



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0286]

RIN 1625-AA00

Safety Zone; Fireworks, Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for multiple fireworks events launched in the vicinity of Penn's Landing, Philadelphia, Pennsylvania, for waters of the Delaware River, Philadelphia, PA. Establishment of this safety zone is necessary 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 Delaware Bay or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2018-0286 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the

“Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Edmund Ofalt, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, Coast Guard; telephone (215) 271–4814, e-mail Edmund.J.Ofalt@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On March 1, 2018, the Coast Guard was notified of fireworks events planned for May 24, 25, 26, and 27, 2018. Hazards from fireworks displays include accidental discharge, dangerous projectiles and falling hot embers or other debris. The COTP Delaware Bay has determined that a temporary safety zone is necessary to provide safety on the navigable waters of the Delaware River during these fireworks events, and to enhance safety of the public, spectators, and vessels.

The purpose of this rulemaking is to ensure the safety of vessels and navigable waters immediately prior to, during, and immediately after these fireworks events. The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP Delaware Bay proposes to establish a safety zone on the Delaware River adjacent to Penns Landing in Philadelphia, PA, May 24, 2018, through May 27, 2018. The safety zone will be enforced from approximately 8 pm to 11 pm on nights on which fireworks are being displayed from a barge in the Delaware River. These fireworks displays may be held on May 24th, 25th, 26th, and 27th, or on only some of these dates. Notification of enforcement dates and times will be published in the Coast Guard District 5 Local Notice to Mariners and broadcast via Broadcast Notice to Mariners. The safety zone will include all navigable waters of Delaware River, adjacent to Penns Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline connecting 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 southern edge of the Benjamin Franklin Bridge where it crosses the Delaware River.

Access to this safety zone will be restricted during the specified enforcement dates and time periods. Vessels may not take on bunkers or conduct lightering operations inside the zone during times of enforcement. Only vessels or persons specifically authorized by the COTP Delaware Bay or designated representative may enter or remain in the regulated area. Requests to enter or remain in the zone will be required to be submitted to the COTP Delaware Bay, or his designated representative via VHF-FM channel 16 or 217-271-4807. Vessels engaged in law enforcement, servicing of aids to navigation, and emergency response will be exempt from these requirements.

The regulatory text we are proposing can be found at the end of this document.

IV. 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 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 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration and time of day of the safety zone. The proposed safety zone will impact waters affected by this rule on May 24, 25, 26, and 27, 2018 from 8 pm to 11 pm. During this time of day commercial and recreational traffic is normally low. Notifications of enforcement dates and times will be made to the maritime community via Broadcast Notice to Mariners and Local Notice to Mariners so that plans may be adjusted accordingly. Notifications will be updated as necessary, to keep the maritime community informed of the status of the safety 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 proposed rule would 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 IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

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.

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. 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. 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.

C. Collection of Information

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

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (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 a safety zone that will only be enforced for a short duration and excludes vessels from entry into or remaining within a specified area on the Delaware River. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is 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.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. 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.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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; 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.T05-0286 to read as follows:

§ 165.T05-0286 Safety Zone; Safety Zone; Fireworks, Delaware River, Philadelphia PA.

(a) Location. The following area is a safety zone: All navigable waters of 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. These coordinates are based on the 1984 World Geodetic System (WGS 84).

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

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone, contact the COTP or the COTP's representative via VHF-FM channel 16 or 215-271-4807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) No vessel may take on bunkers or conduct lightering operations within the safety zone during its enforcement period(s).

(4) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(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 zone will be enforced from approximately 8 pm to 11 pm on nights on which fireworks are being displayed from a barge beginning May 24 through May 27, 2018. Starting and ending times for the enforcement of the safety zone will be broadcast via Broadcast Notice to Mariners and published in the weekly Local Notice to Mariners.

Dated: April 26, 2018.

Scott E. Anderson,

Captain, U.S. Coast Guard,

Captain of the Port Delaware Bay.

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