



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2019-0775]**

**RIN 1625-AA00**

**Safety Zone for Hurricane Dorian; Coast Guard Maryland-National Capital Region**

**Captain of the Port Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

---

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters within the Coast Guard Maryland-National Capital Region Captain of the Port Zone. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the possible landfall of Hurricane Dorian. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Maryland-National Capital Region.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 5 a.m. on September 12, 2019. For the purposes of enforcement, actual notice will be used from 5 a.m. on September 6, 2019, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0775 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 Mr. Ron Houck, Sector Maryland-National Capital Region Waterways

Management Division, U.S. Coast Guard; telephone 410-576-2674, e-mail

Ronald.L.Houck@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

|        |                                 |
|--------|---------------------------------|
| COTP   | Captain of the Port             |
| 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 because it is impracticable and contrary to the public interest. Immediate action is required by the Coast Guard due to the potential safety hazards vessels in these waterways present to life, property and the environment during a hurricane. We must establish this safety zone by September 6, 2019, to ensure that the rule is in place in advance of Hurricane Dorian.

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 of this rule would be impracticable and contrary to the public interest because immediate action is needed to restrict vessel traffic to protect life, property and the environment and respond to the potential safety hazards associated with the nature and path of Hurricane Dorian.

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

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). Hurricane Dorian continues to track toward the mid-Atlantic region, with a most probable path inclusive of the Chesapeake Bay, Maryland. The COTP Maryland-National Capital Region has determined that potential hazards associated with the destructive force associated with a hurricane necessitates establishment of a temporary safety zone to protect the safety of life and property on navigable waters starting September 6, 2019, will be a safety concern for anyone within the COTP Maryland-National Capital Region Zone. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the weather event.

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

This rule establishes a safety zone from 5 a.m. on September 6, 2019, until 5 a.m. on September 12, 2019, unless sooner terminated by the Captain of the Port Maryland-National Capital Region. The safety zone will cover all navigable waters within the COTP Maryland-National Capital Region Zone, as described in 33 CFR 3.25-15. The duration of the zone is intended to protect personnel, vessels, and the marine environment

in these navigable waters due to the expected impact of Hurricane Dorian. Except for vessels already at berth, mooring, or anchor, all vessels underway within this safety zone at the time it is implemented are to depart the zone. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. To seek permission to enter, vessels and persons may contact the COTP or the COTP's representative by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). 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.

## **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 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule 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 duration of the safety zone. The effect of this regulation will not be significant due to the limited time that will be

regulated (less than a week) and that vessel traffic will be allowed to transit through the zone once the hurricane has passed, when it has been determined safe to do so, and with the permission of the COTP Maryland-National Capital Region. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about 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 Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), 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 that will prohibit entry within the COTP Maryland-National Capital Region Zone for six days, as described in 33 CFR 3.25-15, due to the expected impact of Hurricane Dorian. It is categorically excluded from further review under paragraph L60(c) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1.

#### *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: 46 U.S.C. 70034, 70051; 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.T05-0775 to read as follows:

#### **§ 165.T05-0775 Safety Zone for Hurricane DORIAN; Coast Guard Maryland-National Capital Region Captain of the Port Zone.**

(a) Location. The following area is a safety zone: All navigable waters of the Coast Guard Captain of the Port Maryland-National Capital Region Zone, as described in 33 CFR 3.25-1.

- (b) Definitions. As used in this section---

Captain of the Port Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region (COTP) to assist 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. All vessels entering the safety zone may be boarded and examined by the Coast Guard under existing regulations, prior to entry, to ensure compliance with the general safety zone regulations.

(2) Except for vessels already at berth, mooring, or anchor, all vessels underway within this safety zone on September 6, 2019, are to depart the zone.

(3) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). 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.

(4) The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

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

Dated: September 5, 2019.

Joseph B. Loring,  
Captain, U.S. Coast Guard,  
Captain of the Port Maryland-National Capital Region.  
[FR Doc. 2019-19647 Filed: 9/10/2019 8:45 am; Publication Date: 9/11/2019]