



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0148]

RIN 1625-AA00

Safety Zone, Fifth Coast Guard District Fireworks Display Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is proposing a temporary change to the enforcement location of a safety zone for one specific recurring fireworks display in the Fifth Coast Guard District. This regulation applies to only one recurring fireworks event, held adjacent to the Cape Fear River, Wilmington, North Carolina. The fireworks display formerly originated from a location on land but this year will originate from a barge. The safety zone is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Cape Fear River, Wilmington, North Carolina, during the event.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: 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. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail CWO4 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252-247-4525, e-mail Joseph.M.Edge@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. 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.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, 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 at <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, 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>, type the docket number [USCG-2014-0148] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

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.

2. 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>, type the docket number (USCG-2014-0148) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. 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.

3. 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).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the 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.

B. Regulatory History and Information

This fireworks display event is regulated at 33 CFR 165.506, Table to § 165.506, section (d.) line 2. On June 25, 2013, a Temporary Final Rule (TFR) was published amending 33 CFR 165.506, Table to § 165.506, section (d.) line 2 entitled "Safety Zone, Fifth Coast Guard District Fireworks Display Cape Fear River; Wilmington, NC" in the Federal Register (78 FR 37963). The Coast Guard plans to permanently amend the regulation at 33 CFR 165.506 at a later date to reflect this change.

C. Basis and Purpose

Recurring fireworks displays are frequently held on or adjacent to the navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector - Captain of the Port Zone, please see 33 CFR 3.25.

The regulation listing annual fireworks displays within the Fifth Coast Guard District and safety zones locations is 33 CFR

165.506. The Table to § 165.506 identifies fireworks displays by COTP zone, with the COTP North Carolina zone listed in section "(d.)" of the Table.

The Battleship NORTH CAROLINA Commission has relinquished sponsorship to the City of Wilmington for the annual fireworks display held on July 4 over the waters of Cape Fear River at Wilmington, North Carolina. The Table to § 165.506, at section (d.) event Number "2", describes the enforcement date and regulated location for this fireworks event.

The location listed in the Table has the fireworks display originating from a location, on land, on the north bank of the Cape Fear River at Wilmington, North Carolina. However, the coordinator for this event changed the fireworks launch location for July 4, 2014, to a position on the Cape Fear River at latitude 34°14'17" N longitude 077°57'11" W.

A fleet of spectator vessels is anticipated to gather nearby to view the fireworks display. Due to the need for vessel control during the fireworks display vessel traffic will be temporarily restricted to provide for the safety of participants, spectators, and transiting vessels. Under provisions of 33 CFR 165.506, during the enforcement period, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

D. Discussion of Proposed Rule

The Coast Guard is proposing to temporarily suspend the

regulation listed in Table to § 165.506, section (d) event Number 2, only in regards to the July 4th event, and insert this temporary regulation at Table to § 165.506, at section (d) as event Number "15", in order to reflect that the fireworks display will originate from a barge in the Cape Fear River and therefore the regulated area is changed. This change is needed to accommodate the sponsor's event plan. No other portion of the Table to § 165.506 or other provisions in § 165.506 shall be affected by this regulation.

The regulated area of this safety zone includes all waters of the Cape Fear River within a 300 yards radius of latitude 34°14'17" N longitude 077°57'11" W.

This safety zone will restrict general navigation in the regulated area during the fireworks event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the effective period. The regulated area is needed to control vessel traffic during the event for the safety of participants and transiting vessels.

The enforcement period for this safety zone does not change from that enforcement period listed in § 165.506(d)2. Therefore, this safety zone will be enforced from 5:30 p.m. on July 4, 2014 through 1 a.m. on July 5, 2014.

In addition to notice in the Federal Register, the maritime community will be provided extensive advance notification via the

Local Notice to Mariners, and marine information broadcasts so mariners can adjust their plans accordingly.

E. Regulatory Analyses

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

1. 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, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation restricts access to a small segment of the Cape Fear River, the effect of this rule will not be significant because: (i) the safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly. Additionally, this rulemaking changes the regulated area for the Cape Fear River fireworks demonstration for July 4, 2014 only and does not change the permanent regulated area that has been published in 33 CFR 165.506, Table to § 165.506 at portion "d"

event Number "2". In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 will not have a significant economic impact on a substantial number of small entities. This 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 Cape Fear River where fireworks events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during the fireworks display event that has been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the regulated area when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated

area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this 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.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. 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 the person listed in the FOR FURTHER INFORMATION CONTACT, above. 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.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would 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.

9. 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.

10. Protection of Children from Environmental Health Risks

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.

11. 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.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a safety zone for a fireworks display launch site and fallout area and is expected to have no impact on the water or environment. This zone is designed to protect mariners and spectators from the hazards associated with aerial fireworks displays. This rule is categorically excluded from further review under paragraph 34 (g) of Figure 2-1 of the Commandant Instruction. A preliminary

environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are 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. 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. At § 165.506, in the Table to § 165.506, make the following amendments:

a. Under "(d) Coast Guard Sector North Carolina - COTP Zone," suspend entry 2, from 5:30 p.m. on July 4, 2014 to 1 a.m. on July 5, 2015.

b. Under, "(d) Coast Guard Sector North Carolina - COTP Zone," add entry 15, which will be enforced from 5:30 p.m. on

July 4, 2014 to 1 a.m. on July 5, 2014, to read as follows:

§ 165.506-T05-0148 Safety Zones; Fifth Coast Guard District
Fireworks Displays, Cape Fear River , Wilmington, NC.

* * * * *

(d) Coast Guard Sector North Carolina-COTP Zone			
Number	Date	Location	Regulated area
* 15	* * July 4-5, 2014	* Cape Fear River, Wilmington, NC, Safety Zone.	* All waters of the Cape Fear River within a 300 yard radius of the fireworks launch barge in approximate position latitude 34°14'17" N longitude 077°57'11".

Dated: 16 March 2014

S. R. Murtagh
Captain, U.S. Coast Guard
Captain of the Port

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Date: 03/27/2014]