



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2018-0777]

RIN 1625-AA00

Safety Zone; Sandusky Bicentennial Fireworks, Sandusky Bay, Sandusky, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Sandusky Bay, in the vicinity of Sandusky, OH. This zone is intended to restrict vessels from portions of the Sandusky Bay for the Sandusky Bicentennial Fireworks. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port Detroit, or his designated representative. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This temporary final rule is effective from 8:10 p.m. through 9:35 p.m. on August 19th, 2018.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2018-0777. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and

click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail MST1 Ryan Erpelding, Waterways Department, Marine Safety Unit Toledo, Coast Guard; telephone (419)418-6037, e-mail Ryan.G.Erpelding@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
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

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 (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this fireworks display in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment

period and then consider those comments before issuing the rule.

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. Waiting for a 30-day effective period to run is impracticable and contrary to the public interest for the reasons discussed in the preceding paragraph.

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 Detroit (COTP) has determined that potential hazards associated with fireworks displays starting after 9:10 p.m. on August 19th, 2018 will be a safety concern for anyone within a 420 foot radius of the launch site. The likely combination of recreational vessels, darkness punctuated by bright flashes of light, and fireworks debris falling into the water presents risks of collisions, which could result in serious injuries or fatalities. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone that will be enforced from 8:10 p.m. through 9:35 p.m. on August 19, 2018. The safety zone will encompass all U.S. navigable waters of the Sandusky Bay within a 420 foot radius of the fireworks launch site located at position 41°27'53.31"N, 082°42'15.85"W with an alternate heavy wind location at position 41°27'55.24"N, 082°42'17.86" W. All geographic coordinates are North American Datum of 1983 (NAD 83).

The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. Entry into,

transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Detroit or his designated representative. The Captain of the Port, Sector Detroit or his designated representative may be contacted via VHF Channel 16.

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, and duration of the safety zone. The majority of vessel traffic will be able to safely transit around the safety zone, which will impact only a portion of the Sandusky Bay in Sandusky, OH for a period of 85 minutes. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

B. 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 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. Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this temporary rule on 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

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 above.

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 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 85 minutes that will prohibit entry within a 420 foot radius from where a fireworks display will be conducted. 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.T09-0777 to read as follows:

§ 165.T09-0777 Safety Zone; Sandusky Bicentennial Fireworks, Sandusky Bay, Sandusky, OH.

(a) Location. The following area is a temporary safety zone: all U.S. navigable waters of the Sandusky Bay within a 420 foot radius of the fireworks launch site located at position 41°27'53.31"N, 082°42'15.85" W with an alternate heavy wind location at 41°27'55.24" N, 82°42'17.86" W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) Enforcement period. This regulation will be enforced from 8:10 p.m. through 9:35 p.m. on August 19, 2018. The Captain of the Port Detroit, or a designated representative may suspend enforcement of the safety zone at any time.

(c) Regulations. (1) In accordance with the general regulations in § 165.23, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated representative.

(3) The “designated representative” of the Captain of the Port Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Detroit to act on his behalf. The designated representative of the Captain of the Port Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port Detroit or his designated representative may be contacted

via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated representative to obtain permission to do so. The COTP or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or his designated representative.

Dated: August 10, 2018.

Jeffrey W. Novak,
Captain, U.S. Coast Guard,
Captain of the Port Detroit
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