



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0048]

RIN 1625-AA00

Safety Zone, Chesapeake Bay; Cape Charles, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to establish a safety zone on the navigable waters of the Chesapeake Bay in Cape Charles, VA. This proposed safety zone would restrict vessel movement in the specified area during the Cape Charles Clam Slam fireworks display between 9:30 p.m. and 10 p.m. on August 1, 2015. This action is necessary to provide for the safety of life and property on the surrounding navigable waters during the fireworks displays.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT 30 DAYS AFTER PUBLISH IN FR]

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

- (1) Federal eRulemaking Portal: <http://www.regulations.gov>.
- (2) Fax: 202-493-2251.
- (3) 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 LCDR Gregory Knoll, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone (757) 668-5580, e-mail [HamptonRoadsWaterway@uscg.mil](mailto:HamptonRoadsWaterway@uscg.mil). If you have questions on viewing or submitting material to the docket, call Cheryl Collins, 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 [www.regulations.gov](http://www.regulations.gov), type the docket number [USCG-2015-0048] 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-2015-0048] 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 plan to hold a public meeting, but you may submit a request for one, using one of the methods specified under ADDRESSES 15 days prior to the close of the comment period. 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

The town of Cape Charles has not held a Clam Slam fireworks display in the past. However, this same location is used for other fireworks displays throughout the year as published in 33 CFR 165.506.

#### C. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish safety zones: 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, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of this safety zone is to protect mariners and spectators from the hazards associated with the fireworks display, such as accidental discharge of fireworks, dangerous

projectiles, and falling hot embers or other debris.

#### D. Discussion of the Proposed Rule

The Captain of the Port of Hampton Roads proposes to establish a safety zone on specified waters of the Chesapeake Bay within a 700 foot radius of the approximate position: 37° 15' 47"N / 076° 01' 29"W (NAD 1983), at the end of Bayshore Road located in the vicinity of Cape Charles Harbor, Cape Charles, Virginia. This safety zone will be enforced on August 1, 2015 between the hours of 9:30 p.m. and 10 p.m. Access to the safety zone will be restricted during the specified date and time.

Spectator vessels may gather nearby to view the fireworks display. Due to the need for vessel control during the fireworks display, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels. Except for vessels authorized by the Captain of the Port or his designated representative, no person or vessel may enter or remain in the safety zone. The Captain of the Port will provide advance notice of the safety zone by all appropriate means to provide the widest dissemination of notice among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts.

#### 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 these statutes and 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. The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the safety zone on the Chesapeake Bay in the vicinity of Cape Charles, VA from 9:30 p.m. until 10 p.m. on August 1, 2015. Although this safety zone temporarily restricts traffic from transiting a portion of the Chesapeake Bay during this event, this safety zone is limited in duration, affects only a limited area, and will be well publicized in advance to allow mariners to make alternative plans for transiting the affected area.

#### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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.

This proposed rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the waters of the Chesapeake Bay near Cape Charles Harbor during the outlined timeframe.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) the safety zone is limited in size and duration, and (ii) before the enforcement period, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity 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 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 will 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 will 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 does not create an environmental risk to health or risk to safety that may 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 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.

#### 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 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 proposed rule involves the establishment of a safety zone. This proposed rule is categorically excluded from further review under paragraph 34-g of Figure 2-1 of the Commandant Instruction. An 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 rule.

#### F. 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, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0048 to read as follows:

§ 165.T05-0048 Safety Zone, Chesapeake Bay; Cape Charles, VA

(a) Definitions. For the purposes of this section, Captain of the Port means the Commander, Sector Hampton Roads.

Representative means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port

(b) Location. The following area is a proposed safety zone: specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25-10, in the vicinity of the Chesapeake Bay near Cape Charles, VA all waters within a 700 foot radius of approximate location 37° 15' 47"N / 076° 01' 29"W (NAD 1983) which is located at the end of Bayshore Road in Cape Charles Harbor.

(c) Regulations. (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Contact on scene contracting vessels via VHF channel 13 and 16 for passage instructions.

(ii) If on scene proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 668-5555.

(4) The Coast Guard Representatives enforcing the safety zone may be contacted on VHF-FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement period. This section will be enforced from 9:30 p.m. until 10 p.m. on August 1, 2015.

Dated: March 9, 2015

Christopher S. Keane  
Captain, U.S. Coast Guard  
Captain of the Port Hampton Roads  
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