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*Transport Airplane Directorate, Aircraft  
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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

[CGD01-99-130]

RIN 2115-AA97

### Safety Zone: New York Harbor and Hudson River Fireworks.

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish five permanent safety zones for fireworks displays located on Upper and Lower New York Bay, the Hudson River, and Raritan Bay. This action is necessary to provide for the safety of life on navigable waters during the events. This action establishes permanent exclusion areas that are only active prior to the start of the fireworks display until shortly after the fireworks display is completed, and is intended to restrict vessel traffic in a portion of Upper and Lower New York Bay, the Hudson River, and Raritan Bay.

**DATES:** Comments must reach the Coast Guard on or before December 6, 1999.

**ADDRESSES:** Comments may be mailed to the Waterways Oversight Branch (CGD01-99-130), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:**  
Lieutenant J. Lopez, Waterways  
Oversight Branch, Coast Guard  
Activities New York (718) 354-4193.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01-99-130) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The Coast Guard proposes to establish five permanent safety zones that will be activated for fireworks displays occurring throughout the year that are not held on an annual basis but are normally held in one of these five locations. The five locations are east of Liberty and Ellis Islands in Upper New York Bay; east of South Beach, Staten Island in Lower New York Bay; west of Pier 60, Manhattan, on the Hudson River; and Raritan Bay in the vicinity of the Raritan River Cutoff and Ward Point Bend (West). The number of events held in these locations has increased from three in 1996 to 21 in 1998. The Coast Guard has received 11 applications for fireworks displays in these areas to date in 1999. In the past, temporary safety zones were established with limited notice for preparation by the U.S. Coast Guard and limited opportunity for public comment. Establishing permanent safety zones by notice and comment rulemaking at least gives the public the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active. The Coast Guard has received no prior notice of any impact caused by the previous events.

### Discussion of Proposed Rule

The five proposed safety zones are as follows:

The proposed safety zone at Liberty Island includes all waters of Upper New York Bay within a 360-yard radius of the fireworks barge located in Federal Anchorage 20-C, in approximate position 40°41'16.5" N 074°02'23" W (NAD 1983), about 360 yards east of Liberty Island. The proposed safety zone prevents vessels from transiting a portion of Federal Anchorage 20-C and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational and commercial vessel traffic will be able to anchor in the unaffected northern and southern portions of Federal Anchorage 20-C. Federal Anchorages 20-A and 20-B, to the north, and Federal Anchorages 20-D and 20-E, to the south, are also available for vessel use. Marine traffic will still be able to transit through Anchorage Channel, Upper Bay, during the event as the safety zone only extends 125 yards into the 925-yard wide channel. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone at Ellis Island includes all waters of Upper New York Bay within a 360-yard radius of the fireworks barge located between Federal Anchorages 20-A and 20-B in approximate position 40°41'15" N 074°02'09" W (NAD 1983), about 365 yards east of Ellis Island. The proposed safety zone prevents vessels from transiting a portion of Federal Anchorages 20-A and 20-B and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational and commercial vessel traffic will be able to anchor in the unaffected northern and southern portions of Federal Anchorages 20-A and 20-B. Federal Anchorages 20-C, 20-D, and 20-E, to the south, are also available for vessel use. Marine traffic will still be able to transit through Anchorage Channel, Upper Bay, during the event as the safety zone only extends 150 yards into the 900-yard wide channel. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone east of South Beach, Staten Island includes all waters of Lower New York Bay within a 360-yard radius of the fireworks barge located in approximate position 40°35'11" N 074°03'42" W (NAD 1983), about 350 yards east of South Beach,

Staten Island. The proposed safety zone prevents vessels from transiting a portion of Lower New York Bay and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Lower New York Bay during the event. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone off Pier 60, Manhattan includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44'49" N 074°01'02" W (NAD 1983), about 500 yards west of Pier 60, Manhattan, New York. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 150 yards of the 850-yard wide Hudson River during the event. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone. Additionally, vessels are not precluded from mooring at or getting underway from Piers 59–62 or from the Piers at Castle Point, New Jersey due to this proposed safety zone.

The proposed safety zone in Raritan Bay includes all waters of the Raritan River Cutoff and Ward Point Bend (West) within a 240-yard radius of the fireworks barge in approximate position 40°30'04" N 074°15'35" W (NAD 1983), about 240 yards east of Raritan River Cutoff Channel Buoy 2 (LLNR 36595). The proposed safety zone prevents vessels from transiting a portion of Raritan Bay in the vicinity of the Raritan River Cutoff and Ward Point Bend (West). It is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 140 yards of the 230-yard wide Ward Point Bend (West) during the event. Traffic that could not transit through the closed Raritan River Cutoff would transit through Ward Point Bend (West) by using South Amboy Reach, Great Beds Reach, Ward Point Secondary Channel, and Ward Point Bend (East). Additionally, vessels would not be precluded from mooring at or getting underway from any marinas or piers at Perth Amboy, New Jersey due to this proposal.

The actual dates that these safety zones will be activated are not known by the Coast Guard at this time. Coast Guard Activities New York will give

notice of the activation of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners. Marine information broadcasts will also be made for these events beginning 24 to 48 hours before the event is scheduled to begin. Facsimile broadcasts will also be made to notify the public. The Coast Guard expects that the notice of the activation of each permanent safety zone in this rulemaking will normally be made between thirty and fourteen days before the zone is actually activated. Fireworks barges used in the locations stated in this rulemaking will also have a sign on the port and starboard side of the barge labeled "FIREWORKS BARGE". This will provide on-scene notice that the safety zone the fireworks barge is located in is or will be activated on that day. This sign will consist of 10" high by 1.5" wide red lettering on a white background. There will also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 15 minutes after its completion to enforce each safety zone.

The effective period for each proposed safety zone is from 8 p.m. to 1 a.m. However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45 minute period that a Coast Guard patrol vessel is present.

This rule is being proposed to provide for the safety of life on navigable waters during the events and to give the marine community the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active.

#### Regulatory Evaluation

This proposed 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. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). 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 DOT is unnecessary. This finding 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 on all mariners from the zones' activation. Vessels may safely anchor to the north and south of the zones by Liberty and Ellis Islands. Vessels may also still transit through Anchorage Channel, Lower New York Bay, the Hudson River, and Ward Point Bend (West) in Raritan Bay during these events. Vessels would not be precluded from getting underway, or mooring at, Piers 59–62 and the Piers at Castle Point, New Jersey during displays off Pier 60, nor from marinas and piers at Perth Amboy, New Jersey during displays in the Raritan River Cutoff. Advance notifications would also be made to the local maritime community by the Local Notice to Mariners, marine information broadcasts, and facsimile. Fireworks barges used in these locations will also have a sign on the port and starboard side of the barge labeled "FIREWORKS BARGE". This sign will consist of 10" high by 1.5" wide red lettering on a white background. Additionally, the Coast Guard anticipates that these safety zones would only be activated 20–25 times per year. These safety zones have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include 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.

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see ADDRESSES) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

## Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

## Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4, 109 Stat. 48) requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, \$100 million or more in any one year, the UMRA analysis is required. This proposed rule would not impose Federal mandates on any State, local, or tribal governments, or the private sector.

## Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under figure 2-1, paragraph 34(g), of Commandant Instruction M16475.1C, 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.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

## Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

### PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, 160.5; 49 CFR 1.46.

2. Add § 165.168 to read as follows:

#### § 165.168 Safety Zones: New York Harbor and Hudson River Fireworks.

(a) *Liberty Island Safety Zone:* All waters of Upper New York Bay within a 360-yard radius of the fireworks barge in approximate position 40°41'16.5" N 074°02'23" W (NAD 1983) located in Federal Anchorage 20-C, about 360 yards east of Liberty Island.

(b) *Ellis Island Safety Zone:* All waters of Upper New York Bay within a 360-yard radius of the fireworks barge located between Federal Anchorages 20-A and 20-B, in approximate position 40°41'15" N 074°02'09" W (NAD 1983), about 365 yards east of Ellis Island.

(c) *South Beach, Staten Island Safety Zone:* All waters of Lower New York Bay within a 360-yard radius of the fireworks barge in approximate position 40°35'11" N 074°03'42" W (NAD 1983), about 350 yards east of South Beach, Staten Island.

(d) *Pier 60, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44'49" N 074°01'02" W (NAD 1983), about 500 yards west of Pier 60, Manhattan, New York.

(e) *Raritan Bay Safety Zone:* All waters of Raritan Bay in the vicinity of the Raritan River Cutoff and Ward Point Bend (West) within a 240-yard radius of the fireworks barge in approximate position 40°30'04" N 074°15'35" W (NAD 1983), about 240 yards east of Raritan River Cutoff Channel Buoy 2 (LLNR 36595).

(f) *Notification.* Coast Guard Activities New York will cause notice of the activation of these safety zones to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the local notice to mariners, marine information broadcasts, and facsimile. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled "FIREWORKS BARGE". This sign will consist of 10" high by 1.5" wide red lettering on a white background.

(g) *Effective Period.* This section is effective from 8 p.m. to 1 a.m. each day a barge with a "FIREWORKS BARGE" sign on the port and starboard side is on-scene in a location in paragraphs (a) through (e) of this section. Vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York or designated Coast Guard patrol personnel on scene.

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

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

Dated: September 28, 1999.

**R.E. Bennis,**

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

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## DEPARTMENT OF EDUCATION

### 34 CFR Part 75

#### Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities Act Native Hawaiian Program; Direct Grant Program

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Waiver.

**SUMMARY:** The Secretary proposes to waive the requirements in EDGAR at 34 CFR 75.261 in order to extend the project period under the Safe and Drug-Free Schools and Communities Act (SDFSCA) Native Hawaiian Program, under title IV of the Elementary and Secondary Education Act of 1965, as amended (ESEA), from 48 months to up to 72 months. This action will allow services under this program to continue uninterrupted and will result in the awarding of up to a 24-month continuation award to the existing grantee, using fiscal year (FY) 1999 and FY 2000 funds.

**DATES:** Comments must be received by December 6, 1999.

**ADDRESSES:** Comments should be sent to the Safe and Drug-Free Schools and Communities Native Hawaiian Program, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-6123. FAX: (202) 260-7767.

**FOR FURTHER INFORMATION CONTACT:** Contact Elayne McCarthy, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E322, Washington, DC 20202-6123. Telephone: (202) 260-2831; FAX: (202) 260-7767.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information