



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG- USCG-2020-0645]

RIN 1625- AA00

**Safety Zone; Neuse River, New Bern, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the Neuse River in New Bern, North Carolina. This action is necessary to provide for the safety of life on these navigable water near New Bern, NC, during an aerobatic airshow on December 05, 2020. This rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port (COTP) North Carolina or a designated representative.

**DATES:** This rule is effective December 5, 2020 from 4 p.m. through 5:30 p.m.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0645 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 Chief Petty Officer Joshua O'Rourke, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone 910-772-2227, email [NCMarineevents@uscg.mil](mailto:NCMarineevents@uscg.mil)

### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

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**

In August 2020, the UHF Development Group informed the Coast Guard of their intention to plan an aerobatic airshow on the Neuse River in New Bern, North Carolina. The airshow will take place December 5, 2020, from 4 p.m. to 5:30 p.m. We are proposing to establish a temporary safety zone covering approximately one square mile of the Neuse River for the duration of the event. The Captain of the Port (COTP) North Carolina has determined that potential safety hazards associated with the aerobatic airshow would be a concern for anyone transiting this portion of the Neuse River during the show.

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 public interest because immediate action is needed to protect persons and vessels from the hazards associated with this event on December 5, 2020.

## **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) The COTP North Carolina has determined that potential hazards associated with the New Bern Christmas Flotilla Airshow scheduled for 4 p.m. through 5:30 p.m. on December 5, 2020 is a safety concern for mariners during the time that aircraft perform aerobatic maneuvers directly above the Neuse River. This rule is necessary to protect safety of life from the potential hazards associated with the high-speed boat race.

## **IV. Discussion of Comments, Changes, and the Rule**

This rule establishes a temporary safety zone on a portion of the Neuse River from December 5, 2020, from 4 p.m. to 5:30 p.m. The rule will be enforced for the duration of the event. The dates and times of enforcement will be broadcast locally over VHF-FM marine radio. The safety zone will include all navigable waters of the Neuse River in New Bern, North Carolina, inside an area starting from approximate positions: latitude 35°06'32"N., longitude 077°01'54"W., then north to latitude 35°06'55"N., longitude 077°02'04"W., then east to latitude 35°07'06"N., longitude 077°01'27"W., then southeast to latitude 35°06'49"N., longitude 077°01'12"W., then south to latitude 35°06'08"N., longitude 077°01'18"W., then west to latitude 35°06'02"N., longitude 077°01'57"W., then north to the point of origin, for a total area of approximately 1 mile square. The airshow will consist of two separate performances and will last a total approximately 1.5 hours. The event will begin roughly 20 minutes before sunset and will last to approximately 30 minutes after sunset. All aircraft will remain at least 500 feet above the ground. Public spectators will be allowed to view the event from the waterway, however, for safety reasons, the aircraft will not perform if there are any vessels inside the safety zone. The duration of this safety zone is intended to protect participants and spectators on the navigable waters of the Neuse River during the airshow. Vessels may transit the area, so long as they remain outside the safety zone. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP North Carolina or a 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 size, location, and duration of the safety zone. Vessel traffic will not be allowed to enter or transit a portion of the Neuse River during the airshow from 4 p.m. through 5:30 p.m. December 5, 2020. The Coast Guard will transmit a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the enforcement area. This rule allows vessels to request permission to pass through the regulated area.

#### *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 call or email 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.

*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, 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 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 lasting 1.5 hours that will prohibit entry within a 1 square mile area of the Neuse River on December 5, 2020, from 4 p.m. to 5:30 p.m. It is 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 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.

*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.

## 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.T05-0645 to read as follows:

#### **§ 165.T05-0645 Safety Zone; Neuse River, Airshow, New Bern, NC.**

(a) *Location.* The following area is a safety zone: all navigable waters of the Neuse River in New Bern, North Carolina, inside an area starting from approximate positions: latitude 35°06'32"N., longitude 077°01'54"W., then north to latitude 35°06'55"N., longitude 077°02'04"W., then east to latitude 35°07'06"N., longitude 077°01'27"W., then southeast to latitude 35°06'49"N., longitude 077°01'12"W., then south to latitude 35°06'08"N., longitude 077°01'18"W., then west to latitude 35°06'02"N., longitude 077°01'57"W., then north to the point of origin, for a total area of approximately 1 mile square.

(b) *Definitions.* As used in this section—

*Captain of the Port (COTP)* means the Commander, Sector North Carolina.

*Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

(c) *Regulations.* (1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (a) of this section.

(2) Entry into or remaining in this safety zone is prohibited unless authorized by the COTP North Carolina or the COTP North Carolina's designated representative. Unless permission to remain in the zone has been granted by the COTP North Carolina or the COTP North Carolina's designated representative, a vessel within this safety zone must immediately depart the zone when this section becomes effective.

(3) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina, at telephone number 910-343-3882.

(4) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(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 regulation will be enforced from 4 p.m. through 5:30 p.m. on December 5, 2020.

Dated: November 17, 2020.

Matthew J. Baer,  
Captain, U. S. Coast Guard,  
Captain of the Port North Carolina.