

TABLE 150.940(C)—ATBA FOR NEPTUNE—Continued

Plotting guidance	Latitude N	Longitude W
(iii) Then an arc with a 1250 meter radius centered at point .....	42°29'12.3"	70°36'29.7"
(iv) To a point .....	42°29'6.3"	70°37'24.0"
(v) Then a rhumb line to .....	42°27'14.7"	70°37'1.6"
(vi) Then an arc with a 1250 meter radius centered at point .....	42°27'20.5"	70°36'7.3"
(vii) To the point of starting .....	42°27'26.6"	70°35'13.1"

(4) *Regulations.* (i) In accordance with the general regulations set forth in 33 CFR 165.23 and elsewhere in this part, no person or vessel may enter the waters within the boundaries of the safety zones described in paragraph (d)(1) of this section unless previously authorized by the Captain of the Port (COTP) Boston, or the COTP's authorized representative.

(ii) Notwithstanding paragraph (d)(4)(i) of this section, liquefied natural gas carriers (LNGCs) and support vessels, as defined in 33 CFR 148.5, calling on Neptune, are authorized to enter and move within such zones in the normal course of their operations following the requirements set forth in 33 CFR 150.340 and 150.345, respectively.

(iii) All other vessel operators desiring to enter, operate or conduct diving operations within a safety zone described in paragraph (d)(1) of this section must contact the COTP or the COTP's authorized representative to obtain permission by contacting the Sector Boston Command Center at 617-223-5761 or via VHF-FM Channel 16 (156.8 MHz). Vessel operators given permission to enter or operate in a safety zone must comply with all directions given to them by the COTP or the COTP's authorized representative.

(iv) No vessel, other than an LNGC or support vessel calling on Neptune, may anchor in the area described in paragraph (d)(2) of this section.

#### **PART 165—WATERWAYS SAFETY; REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

■ 3. 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(g), 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 4. Amend § 165.117 by revising paragraphs (a)(3) and (d)(1) to read as follows:

**§ 165.117 Regulated Navigation Areas, Safety, and Security Zones: Deepwater Ports, First Coast Guard District.**

(a) \* \* \*

(3) \* \* \*

(i) \* \* \*

(ii) The geographic coordinates forming the loci for the regulated navigation areas, safety, and security zones for Neptune Deepwater Port are: 42°29'12.3" N, 70°36'29.7" W; and 42°27'20.5" N, 70°36'7.3" W.

(iii) [Reserved].

\* \* \* \* \*

(d) \* \* \*

(1) No vessel may anchor, engage in diving operations, or commercial fishing using nets, dredges, traps (pots), or use of remotely operated vehicles (ROVs) in the regulated navigation areas set forth in paragraph (a)(1) of this section.

\* \* \* \* \*

Dated: August 10, 2010.

**D.A. Neptun,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

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#### **DEPARTMENT OF HOMELAND SECURITY**

##### **Coast Guard**

##### **33 CFR Part 165**

[Docket No. USCG-2010-0745]

**RIN 1625-AA00**

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

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Niagara River, North Tonawanda, NY. This safety zone is intended to restrict vessels from a portion of the Niagara River during the Thunder on Niagara powerboat races. This safety zone is necessary to protect spectators and vessels from the hazards associated with powerboat races.

**DATES:** This rule is effective from 10 a.m. on August 22, 2010 to 6 p.m. on August 23, 2010.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble

as being available in the docket, are part of docket USCG-2010-0745 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0745 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0745 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0745 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Lieutenant Brian Sadler, Waterways Management Division Chief, U.S. Coast Guard Sector Buffalo; telephone 716-843-9573, e-mail [Brian.L.Sadler@uscg.mil](mailto:Brian.L.Sadler@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a

notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to the public interest to delay the effective date of this rule. Delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objectives because immediate action is needed to protect persons and vessels against the dangers presented by a power boat race.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

### Background and Purpose

This 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 present significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, and alcohol use, present a significant risk of serious injuries or fatalities.

### Discussion of Rule

This temporary safety zone is necessary to ensure the safety of spectators and vessels during the Thunder on Niagara powerboat races. This rule is effective and will be enforced from 10 a.m. on August 22, 2010 to 6 p.m. on August 23, 2010. The safety zone will encompass all waters of the Niagara River, North Tonawanda, NY within two miles of the Grand Island Bridge located at 43°03'36" N, 078°54'45" W to 43°03'09" N, 078°55'21" W to 43°02'42" N, 078°54'09" W to 43°03'00" N, 078°53'42" W, then returning to the point of origin. (DATUM: NAD 83).

### Regulatory Analyses

We developed this 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 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.

The Coast Guard determined that this rule is not a significant regulatory action because the safety zone will be in effect for a relatively short amount of time. Plus, vessels may still transit with the permission of the Captain of the Port Buffalo or his designated on-scene representative.

### Small Entities

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

This rule will 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 Niagara River, North Tonawanda, NY, between 10 a.m. on August 22, 2010 to 6 p.m. August 23, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities because of the relatively short amount of time in which the safety zone will be enforced. Vessels may still transit through the safety zone with permission from the Captain of the Port Buffalo or his on-scene representative.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them 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 Ombudsman

and the Regional Small Business Regulatory 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 1–888–REG–FAIR (1–888–734–3247). 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 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 (adjusted for inflation) 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 cause 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 does not create an environmental risk to

health or risk to safety that may 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 rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a

category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are 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. Chapters 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 temporary section 165.T09-0745 to read as follows:

#### § 165.T09-0745 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 43°03'36" N, 078°54'45" W to 43°03'09" N, 078°55'21" W 43°02'42" N, 078°54'09" W to 43°03'00" N, 078°53'42" W, then returning to the point of origin. (DATUM:NAD 83).

(b) *Effective Period.* This regulation is effective on from 10 a.m. on August 22, 2010 to 6 p.m. on August 23, 2010.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within an enforced safety zone established by this section is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within this safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: August 5, 2010.

**R.S. Burchell,**

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

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### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0746]

**RIN 1625-AA00**

#### Safety Zone; Celebrate Erie, Presque Isle Bay, Erie, PA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Presque Isle Bay, Erie, PA for the Celebrate Erie fireworks. This zone is intended to restrict vessels from a portion of Presque Isle Bay in Erie, PA during the Celebrate Erie fireworks display, August 22, 2010. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a firework display.

**DATES:** This rule is effective from 9:30 p.m. until 10:30 p.m. on August 22, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket USCG-2010-0746 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0746 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.