



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2012-0969

RIN 1625-AA00

Safety Zone for Fireworks Display, Upper Potomac River,
Alexandria Channel; Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone encompassing certain waters of the Upper Potomac River. This action is necessary to provide for the safety of life on navigable waters during a fireworks display launched from a barge located within the Alexandria Channel at Washington, DC. This safety zone is intended to protect the maritime public in a portion of the Upper Potomac River.

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]**. If finalized, this rule would be effective from 10:30 p.m. on December 31, 2012 through 9 p.m. on January 1, 2013.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>.
- Fax: 202-493-2251.
- Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods. FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Ronald L. Houck, Sector Baltimore, Waterways Management Division, U.S. Coast Guard; telephone (410) 576-2674, e-mail Ronald.L.Houck@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

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. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number USCG-2012-0969 in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit

them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2012-0969) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

This rule involves a New Years Eve fireworks display, an event that takes place in Alexandria, Virginia each year on December 31st and attracts thousands of spectators. This year, the launch site for the annual fireworks display is being moved from land to a discharge barge located on the Upper Potomac River. The permanent safety zone listed as Number 21 in the Table to 33 CFR 165.506 does not apply to this event.

C. Basis and Purpose

First Night Alexandria, of Alexandria, Virginia, will conduct a fireworks display launched from a barge located on the Upper Potomac River, near Alexandria, Virginia, scheduled on December 31, 2012 at approximately 12 a.m. Midnight. If necessary, due to inclement weather, the fireworks display may be re-scheduled to take place on January 1, 2013 at approximately 8 p.m.

Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The potential

hazards associated with fireworks displays are a safety concern during such events. The purpose of this rule is to promote public and maritime safety during a fireworks display, and to protect mariners transiting the area from the potential hazards associated with a fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway before, during and after the scheduled event.

D. Discussion of Proposed Rule

Through this regulation, the Coast Guard proposes to establish a temporary safety zone. The proposed zone would encompass all waters of the Upper Potomac River, Alexandria Channel, within a 200 yards radius of a fireworks discharge barge in approximate position latitude 38°48'40" N, longitude 077°02'07" W, located near the waterfront of Alexandria, Virginia. The temporary safety zone would be enforced from 10:30 p.m. on December 31, 2012 through 1 a.m. on January 1, 2013 and, if necessary due to inclement weather, from 6:30 p.m. through 9 p.m. on January 1, 2013.

The effect of this temporary safety zone would be to restrict navigation in the regulated area during, as well as the set up and take down of, the fireworks display. Vessels would be allowed to transit the waters of the Upper Potomac River outside the safety zone.

This rule would require that entry into or remaining in this

safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor in the safety zone at the time the safety zone is implemented would not have to depart the zone. All vessels underway within this safety zone at the time it is implemented would have to depart the zone. To seek permission to transit the area of the safety zone, the Captain of the Port Baltimore can be contacted at telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Coast Guard vessels enforcing the safety zone can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Federal, state, and local agencies may assist the Coast Guard in the enforcement of the safety zone. The Coast Guard will issue notices to the maritime community to further publicize the safety zone and notify the public of changes in the status of the zone. Such notices will continue until the event is complete.

E. 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 or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving

Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. There is no vessel traffic associated with recreational boating and commercial fishing expected during the effective period.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. 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. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or transit through or within the safety zone during the enforcement period. Before the effective period, maritime advisories will be widely available to the maritime community.

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.

3. Assistance for Small Entities

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, above. 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.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

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 determined that this rule does not have implications for federalism.

6. 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.

7. 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.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and

Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

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.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (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 establishing a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are 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.

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; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0969 to read as follows:

§ 165.0969 Safety Zone, Upper Potomac River, Alexandria Channel; Washington, DC.

(a) Location. The following area is a safety zone: All

waters of the Upper Potomac River, Alexandria Channel, within a 200 yards radius of a fireworks discharge barge in approximate position latitude 38°48'40" N, longitude 077°02'07" W, located near the waterfront of Alexandria, Virginia. All coordinates refer to datum NAD 1983.

(b) Regulations. The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05.0969.

(1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the safety zone is implemented do not have to depart the safety zone. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 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). 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. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

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

(c) Definitions. As used in this section:

Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) Effective period. This section will be enforced from 10:30 p.m. on December 31, 2012 through 1 a.m. on January 1, 2013 and, if necessary due to inclement weather, from 6:30 p.m. through 9 p.m. on January 1, 2013.

Dated: November 2, 2012

Kevin C. Kiefer
Captain, U.S. Coast Guard
Captain of the Port Baltimore.

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