



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0330]

RIN 1625-AA00

Safety Zone; Appomattox River, Hopewell, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a marine event on the navigable waters of the Appomattox River at confluence with the James River in Hopewell, VA. This action is necessary to provide for the safety of life on these navigable waters in Hopewell, VA, during a fireworks display on June 30, 2018. This rule prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Hampton Roads or a designated representative.

DATES: This rule is effective from 9 p.m. to 11 p.m. on June 30, 2018.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Barbara Wilk, Waterways Management Division Chief, Sector Hampton Roads, U.S. Coast Guard; telephone 757-668-5580, email HamptonRoadsWaterways@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 Information and Regulatory History

On March 27, 2018, the Hopewell Recreation and Parks Department notified the Coast Guard that it will be conducting a fireworks display from approximately 9:30 to 9:45 p.m. on June 30, 2018, to serve as the city of Hopewell’s Fourth of July celebration. The fireworks are to be launched from a barge in the Appomattox River near City Point in Hopewell, VA. In response, on May 31, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Appomattox River, Hopewell, VA (83 FR 24950). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended June 7, 2018, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with fireworks displays including accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Hampton Roads (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 234-yard radius of the barge. The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 234-yard radius of the fireworks barge before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published May 31, 2018. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 9 to 11 p.m. on June 30, 2018. The safety zone would cover all navigable waters within 234 yards of a barge in the Appomattox River at approximate coordinates: 37° 18' 52.20" N, 077° 17' 12.52" W. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:30 to 9:45 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.

V. 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 13771 directs agencies to

control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule 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 time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Appomattox River at confluence with the James River in Hopewell, VA, for 2 hours. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission on-scene to enter the 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 received XX comments from the Small Business Administration on this rulemaking. 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 V.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.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). 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 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. 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 Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(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 rule involves a safety zone lasting 2 hours that will prohibit entry within 234 yards of a fireworks barge in the Appomattox River near City Point in Hopewell, VA. It is 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 Record of Environmental

Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

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.T05-0330 to read as follows:

§ 165.T05-0330 Safety Zone, Appomattox River; Hopewell, VA.

(a) *Definitions.* The following definitions apply to this section:

(1) *Captain of the Port* means the Commander, Sector Hampton Roads.

(2) *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.

(3) *Participants* mean individuals and vessels involved in the fireworks display.

(b) *Location*. The following area is a safety zone: All navigable waters in the vicinity of the Appomattox River at confluence with the James River, within a 234 yard radius of the fireworks display barge in approximate position 37° 18' 52.20" N, 077° 17' 12.52" W. (NAD 1983).

(c) *Regulations*. (1) Except as provided in paragraph (c)(4) of this section, all persons are required to comply with the general regulations governing safety zones of subpart C of this part.

(2) With the exception of participants, entry into or remaining in this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives. All vessels within this safety zone at the time it is implemented are to depart the zone immediately.

(3) The Captain of the Port, Hampton Roads or his representative can be contacted at telephone number (757) 668-5555. The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz), or by visual or verbal hailing on-scene.

(4) This section does not apply to participants and vessels that are engaged in the following operations:

- (i) Enforcing laws;
- (ii) Servicing aids to navigation; and
- (iii) Emergency response vessels.

Dated: June 11, 2018.

Richard J. Wester,
Captain, U.S. Coast Guard,
Captain of the Port, Hampton Roads.

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