



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0176]

RIN 1625-AA00

Safety Zone for Fireworks Display; Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Patapsco River. This action is necessary to provide for the safety of life on the navigable waters of the Inner Harbor at Baltimore, MD, during a fireworks display on April 8, 2017. This action will prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 11 p.m. on April 8, 2017, until 1 a.m. on April 10, 2017. This rule will be enforced from 11 p.m. on April 8, 2017, until 1 a.m. on April 9, 2017, or if necessary due to inclement weather, from 11 p.m. on April 9, 2017, until 1 a.m. on April 10, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0176 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 about this rulemaking, call or email Mr. Ronald Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; 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
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because doing so would be impracticable and contrary to the public interest. The event is scheduled to take place on April 9th and the safety zone must be in effect on that date in order to serve its purpose of ensuring the safety of the public from hazards associated with the fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the Federal Register because doing so would be impracticable and contrary to the public interest. Delaying the effective date would be contrary to the rule's objectives of ensuring the safety of the public from hazards associated with the fireworks display.

The public fireworks display will be conducted by Fireworks by Grucci, Inc. and launched from five floating platforms located within the waters of Inner Harbor Baltimore, between Inner Harbor Pier 3 and Inner Harbor Pier 5 in Baltimore, MD. In the event of inclement weather, the fireworks display will be scheduled for April 9, 2017. Hazards from fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 75-yard radius of each of each of the five fireworks discharge sites.

The fireworks display will be conducted at a time of year and time of day when boating traffic is expected to be minimal. The purpose of this rulemaking is to ensure the safety of persons and vessels on the navigable waters within the Inner Harbor before, during, and after the scheduled event. The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231.

III. Discussion of Rule

The COTP is establishing a safety zone from 11 p.m. on April 8, 2017, until 1 a.m. on April 9, 2017, and if necessary due to inclement weather, from 11 p.m. on April 9, 2017, until 1 a.m. on April 10, 2017. The safety zone will cover all navigable waters of the Patapsco River, Inner Harbor, from shoreline to shoreline, within an area bounded on the east by longitude 076°36'12" W, and bounded on the west by the Inner Harbor west bulkhead, located at Baltimore, MD. The duration of the zone is intended to ensure the safety of persons and vessels on the specified navigable waters before, during, and after the scheduled 11:59 p.m. fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text appears at the end of this document.

IV. 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 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This temporary final rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. In some cases vessel traffic may be able to safely transit around this safety zone which would impact a small designated area of Inner Harbor Baltimore for 2 hours during the evening when vessel traffic is normally low. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine band channel 16 to provide information about the safety zone.

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 IV.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 contact 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 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 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 rule has implications for federalism or Indian tribes, please contact 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 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 Management Directive 023-01 and Commandant Instruction M16475.ID, 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 rule involves a safety zone lasting 2 hours that would prohibit vessel movement within a portion of Baltimore's Inner Harbor. Normally such actions are categorically excluded from further review under paragraph 34(g) of figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and 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.

G. 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.

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: 33 U.S.C. 1231; 50 U.S.C. 191; 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.T05-0176 to read as follows:

§ 165.T05-0176 Safety Zone for Fireworks Display; Patapsco River, Inner Harbor, Baltimore, MD.

- (a) **Definitions.** As used in this section:

- (1) **Captain of the Port Maryland-National Capital Region** means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

- (2) **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 enforcement of the safety zone described in paragraph (a) of this section.

- (b) **Location.** The following area is a safety zone: All waters of the Patapsco River, Inner Harbor, from shoreline to shoreline, within an area bounded on the east by longitude 076°36'12" W., and bounded on the west by the Inner Harbor west bulkhead, located at Baltimore, MD. All coordinates refer to datum NAD 1983.

(c) Regulations. The general safety zone regulations found in 33 CFR part 165, subpart C apply to the safety zone created by this section.

(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 safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Maryland-National Capital Region. 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 shall obtain authorization from the Captain of the Port Maryland-National Capital Region or designated representative. To request permission to transit the area, the Captain of the Port Maryland-National Capital Region and or 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 to enter the safety zone, all persons and vessels shall comply with the instructions of the Captain of the Port Maryland-National Capital Region or designated representative and proceed as directed while within the zone.

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

(d) Enforcement period. This section will be enforced from 11 p.m. on April 8, 2017, until 1 a.m. on April 9, 2017, and if necessary due to inclement weather, from 11 p.m. on April 9, 2017, until 1 a.m. on April 10, 2017.

Dated: March 28, 2017

L. P. Harrison, Jr.
Captain, U.S. Coast Guard
Captain of the Port Maryland-National Capital Region
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