



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0270]

RIN 1625-AA00

Safety Zone; North Atlantic Ocean, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for certain waters of the North Atlantic Ocean adjacent to Ocean City, MD. This action is necessary to provide for the safety of life on the navigable waters during an air show on May 23, 2018. This action would 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. We invite your comments on this proposed rulemaking.

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].

ADDRESSES: You may submit comments identified by docket number USCG-2018-0270 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Ron 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
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On February 21, 2018, the Town of Ocean City, MD, notified the Coast Guard that it will be conducting the Canadian Snowbirds Air Show Featurette from 2 p.m. to 3:30 p.m. on May 23, 2018. Details of the event were provided to the Coast Guard on March 7, 2018. The air show consists of a single public performance by the Canadian Forces 431 Air Demonstration Squadron conducting a 40-minute aerobatic performance of high-speed, low-flying fixed-wing military aircraft operating within a Federal Aviation Administration-designated air show box, located above the North Atlantic Ocean adjacent to Ocean City, MD. Hazards from the air show include participants operating adjacent to a designated navigation channel and interfering with vessels intending to operate within that channel, as well as aircraft mishaps that involve crashing during an air show aerobatic performance conducted above navigable waters located near the shoreline. The COTP Maryland-National Capital Region has determined that potential

hazards associated with the air show would be a safety concern for anyone intending to operate within certain waters of the North Atlantic Ocean adjacent to Ocean City, MD.

The purpose of this rulemaking is to ensure the safety of persons and vessels on certain waters of the North Atlantic Ocean before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 1:30 p.m. to 4 p.m. on May 23, 2018. The safety zone would cover all waters of the North Atlantic Ocean, within an area bounded by the following coordinates: Commencing at a point near the shoreline at latitude 38°20'33.3" N., longitude 075°04'37.7" W., thence eastward to latitude 38°20'24.9" N., longitude 075°04'01.5" W., thence southward to latitude 38°19'18.4" N., longitude 075°04'26.9" W., thence westward to latitude 38°19'27.0" N., longitude 075°05'03.0" W., thence northward to point of origin, located adjacent to Ocean City, MD. The safety zone will encompass all navigable waters within a rectangular area approximately 7,000 feet in length and 3,000 feet in width, parallel to the shoreline at Ocean City, 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 2 p.m. air show. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. 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 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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, duration, and day-of-week of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which would impact a small designated area of the North Atlantic Ocean for less than 3 hours during a Wednesday before Memorial Day 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 proposed rule would 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 proposed rule would not have a significant economic impact on any vessel owner or operator.

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.

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 section. 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.

C. Collection of Information

This proposed rule would 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 proposed 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 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. If you believe this proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, which guides 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 proposed rule

involves a safety zone lasting less than 3 hours that would prohibit vessel movement within a small portion of the North Atlantic Ocean. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is 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.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. 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.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0270 to read as follows:

§ 165.T05-0270 Safety Zone; North Atlantic Ocean, Ocean City, MD.

(a) Location. The following area is a safety zone: All waters of the North Atlantic Ocean, within an area bounded by the following coordinates: Commencing at a point near the shoreline at latitude 38°20'33.3" N., longitude 075°04'37.7" W., thence eastward to latitude 38°20'24.9" N., longitude 075°04'01.5" W., thence southward to latitude

38°19'18.4" N., longitude 075°04'26.9" W., thence westward to latitude 38°19'27.0" N., longitude 075°05'03.0" W., thence northward to point of origin, located adjacent to Ocean City, MD. All coordinates refer to datum NAD 1983.

(b) 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.

(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 1:30 p.m. to 4 p.m. on May 23, 2018.

Dated: April 9, 2018

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