs within the proposed Paso Robles Westside AVA is unique to that area.” He concludes by urging TTB “to reject the Paso Robles Westside petition based on its inaccurate, misleading and false statements related to topography and soils diversity within the larger Paso Robles AVA.”

Opposing commenter Richard Hoenisch (comment 112), a plant pathologist at the University of California, Davis, and the education director for the western region of the National Plant Diagnostic Network, explains that he served for six years as the founding manager of the Tablas Creek Winery in Paso Robles. Mr. Hoenisch states that, based on his past and current experience and knowledge, the proposed Paso Robles Westside viticultural area “includes too many different geologies, soil types, and micro-climates.” Mr. Hoenisch concludes that the Paso Robles area contains many distinct and excellent potential viticultural area sites.

Mr. Donald Schucraft, a certified consulting meteorologist with the Western Weather Group, explains in his opposing comment (comment 122) that in the mid-1990’s he led a team of meteorologists and physical scientists that established a network of automated weather stations in the Paso Robles region, and that these stations continue to provide key information for localized Paso Robles weather forecasts. Based on the data from these stations, Mr. Schucraft states that the Salinas River does not provide a suitable boundary line for the many different

microclimates found in the Paso Robles viticultural area. He notes that there are distinct microclimates to the west of the Salinas River within the proposed Paso Robles Westside viticultural area, and that these microclimates change from north to south as well as to east to west.

Seasonal rainfall, according to Mr. Schucraft, varies from 11 to 12 inches in the northern-most part of the proposed Paso Robles Westside viticultural area to 27 to 28 inches in the southern-most part. Also, air temperatures, influenced by the marine air passing through the Templeton Gap, and wind speeds, influenced by the Salinas River Valley Basin, vary widely within the proposed viticultural area. Mr. Schucraft concludes that observed weather in the Paso Robles region fails to define the proposed Paso Robles Westside viticultural area as a single viticultural region, but instead supports the existence of multiple viticultural regions within the existing Paso Robles viticultural area.

#### TTB Finding

TTB notes that there is a marked lack of unanimity among the commenters concerning the appropriateness of establishing the proposed Paso Robles Westside viticultural area. While substantial petition evidence and a large number of comments support the establishment of the proposed viticultural area, we also received a significant number of comments setting forth information that refutes, or is otherwise inconsistent with that petition evidence. Some of those comments challenge the appropriateness of the Paso Robles Westside name. Other commenters, including scientific experts, contradict the geographical feature evidence presented in the petition and relied upon by TTB in Notice No. 71 as a basis for proposing the establishment of the Paso Robles Westside viticultural area.

Given the conflicting information before us, we cannot conclude that a delimited grape-growing region exists that is recognized by the name “Paso Robles Westside,” or that the area described in Notice No. 71 is distinguishable by geographical features. Accordingly, TTB hereby withdraws its proposal to establish the Paso Robles Westside viticultural area.

With regard to the petitions submitted by the PRAVAC to establish 11 smaller viticultural areas within the Paso Robles viticultural area, TTB will review those 11 petitions independently from this regulatory action. A notice regarding the PRAVAC proposal to expand the existing Paso Robles viticultural area was published in the **Federal Register**

on July 15, 2008 (see Notice No. 85, 73 FR 40474).

Signed: February 12, 2009.

**John J. Manfreda,**  
Administrator.

Approved: February 27, 2009.

**Timothy E. Skud,**

Deputy Assistant Secretary (Tax, Trade, and  
Tariff Policy).

[FR Doc. E9-9855 Filed 4-29-09; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[USCG-2009-0110]

RIN 1625-AA00

### Safety Zone; Thunder on Niagara, Niagara River, North Tonawanda, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes establishment of a safety zone for a powerboat race in the Captain of the Port Buffalo zone. This proposed rule is intended to restrict vessels from areas of water during events that pose a hazard to public safety. The safety zone established by this proposed rule is necessary to protect spectators, participants, and vessels from the hazards associated with a powerboat race.

**DATES:** Comments and related materials must be received by the Coast Guard on or before June 29, 2009. Requests for public meetings must be received by the Coast Guard on or before May 29, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG-2009-0110 using one of the following methods:

(1) *Federal eRulemaking Portal:*  
<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the

**SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, contact Lieutenant Brian Sadler, Prevention Department, U.S. Coast Guard Sector Buffalo, at (716) 843-9573. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

#### **Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

#### **Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-0110), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand deliver, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-2009-0110" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or

envelope. We will consider all comments and material received during the comment period and may change the proposed rule in view of them.

#### **Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2009-0119 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Coast Guard Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### **Privacy Act**

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

#### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one on or before May 29, 2009 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting 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**

Temporary safety zones are 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. The likely combination of large numbers of recreational vessels, congested waterways, and alcohol use, could easily result in serious injuries or fatalities.

#### **Discussion of Proposed Rule**

The proposed rule and associated safety zone are necessary to ensure the safety of vessels and people during events in the Captain of the Port Buffalo area of responsibility that may pose a hazard to the public. The proposed safety zone is described in subparagraph (1) of this regulation. The proposed safety zone will be enforced only immediately before and during the event which poses hazard to the public and only upon notice by the Captain of the Port. The Captain of the Port Buffalo will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

#### **Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### **Regulatory Planning and Review**

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The Coast Guard's use of this safety zone will be periodic in nature, of short duration, and designed to minimize the impact on navigable waters. This safety zone will only be enforced immediately before and during the time the event occurs. Furthermore, this safety zone has been designed to allow vessels to transit unrestricted to portions of the waterway not affected by the safety zone. The Coast Guard expects insignificant adverse impact to mariners from the activation of this safety zone.

#### **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 the area designated as the safety zone in subparagraph (1) during the date and time the safety zone is being enforced. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone in this proposed rule would be in effect for short periods of time and only once per year. The proposed safety zone has been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zone with the permission of the Captain of the Port.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Brian Sadler, Prevention Department, Coast Guard Sector Buffalo, Buffalo, NY at (716) 843-9573. 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 will not result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule will not effect the 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 proposed rule is not an economically significant rule and does not create 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 Department of Homeland Security Management Directive 0023-01 and Commandant Instruction M16475.ID, which guide 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 under the Instruction that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 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.T09–0110 to read as follows:

**§ 165.T09–0110 Safety Zone; Thunder on Niagara, Niagara River, North Tonawanda, NY.**

(a) *Location.* The following area is a temporary safety zone: all waters of the Upper Niagara River, North Tonawanda, NY within two miles of the Grand Island Bridge 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) *Effective Period.* This regulation is effective from 11 a.m. August 29, 2009 to 6 p.m. August 30, 2009. This zone will be enforced from 11 a.m. to 6 p.m. on August 29, 2009 and August 30, 2009.

*(c) Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) Commercial vessels may request permission from the Captain of the Port Buffalo to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Sector Buffalo on Channel 16, VHF–FM.

Dated: March 6, 2009.

**R.S. Burchell,**

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

[FR Doc. E9–9993 Filed 4–29–09; 8:45 am]

**BILLING CODE 4910–15–P**

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

**[Docket No. USCG–2008–0125]**

**RIN 1625–AA87**

**Security Zone; Freeport Channel Entrance, Freeport, TX**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish moving security zones for certain vessels, for which the Captain of the Port, Houston-Galveston deems enhanced security measures necessary on a case-by-case basis. These moving security zones would extend 1,000 yards ahead and astern and 500 yards on each side of certain vessels, which would display the international signal flag or pennant number five to signal a security zone is established around the vessel. The moving security zone may commence at any point after certain vessels bound for the Port of Freeport enter the U.S. territorial waters (12 nautical miles) in the Captain of the Port (COTP) Houston-Galveston zone. These security zones are needed to safeguard the vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature. Unless exempted under this rule, entry into or movement within these security zones would be prohibited without permission from the COTP Houston-Galveston.

**DATES:** Comments and related material must reach the Coast Guard on or before June 1, 2009.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2008–0125 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Cliff Harder, Marine Safety Unit Galveston, telephone (409) 978–2700, extension 2705, or e-mail [cliff.j.harder@uscg.mil](mailto:cliff.j.harder@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:****Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

**Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0125), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand-deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert “USCG–2008–0124” in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand