



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0563]

RIN 1625-AA00

Safety Zone, Indian River Bay; Millsboro, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the waters of Indian River Bay adjacent to Millsboro, Delaware. The safety zone will restrict vessel traffic on Indian River Bay in the vicinity of a fireworks barge on August 22 and September 26, 2015, from 8:45 p.m. until 10:15 p.m. on each day. Should inclement weather require cancellation of the fireworks display on the above scheduled dates, the safety zone will be enforced from 8:45 p.m. to 10:15 p.m. on August 23 and September 27, 2015. This safety zone is necessary to protect the surrounding public and vessels from the hazards associated with a fireworks display.

DATES: Comments and related material must be received by the

Coast Guard on or before [INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2015-0563 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 proposed rule, call or e-mail Lieutenant Brennan Dougherty, U.S. Coast Guard, Sector Delaware Bay, Chief Waterways Management Division, Coast Guard; telephone (215)271-4851, e-mail Brennan.P.Dougherty@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	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
COTP	Captain of the Port

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 (Docket Number USCG-2015-0563), 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-2015-0563) 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-2015-0563) 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. 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 NPRM represents the first time the Coast Guard is seeking comments on the proposed safety zone at this location.

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; 33 CFR 1.05-1, 160.5; 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 Proposed Rule

The Captain of the Port, Delaware Bay, proposes to establish a safety zone on specified waters that will encompass all waters of Indian River Bay, within a 200-foot radius of the fireworks barge in approximate position 38-36.58N, 075-09.00W, adjacent to Millsboro, Delaware. The safety zone will be enforced from 8:45 p.m. to 10:15 p.m. on August 22 and September 26, 2015, unless cancelled earlier by the Captain of the Port. Should inclement weather require cancellation of the fireworks display on the above scheduled dates, the safety zone will be enforced from 8:45 p.m. to 10:15 p.m. on August 23 and September 27, 2015, respectively.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Delaware Bay, or his designated representative. The Captain of the Port, Delaware Bay, or his representative may be contacted via VHF channel 16 or at 215-271-4807.

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. Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because: the Coast Guard will make extensive notification of the Safety Zone to the maritime public via maritime advisories so mariners can alter their plans accordingly; vessels may still be permitted to transit through the safety zone with the permission of the Captain of the Port on a case-by-case basis; and the size and duration of the zone are relatively limited in scope.

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 would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to anchor or transit along Indian River Bay, adjacent to Millsboro, Delaware, on August 22 and September 26, 2015, respectively from 8:45 p.m. until 10:15 p.m., unless cancelled earlier by the Captain of the Port.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: vessel traffic will be allowed to pass through the zone with permission of the Coast Guard Captain of the Port Delaware Bay or his designated representative and the safety zone is limited in size and duration. The Coast Guard will issue maritime advisories widely available to users of Indian River Bay.

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 implementation of regulations within 33 CFR part 165, applicable to safety zones on the navigable waterways. This zone will temporarily restrict vessel traffic from anchoring or transiting a portion of Indian River Bay near Millsboro, Delaware, in order to protect the safety of life and property on the waters while a fireworks display is conducted. 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; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T05-0563 to read as follows:

§ 165.T05-0563 Safety Zone, Indian River Bay; Millsboro, DE.

(a) Regulated area. The following area is a safety zone:
All waters of Indian River Bay within a 200-foot radius of a fireworks barge located approximately at position 38-36.58N, 075-09.00W near Millsboro, Delaware.

(b) Regulations. The general safety zone regulations found in subpart C of this part apply to this safety zone created by this section.

(1) All persons and vessels are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port or his designated representative.

(2) This section applies to all vessels wishing to transit through the safety zone except vessels that are engaged in the following operations:

- (i) Enforcing laws;
- (ii) Servicing aids to navigation; and

(iii) Emergency response vessels.

(3) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;

(4) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port; and

(5) No person may board, or take or place any article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port.

(c) Definitions. In this section—

Captain of the Port means the Commander, Coast Guard Sector Delaware Bay, or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

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

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

(e) Enforcement period. This safety zone will be enforced on August 22 and September 26, 2015, from 8:45 p.m. until 10:15 p.m., unless cancelled earlier by the Captain of the Port. Should inclement weather require cancellation of the fireworks

display on the above scheduled dates, the safety zone will be enforced between 8:45 p.m. and 10:15 p.m. on August 23 and September 27, 2015, unless cancelled earlier by the Captain of the Port.

Dated: June 29, 2015.

B. A. Cooper,
Captain, U.S. Coast Guard,
Captain of the Port Delaware Bay.

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7/16/2015]