



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0416]

RIN 1625-AA00

Safety Zone; Chesapeake Bay, Cape Charles, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters in the vicinity of the inlet of Kings Creek, on the Chesapeake Bay. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with a fireworks display, which include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Hampton Roads.

**DATES:** This rule is effective from 8:30 p.m. on August 6, 2016, through 10:30 p.m. on August 7, 2016. This rule will be enforced from 8:30 p.m. through 10:30 p.m. on August 6, 2016, unless the fireworks display is postponed because of adverse weather, in which case this rule will be enforced from 8:30 p.m. through 10:30 p.m. on August 7, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0416 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LCDR Barbara Wilk, Waterways Management Division Chief, Sector Hampton Roads, U.S. Coast Guard; telephone 757-668-5580, email hamptonroadswaterway@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary 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. It is impracticable for us to publish an NPRM because information about the fireworks was received by the Coast Guard without sufficient time to publish a proposed rule and consider comments on it and then issue an effective rule by August 6, 2016. The Coast Guard will provide advance notifications to users of the affected waterway via marine information broadcasts and local notice to mariners.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause for making it effective less than 30 days after publication in the **Federal Register**. The restriction on vessel traffic is necessary to protect life, property and the environment, on the scheduled day and rain date for the

fireworks display when there are expected to be more than 2,000 spectators present. Therefore, due to the need to have a rule effective starting August 6, it is impracticable to delay the effective date of this rule until 30 days after it is published. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Hampton Roads (COTP) has determined that potential hazards associated with fireworks display starting on August 6, 2016, with a rain date of August 7, 2016, will be a safety concern for anyone within a 280 foot radius of the launching site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display. The potential hazards to mariners within the safety zone include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from 8:30 p.m. through 10:30 p.m. on August 6, 2016, with a rain date of August 7, 2016. This rule will only be subject to enforcement on August 7, 2016, if the scheduled August 6 fireworks display is postponed because of adverse weather. The safety zone will encompass all navigable waters of the of the inlet of Kings Creek, on the Chesapeake Bay, within a 280 foot radius of the fireworks launch site in approximate position 37°16'53"N, 076°00'42"W (NAD 1983). The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Chesapeake Bay in Cape Charles, VA for one hour. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

### **B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980, 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 rule will not have a significant economic impact on a substantial number of small

entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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 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 section.

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.

#### C. Collection of Information

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

#### D. Federalism and Indian Tribal Governments

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 rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. 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.

#### F. Environment

We have analyzed this 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(42 U.S.C. 4321-4370f), and have determined 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 rule involves a safety zone lasting two

hours that will prohibit entry in all navigable waters within a 280 foot radius of the launching site. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An 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 rule.

#### G. 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.

#### **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. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add, under the undesignated center heading Fifth Coast Guard District, temporary § 165.T05-0416 to read as follows:

§ 165.T05-0416 Safety Zone, Chesapeake Bay; Cape Charles, VA.

(a) Definitions. For the purposes of this section—

“*Captain of the Port*” means the Commander, Sector Hampton Roads.

“*Participants*” means individuals and vessels involved in explosives training.

“*Representative*” means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) Location. The following area is a safety zone: All waters in the vicinity of the of the inlet of Kings Creek, on the Chesapeake Bay, within a 280 foot radius of the fireworks launch site in approximate position 37°16'53"N, 076°00'42"W (NAD 1983).

(c) Regulations. (1) The general regulations governing safety zones in § 165.23, apply to the area described in paragraph (b) of this section.

(2) With the exception of participants, entry into or remaining in this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(3) All vessels underway within this safety zone at the time it is implemented are to depart the zone immediately.

(4) The Captain of the Port, Hampton Roads or his representative can be contacted at telephone number (757) 668-5555.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(6) This section applies to all persons or vessels wishing to transit through the safety zone except participants and vessels that are engaged in the following operations: enforcing laws, servicing aids to navigation, and emergency response vessels.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement period. This section will be enforced from 8:30 p.m. through 10:30 p.m. on August 6, 2016, with a rain date on August 7, 2016.

Dated: July 19, 2016.

Richard J. Wester,

Captain, U.S. Coast Guard,

Captain of the Port Hampton Roads.

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