



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2020-0511]

RIN 1625-AA00

Safety Zones; Spa Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish two temporary safety zones for certain waters of the Spa Creek from October 19, 2020, through October 23, 2020. This action is necessary to provide for the safety of life on these navigable waters at Annapolis, MD, during a film project. This proposed rulemaking would prohibit persons and vessels from being in the safety zones unless authorized by the Captain of the Port Maryland-National Capital Region 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 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2020-0511 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 Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2674, e-mail Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
PATCOM	Coast Guard Patrol Commander
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

Hoonigan Industries, of Long beach, CA, notified the Coast Guard that it will be conducting a film project from 5 a.m. on October 19, 2020, to noon on October 22, 2020. In the event of inclement weather, the filming may continue on to October 23, 2020. The film project includes the use of barges and other marine equipment positioned at two locations in Spa Creek, at Annapolis, MD, within a portion of Market Slip (Ego Alley) and across the width of Annapolis Harbor. On site marine equipment and vessels will be operated by Smith Marine Towing, Inc. of Baltimore, MD, or its subcontractors. Such equipment and vessels will display the lights and shapes described in U.S. Coast Guard regulations. Vessels engaged in work for this project will utilize marine band radio VHF-FM channels 16 and 13. Hazards associated with the film project include barges and other marine equipment positioned within designated navigation channels and interfering with vessels intending to operate within those channels, and operating within approaches

to local public boat moorings and mooring facilities, yacht clubs and private marinas, and other waterside businesses. The Captain of the Port (COTP) Maryland-National Capital Region has determined that potential hazards associated with the film project would be a safety concern for anyone within promiximity of the barges and other marine equipment positioned at two locations in Spa Creek.

The Coast Guard is requesting that interested parties provide comments within a shortened comment period of 15 days instead of the typical 30 days for this notice of proposed rulemaking. The Coast Guard believes a shortened comment period is necessary and reasonable to ensure the Coast Guard has time to review and respond to any significant comments submitted by the public in response to this NPRM and has a final rule in effect in time for the scheduled event.

The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region is proposing to establish two temporary safety zones for certain waters of Spa Creek at Annapolis, MD. This rule would be effective from 5 a.m. on October 19, 2020, through noon on October 23, 2020, and would be enforced during the times described below for each zone.

The first safety zone would be enforced from 5 a.m. to noon on October 19, 2020, or if necessary due to inclement weather on October 19, 2020, from 5 a.m. to noon on October 20, 2020. This safety zone would cover all navigable waters of Spa Creek, within Market Slip (Ego Alley), from shoreline to shoreline, bounded on the southeast by a line commencing at latitude 38°58'34.2" N, longitude 076°29'05.6" W, thence

southwest to latitude 38°58'32.9" N, longitude 076°29'06.4" W, located at Annapolis, MD. This area is approximately 285 yards in length and approximately 50 yards in width. The proposed duration of the zone is intended to ensure the safety of vessels on these navigable waters before, during, and after the scheduled 5 a.m. to noon film project.

The second safety zone would be enforced from 7 a.m. on October 20, 2020 through noon on October 22, 2020. If there is inclement weather, enforcement would be continued through noon on October 23, 2020. This safety zone would cover all navigable waters of Spa Creek, encompassed by a line connecting the following points, beginning at the shoreline at latitude 38°58'39.8" N, longitude 076°28'48.9" W, thence south to the shoreline at latitude 38°58'32.1" N, longitude 076°28'47.2" W, thence southwest along the shoreline to latitude 38°58'24.6" N, longitude 076°28'57.1" W, thence northwest to the shoreline at latitude 38°58'34.2" N, longitude 076°29'05.6" W, thence northeast along the shoreline to the point of origin, located at Annapolis, MD. This area is approximately 475 yards in length and approximately 430 yards in width. This area includes the Spa Creek Anchorage, described in paragraph (a)(5) of 33 CFR 110.159. The mooring of vessels in this designated anchorage is managed through local ordinances enforced by the City of Annapolis Harbor Master. Vessels at moorings within this anchorage located in the vicinity of the barges and other marine equipment would be required to depart that portion of the safety zone during enforcement. Persons and vessels may seek permission to enter or depart the safety zones, by contacting the COTP or the COTP's representative. Vessels intending to use, using, or seeking to use moorings within this anchorage located near the entrance to Spa Creek would be allowed to do so during enforcement if authorized by the COTP or the COTP's designated

representative. Vessels may also use the designated anchorage located outside the entrance to Spa Creek. This area includes the Spa Creek South Anchorage, described in paragraph (a)(3) of 33 CFR 110.159. The mooring of vessels in this anchorage is managed through local ordinances enforced by the City of Annapolis Harbor Master. The proposed duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 7 a.m. on October 20, 2020 through noon on October 22, 2020 film project.

Except for marine equipment and vessels operated by Smith Marine Towing, Inc. or its subcontractors, no vessel or person would be permitted to enter these safety zones without obtaining permission from the COTP or a designated representative. The COTP would notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, including publication in the **Federal Register**, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 (previously codified in 33 U.S.C. 1232) and 46 U.S.C. 70052 (previously codified in 50 U.S.C. 192). 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 the size, location, time-of-day, time-of-year, and the days of the week of the safety zones, which would impact two designated areas of Spa Creek for 67 total enforcement hours. The first safety zone, within Market Slip (Ego Alley), would be enforced for 14 total enforcement hours. The second safety zone, across the width of Annapolis Harbor, would be enforced for 53 total enforcement hours. The film project is being planned to coincide with the non-peak season for tourism in the area and is not being held during the weekend so that there is less impact on vessel transits in this section of the waterway. Although vessel traffic will not be able to safely transit around these safety zones, there may be locations along the placement of the barges and other marine equipment in Spa Creek across the width of Annapolis Harbor that would allow for vessel transits. Vessels desiring to transit to or from local waterside businesses located within the safety zones during enforcement would be able to seek permission by contacting the COTP or the COTP’s representative. Vessels intending to use, using, or seeking to use moorings within the Spa Creek Anchorage located near the entrance to Spa Creek would be allowed to do so during

enforcement by contacting the COTP or the COTP's representative. Vessels at moorings within this anchorage this time of year are typically transient vessels, which may also use the South Anchorage located outside the entrance to Spa Creek. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the safety zones.

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 call or email 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 call or email 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, 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 two safety zones lasting a combined 67 total enforcement hours that would prohibit entry within portions of Spa Creek. 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 call or email 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 eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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.T05-0511 to read as follows:

§ 165.T05-0511 Safety Zones; Spa Creek, Annapolis, MD.

(a) Locations. The following areas are a safety zone. All coordinates are based on datum NAD 83.

(1) Safety zone 1. All navigable waters of Spa Creek, within Market Slip (Ego Alley), from shoreline to shoreline, bounded on the southeast by a line commencing at latitude 38°58'34.2" N, longitude 076°29'05.6" W, thence southwest to latitude 38°58'32.9" N, longitude 076°29'06.4" W, located at Annapolis, MD.

(2) Safety zone 2. All navigable waters of Spa Creek, encompassed by a line connecting the following points, beginning at the shoreline at latitude 38°58'39.8" N, longitude 076°28'48.9" W, thence south to the shoreline at latitude 38°58'32.1" N, longitude 076°28'47.2" W, thence southwest along the shoreline to latitude 38°58'24.6"

N, longitude 076°28'57.1" W, thence northwest to the shoreline at latitude 38°58'34.2" N, longitude 076°29'05.6" W, thence northeast along the shoreline to the point of origin, located at Annapolis, MD.

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

Captain of the Port (COTP) 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 to assist in enforcing any safety zone described in paragraph (a) of this section.

Marine equipment means any vessel, barge or other equipment operated by Smith Marine Towing, Inc. or its subcontractors.

(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. Except for marine equipment, all vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(3) 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.

(d) Enforcement officials. 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 periods. (1) Paragraph (a)(1) of this section will be enforced from 5 a.m. to noon on October 19, 2020, or if necessary due to inclement weather on October 19, 2020, from 5 a.m. to noon on October 20, 2020.

(2) Paragraph (a)(2) of this section will be enforced from 7 a.m. on October 20, 2020, through noon on October 22, 2020, or if necessary due to inclement weather, from 7 a.m. on October 20, 2020, through noon on October 23, 2020.

Dated: September 8, 2020

Joseph B. Loring,
Captain, U.S. Coast Guard
Captain of the Port Maryland-National Capital Region.

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