



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2020-0088]**

**RIN 1625-AA00**

**Safety Zone; New Jersey Intracoastal Waterway, Atlantic City, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for certain navigable waters of the New Jersey Intracoastal Waterway. The safety zone is needed to protect participants of the Stockton University – AC Double Duel Regatta on these navigable waters near Atlantic City, NJ, during the rowing competition on April 4, 2020, and April 5, 2020. This proposed rulemaking would prohibit non-participant persons and vessels from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port (COTP) Delaware Bay or a designated representative. We invite your comments on the proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments identified by docket number USCG-2020-0088 using the Federal eRulemaking Portal at <https://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 Thomas Welker, U.S. Coast Guard Sector Delaware Bay, Waterways Management Division; telephone 215-271-4814, email Thomas.J.Welker@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**

The Stockton University Athletic Department notified the Coast Guard that it will be conducting a rowing competition from noon to 6:30 p.m. on April 4, 2020, and from 7:30 a.m. to 1:30 p.m. on April 5, 2020. The competition will consist of rowing teams in 40’ to 60’ racing shells on a 2000-meter course in the New Jersey Intracoastal Waterways of Atlantic City, New Jersey. The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with this rowing event will be a safety concern for participants and for vessels operating within the specified waters of the New Jersey Intracoastal Waterway.

The purpose of this rulemaking is to protect participants, spectators, and transiting vessels on waters near the regatta on the New Jersey Intracoastal Waterway before,

during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

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

The Coast Guard is proposing to establish a temporary safety zone from noon on April 4, 2020, until 2 p.m. on April 5, 2020. The zone would be enforced from noon to 7 p.m. on April 4, 2020, and from 7 a.m. to 2 p.m. on April 5, 2020. The safety zone would cover all navigable waters of the New Jersey Intracoastal Waterway within the polygon bounded by the following: originating on the southwest portion at approximate position latitude 39°20'57" N., longitude 074°27'59" W.; thence northeasterly along the shoreline to latitude 39°21'35" N., longitude 074°27'06" W.; thence east across the mouth of Beach Thorofare to the shoreline at latitude 39°21'41" N., longitude 074°26'55" W.; thence east along the shoreline to latitude 39°21'42" N., longitude 074°26'51" W.; thence southeast across the New Jersey Intracoastal Waterway to the shoreline at latitude 39°21'43" N., longitude 074°26'41" W.; thence southwest along the shoreline to approximate position latitude 39°20'55" N., longitude 074°27'57" W.; thence north to the point of origin. The duration of the zone is intended to ensure the safety of participants and vessels on these navigable waters before, during, and after the rowing event. No person or vessel will be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the COTP Delaware Bay or a designated representative. If the COTP Delaware Bay or a designated representative grants authorization to enter, transit through, anchor in, or remain within the safety zone, all persons and vessels receiving such authorization must comply with the instructions of the COTP Delaware Bay or a designated representative. 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.

The impact of this proposed rule is not significant for the following reasons: (1) The enforcement periods will last seven hours each day of the 2-day event at a time of year when vessel traffic is usually low; (2) although non-participant persons and vessels may not enter, transit through, anchor in, or remain with the safety zone without authorization from the COTP Delaware Bay or a designated representative, surrounding channels within the New Jersey Intracoastal Waterways will remain unaffected. Persons and vessels will be able to operate in the surrounding area during the enforcement period; (3) persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the COTP Delaware Bay or a designated

representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene actual notice from designated representatives.

*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 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 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 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 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 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 proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, 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 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 lasting seven hours per day for two days that would prohibit entry within certain navigable waters during a rowing event. 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. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. 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 <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email 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 <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://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 is proposing 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: 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.T05-0088 to read as follows:

#### **§ 165.T05-0088 Safety Zone; New Jersey Intracoastal Waterway, Atlantic City, NJ.**

(a) *Location.* The following area is a safety zone: All navigable waters of the New Jersey Intracoastal Waterway in Atlantic City, NJ, within the polygon bounded by the following: originating on the southwest portion at approximate position latitude 39°20'57" N., longitude 074°27'59" W.; thence northeasterly along the shoreline to latitude 39°21'35" N., longitude 074°27'06" W.; thence east across the mouth of Beach Thorofare to the shoreline at latitude 39°21'41" N., longitude 074°26'55" W.; thence east along the shoreline to latitude 39°21'42" N., longitude 074°26'51" W.; thence southeast across the New Jersey Intracoastal Waterway to the shoreline at latitude 39°21'43" N., longitude 074°26'41" W.; thence southwest along the shoreline to approximate position latitude 39°20'55" N., longitude 074°27'57" W.; thence north to the point of origin.

(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 (COTP), 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) 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 noon to approximately 7 p.m. on April 4, 2020, and from approximately 7 a.m. to 2 p.m., or shortly before that, on April 5, 2020.

Dated: February 24, 2020.

**Scott E. Anderson,**

*Captain, U.S. Coast Guard,*

*Captain of the Port Delaware Bay.*

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