

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0383]

RIN 1625–AA00

Safety Zone; Paddle for Clean Water; San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a safety zone upon the navigable waters of the Pacific Ocean, San Diego, CA, in support of a paddling regatta near the Ocean Beach Pier. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before July 29, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0383 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.

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, call or e-mail Petty Officer Shane Jackson, Waterways Management, Coast Guard; telephone 619–278–7262, e-mail Shane.E.Jackson@uscg.mil. If you have questions on viewing 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–2009–0383), 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 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–2009–0383” 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 rule based on your comments.

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–2009–0383 in the Docket ID box, press

Enter, and then click on the item in the Docket ID column. You may also visit 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of 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 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

The Surfrider Foundation San Diego Chapter is sponsoring the Paddle for Clean Water. The event will consist of 900 to 1000 participants paddling around the Ocean Beach Pier. The sponsor will provide rescue vessels, as well as perimeter safety boats for the duration of this event. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone that would be enforced on September 13, 2009 from 9 a.m. to 4 p.m. The limits of the safety zone would be as follows:

32°45.00' N, 117°15.12' W;
32°45.10' N, 117°15.30' W;
32°44.55' N, 117°15.38' W;
32°44.43' N, 117°15.19' W; along the shoreline to
32°45.00' N, 117°15.12' W.

This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering

into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

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. This determination is based on the size and location of the safety zone. Commercial vessels would not be hindered by the safety zone. Recreational vessels would not be allowed to transit through the designated safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

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.

This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

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 Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. The Coast Guard will not retaliate against small entities that question or complain about this proposed 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 Department of Homeland Security Management Directive 023–01 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 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**. This proposed rule involves establishing a safety zone under figure 2–1, paragraph (34)(g), of the Instruction. 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a new temporary zone § 165.T11–201 to read as follows:

§ 165.T11–201 Safety zone; Paddle for Clean Water; San Diego; California

(a) *Location*. The limits of the safety zone would be as follows:

32°45.00' N, 117°15.12' W;

32°45.10' N, 117°15.30' W;

32°44.55' N, 117°15.38' W;

32°44.43' N, 117°15.19' W; along the shoreline to

32°45.00' N, 117°15.12' W.

(b) *Enforcement Period*. This section will be enforced on September 13, 2009 from 9 a.m. to 4 p.m. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions*. The following definition applies to this section: *designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations*. (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may

request authorization to do so from the Command Center (COMCEN). The COMCEN may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: June 17, 2009.

D.L. Leblanc,

Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.

[FR Doc. E9–15187 Filed 6–26–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2001–8876]

Federal Motor Vehicle Safety Standard No. 108; Lamp, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by General Motors on December 20, 2001. The petitioner requested that the agency amend the Federal motor vehicle safety standard (FMVSS) on lamps, reflective devices, and associated equipment to require the installation of daytime running lamps on passenger cars, multipurpose passenger vehicles, trucks, and buses that have a gross vehicle weight rating under 4,536 kilograms (10,000 lbs). NHTSA has reviewed the petition and performed an extensive analysis of real world crash data. Based on the results of our study we were unable to find solid evidence of an overall safety benefit associated with daytime running lamps and are therefore denying the petition for rulemaking. The agency maintains its neutral position with respect to the safety benefits from the use of daytime running lamps.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Markus Price, Office of Crash Avoidance

Standards (Phone: 202–366–0098; FAX: 202–366–7002).

For legal issues, you may call Mr. Ari Scott, Office of the Chief Counsel (Phone: 202–366–2992; FAX: 202–366–3820).

You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Summary
- II. Background
- III. Petition
- IV. Agency Analysis and Decision
 - a. NHTSA Studies and Comparison
 - b. Differences in Statistical Methodology
- V. Conclusion

I. Summary

This document denies a 2001 petition from General Motors (GM) requesting that the National Highway Traffic Safety Administration (NHTSA) mandate the installation of daytime running lamps (DRLs) on all vehicles with a gross vehicle weight rating (GVWR) under 4,536 kilograms (10,000 lbs). The rationale for denying the petition is that, overall, studies of the effectiveness of DRLs have not indicated that they are an effective means of preventing crashes. While GM presented studies that appear to indicate a degree of effectiveness, NHTSA's own studies contradict that finding. Furthermore, for reasons described in detail below, a careful analysis of the various studies of DRL effectiveness indicates flaws in the studies GM cites and that NHTSA should place greater weight on its own studies. Given the information currently available, the agency has been unable to determine if there are any demonstrable safety benefits associated with mandating DRLs, and therefore has decided that leaving them as a manufacturer option is the best course of action.

II. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 108; *Lamps, reflective devices, and associated equipment*, establishes lighting requirements for motor vehicles. Daytime Running Lamps (DRLs) are steady burning lamps that illuminate when the regular headlamps are not required for driving. While FMVSS No. 108 does not require DRLs, it does specify requirements that they must meet if a vehicle manufacturer voluntarily decides to install them.¹

The requirements for DRLs were first established on January 11, 1993 in

¹ See 49 CFR 571.108, S7.10.1, Table I–a.