



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2018-0868]**

**RIN 1625-AA00**

**Safety Zone; Annual Fireworks Displays within the Sector Columbia River Captain of the Port Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to amend the regulations establishing safety zones for annual fireworks displays in the Captain of the Port Zone Columbia River.. This action would include updating 3 existing safety zones, adding 1 safety zone for a fireworks display that was previously published under a temporary regulation, and removing 10 safety zones for inactive fireworks displays. 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 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments identified by docket number USCG-2018-0868 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 LCDR Dixon Whitley, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503-240-9319, e-mail msupdxwwm@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
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**

Our regulation for safety zones for fireworks displays in Captain of the Port Zone Columbia River., 33 CFR 165.1315, was revised (82 FR 28556, June 23, 2017) in 2017. This proposed rule would remove 10 safety zones for inactive fireworks displays, add 1 safety zone for a new, recurring fireworks display that was previously published as a temporary safety zone, and update the date or location for 3 existing fireworks displays. The purpose of this revision would provide the public accurate information regarding safety zones for annual fireworks displays in Captain of the Port Zone Columbia River.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231. The Captain of the Port Sector Columbia River has determined that fireworks displays create hazardous conditions for the maritime public because of the large number of vessels near the displays, as well as the noise, falling debris, and explosions that occur during the event. Because firework discharge sites pose a potential hazard to the maritime

public, these safety zones are necessary in restricting vessel movement and to reduce vessel congregation in the proximity of the firework discharge sites.

### **III. Discussion of Proposed Rule**

The Coast Guard proposes to remove 10 fireworks display safety zones in 33 CFR 165.1315 that are listed in Table 1 below because the Coast Guard has not received an application to conduct these fireworks displays within the past 3 years.

Table 1. List of Safety Zone We Propose to Remove from 33 CFR 165.1315.

Cinco de Mayo Fireworks	Portland, OR	One day in May	45°30'58" N	122°40'12" W.
Newport High School Graduation Fireworks	Newport, OR	One day in June	44°36'48" N	124°04'10" W.
Celebrate Milwaukie	Milwaukie, OR	One day in July	45°26'33" N	122°38'44" W.
Arlington 4th of July	Arlington, OR	One day in July	45°43'23" N	120°12'11" W.
East County 4th of July Fireworks	Gresham, OR	One day in July	45°33'32" N	122°27'10" W.
Rufus 4th of July Fireworks	Rufus, OR	One day in July	45°41'39" N	120°45'16" W.
Maritime Heritage Festival	St. Helens, OR	One day in July	45°51'54" N	122°47'26" W.
Lynch Picnic	West Linn, OR	One day in July	45°23'37" N	122°37'52" W.
First Friday Milwaukie	Milwaukie, OR	One day in September	45°26'33" N	122°38'44" W.
Willamette Falls Heritage Festival	Oregon City, OR	One day in October	45°21'44" N	122°36'21" W.

Additionally, the Coast Guard proposes to add a new fireworks display safety zone. This safety zone was previously listed as a temporary safety zone (83 FR 30869, July 2, 2018), and after conferring with the event sponsor, it will become a recurring fireworks display. This safety zone would cover all navigable waters within a 450 yard

radius of the fireworks barge in the Willamette River located at 45° 24'37" N, 122° 39'30" W in the vicinity of George Rogers Park in Lake Oswego, OR. The following would be added to the table in 33 CFR 165.1315:

City of Lake Oswego 4 <sup>th</sup> of July Fireworks	Lake Oswego, OR	One day in July	45°24'37" N	122°39'30" W.
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Finally, the Coast Guard proposes to revise three existing fireworks display safety zones. These revisions include updating the date for 4<sup>th</sup> of July at Pekin Ferry to more precisely describe when the fireworks display would occur, correcting the wrong state listed for the Independence Day at the Port and updating the location for the Leukemia and Lymphoma Light the Night Fireworks.

These updates would eliminate any confusion caused by the fireworks display safety zones listed in the 33 CFR165.1315 table and any subsequent temporary safety zones resulting from changes. The regulatory text we are proposing appears 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 size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around these safety zones which would impact small designated areas of the Oregon coast, Tillamook Bay, the Columbia River and its tributaries, and the Clatskanie River for approximately 2 hours during the evening when commercial vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow 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 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 (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** 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, which guides 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 safety zones lasting approximately two hours in duration and would prohibit entry within 450 yards of the launch sites. 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. In § 165.1315, revise paragraph (a) to read as follows:

(a) *Safety zones.* The following areas are designated safety zones: Waters of the Columbia River and its tributaries, waters of the Siuslaw River, Yaquina River, Umpqua River, Clatskanie River, Tillamook Bay and waters of the Washington and Oregon Coasts, within a 450 yard radius of the launch site at the approximate locations listed in the following table:

<b>Event Name (typically)</b>	<b>Event Location</b>	<b>Date of Event</b>	<b>Latitude</b>	<b>Longitude</b>
Portland Rose Festival Fireworks	Portland, OR	One day in May or June	45° 30'58" N	122° 40'12" W

Tri-City Chamber of Commerce Fireworks/River of Fire Festival	Kennewick, WA	One day in July	46° 13' 37" N	119° 08' 47" W
Astoria-Warrenton 4 <sup>th</sup> of July Fireworks	Astoria, OR	One day in July	46° 11' 34" N	123° 49' 28" W
Waterfront Blues Festival Fireworks	Portland, OR	One day in July	45° 30' 42" N	122° 40' 14" W
Florence Independence Day Celebration	Florence, OR	One day in July	43° 58' 09" N	124° 05' 50" W
Oaks Park Association 4 <sup>th</sup> of July	Portland, OR	One day in July	45° 28' 22" N	122° 39' 59" W
City of Rainier/Rainier Days	Rainier, OR	One day in July	46° 05' 46" N	122° 56' 18" W
Ilwaco July 4 <sup>th</sup> Committee Fireworks/Independence Day at the Port	Ilwaco, WA	One day in July	46° 18' 17" N	124° 02' 00" W
Splash Aberdeen Waterfront Festival	Aberdeen, WA	One day in July	46° 58' 40" N	123° 47' 45" W
City of Coos Bay July 4 <sup>th</sup> Celebration/Fireworks Over the Bay	Coos Bay, OR	One day in July	43° 22' 06" N	124° 12' 24" W
Port of Cascade Locks 4 <sup>th</sup> of July Fireworks	Cascade Locks, OR	One day in July	45° 40' 15" N	121° 53' 43" W
Clatskanie Heritage Days Fireworks	Clatskanie, OR	One Day in July	46° 6' 17" N	123° 12' 02" W
Washougal 4 <sup>th</sup> of July	Washougal, WA	One day in July	45° 34' 32" N	122° 22' 53" W
City of St. Helens 4 <sup>th</sup> of July Fireworks	St. Helens, OR	One day in July	45° 51' 54" N	122° 47' 26" W
Waverly Country Club 4 <sup>th</sup> of July Fireworks	Milwaukie, OR	One day in July	45° 27' 03" N	122° 39' 18" W
Hood River 4 <sup>th</sup> of July	Hood River, OR	One day in July	45° 42' 58" N	121° 30' 32" W
Winchester Bay 4 <sup>th</sup> of July Fireworks	Winchester Bay, OR	One day in July	43° 40' 56" N	124° 11' 13" W
Brookings, OR July 4 <sup>th</sup> Fireworks	Brookings, OR	One day in July	42° 02' 39" N	124° 16' 14" W
Yachats 4 <sup>th</sup> of	Yachats, OR	One day in	44° 18' 38"	124° 06' 27" W

July		July	N	
Lincoln City 4 <sup>th</sup> of July	Lincoln City, OR	One day in July	44° 55'28" N	124° 01'31" W
July 4 <sup>th</sup> Party at the Port of Gold Beach	Gold Beach, OR	One day in July	42° 25'30" N	124° 25'03" W
Gardiner 4 <sup>th</sup> of July	Gardiner, OR	One day in July	43° 43'55" N	124° 06'48" W
Huntington 4 <sup>th</sup> of July	Huntington, OR	One day in July	44° 18'02" N	117° 13'33" W
Toledo Summer Festival	Toledo, OR	One day in July	44° 37'08" N	123° 56'24" W
Port Orford 4 <sup>th</sup> of July	Port Orford, OR	One day in July	42° 44'31" N	124° 29'30" W
The Dalles Area Fourth of July	The Dalles, OR	One day in July	45° 36'18" N	121° 10'23" W
Roseburg Hometown 4 <sup>th</sup> of July	Roseburg, OR	One day in July	43° 12'58" N	123° 22'10" W
Newport 4 <sup>th</sup> of July	Newport, OR	One day in July	44° 37'40" N	124° 02'45" W
Cedco Inc./The Mill Casino Independence Day	North Bend, OR	One day in July	43° 23'42" N	124° 12'55" W
Waldport 4 <sup>th</sup> of July	Waldport, OR	One day in July	44° 25'31" N	124° 04'44" W
Westport 4 <sup>th</sup> of July	Westport, WA	One day in July	46° 54'17" N	124° 05'59" W
The 4 <sup>th</sup> of July at Pekin Ferry	Ridgefield, WA	Saturday before July 4th	45° 52'07" N	122° 43'53" W
Bandon 4 <sup>th</sup> of July	Bandon, OR	One day in July	43° 07'29" N	124° 25'05" W
Garibaldi Days Fireworks	Garibaldi, OR	One day in July	45° 33'13" N	123° 54'56" W
Bald Eagle Days	Cathlamet, WA	One day in July	46° 12'14" N	123° 23'17" W
Independence Day at the Fort Vancouver	Vancouver, WA	One Day in July	45° 36'57" N	122° 40'09" W
Oregon Symphony Concert Fireworks	Portland, OR	One day in August or September	45° 30'42" N	122° 40'14" W
Astoria Regatta	Astoria, OR	One day in August	46° 11'34" N	123° 49'28" W
Leukemia and Lymphoma Light the Night Fireworks	Portland, OR	One day in October	45° 30'23" N	122° 40'4" W
Veterans Day Celebration	The Dalles, OR	One day in November	45° 36'18" N	121° 10'34" W

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Dated: September 24, 2018.

**J. C. SMITH,**

*Captain, U.S. Coast Guard,*

*Captain of the Port Columbia River.*

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