



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2017-0543]

RIN 1625-AA00

Safety Zone; Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for multiple fireworks events launched in the vicinity of Penn's Landing in Philadelphia, Pennsylvania for the waters of Delaware River, Philadelphia, PA. Enforcement of this safety zone is necessary and intended to enhance safety of life on navigable waters immediately prior to, during, and immediately after these fireworks events. During the enforcement periods, no vessel may enter in or transit this regulated area without approval from the Captain of the Port or a designated representative.

DATES: This rule is effective from September 3, 2017 to September 13, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0543 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 e-mail MST2 Amanda Boone, U.S. Coast Guard, Sector Delaware Bay,

Waterways Management Division, telephone (215) 271-4814, e-mail
Amanda.N.Boone@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

| | |
|--------|---------------------------------|
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| § | Section |
| U.S.C. | United States Code |
| COTP | Captain of the Port |

II. Background Information and Regulatory History

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 foregoing public comment with respect to this rule. Insufficient time remains to publish a Notice of Proposed Rule Making (NPMR) and allow for a public comment period before the events, which are scheduled to take place September 3, September 10, and September 13, 2017. The safety zone must be in effect on those dates in order to serve its purpose of ensuring the safety of spectators and the general public from hazards associated with the fireworks display. Hazards may include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. For those reasons, it would be impracticable and contrary to the public interest to publish an NPRM.

For the reason discussed above, 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. Delaying the effective date would be contrary to the rule's objectives of ensuring safety of life on the navigable waters and protection of persons and vessels in the vicinity of the fireworks display. The events have been widely publicized in local media outlets.

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 Delaware Bay has determined that this temporary safety zone is necessary to enhance the safety of the public, spectators, vessels, and navigable waters immediately prior to, during, and immediately after these fireworks events.

IV. Discussion of the Rule

On September 3, September 10, and September 13, 2017 fireworks display events will take place in the vicinity of Penn's Landing in Philadelphia, PA. The Coast Guard is establishing a temporary safety zone in a portion of Delaware River, Philadelphia, PA to ensure the safety of persons, vessels, and the public during the event. The safety zone includes all waters of the Delaware River, adjacent to Penn's Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline commencing at latitude 39°56'31.2"N., longitude 075°08'28.1"W.; thence westward to latitude 39°56'29".1N., longitude 075°07'56.5"W., and bounded on the north by the Benjamin Franklin Bridge where it crosses the Delaware River.

Access to this safety zone will be restricted during the specified date and time period. Only vessels or persons specifically authorized by the Captain of the Port

Delaware Bay or designated representative may enter or remain in the regulated area.

This safety zone will be enforced on September 3, September 10, and September 13 2017 from 7:45 p.m. to 10:30 p.m. each day.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders 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. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

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 (OMB).

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled

‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be unable to transit the safety zone for the duration of the fireworks events; however, this safety zone will impact a small designated area of the Delaware River, in Philadelphia, PA, for less than 2 hours during the fireworks events. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the safety zone; under the regulation vessel operators may request 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 (Pub. L. 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 calls for no 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 it is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule adjusts rates in accordance with applicable statutory and regulatory mandates. It is categorically excluded under section 2.B.2, figure 2-1, paragraph 34(g) of the Instruction, which pertains to minor regulatory changes that are editorial or procedural in nature. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the ADDRESSES section of this preamble.

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 § 165.T05-0543 to read as follows:

§ 165.T05-0543 Safety Zone; Delaware River; Philadelphia, PA.

(a) Definitions. As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer operating on board a Coast Guard vessel and or on board another Federal, State, or local law enforcement vessel assisting the Captain of the Port, Delaware Bay in the enforcement of the safety zone.

(b) Location. The following area is a security zone: all waters of the Delaware River, adjacent to Penn's Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline commencing at latitude 39°56'31.2"N., longitude 075°08'28.1"W.; thence

westward to latitude 39°56'29".1N., longitude 075°07'56.5"W., and bounded on the north by the Benjamin Franklin Bridge where it crosses the Delaware River.

(c) Regulations. (1) The general safety zone regulations found in § 165.23 apply to the safety zone created by this temporary section.

(2) Under the general safety zone regulations in § 165.23, persons may not enter the safety zone described in paragraph (b) of this section unless authorized by the COTP or the COTP's designated representative.

(3) To request permission to enter the safety zone, contact the COTP or the COTP's representative on VHF-FM channel 16. All persons and vessels in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement period: This section will be enforced on September 3, 2017, September 10, 2017, and September 13, 2017 from 7:45 p.m. to 10:30 p.m. each day.

Dated: August 29, 2017

Scott E. Anderson,
Captain, U. S. Coast Guard,
Captain of the Port, Delaware Bay.
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