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## DEPARTMENT OF HOMELAND SECURITY

Coast Guard

**33 CFR Part 165**

[Docket Number **USCG-2018-0901**]

**RIN 1625-AA00**

**Safety Zone; Willamette River, Portland, OR**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters of the Willamette River between the Tilikum Crossing and Marquam bridges in Portland, OR. This safety zone is necessary to provide for the safety of life on these navigable waters during a fireworks display on October 27, 2018. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Columbia River or a designated representative.

**DATES:** This rule is effective from 6:40 p.m. to 9 p.m. on October 27, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0901 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 on this rule, call or email LCDR Dixon Whitley, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503-240-9319, e-mail [msupdxwwm@uscg.mil](mailto:msupdxwwm@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Leukemia and Lymphoma Society will be conducting a fireworks display from 7:40 p.m. to 8 p.m. on October 27, 2018. The fireworks are to be launched from a barge in the Willamette River between the Tilikum Crossing and Marquam bridges in Portland, OR. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Columbia River (COTP) has determined that potential hazards associated with the fireworks to be used in this display will be a safety concern for anyone within a 450-yard radius of the barge.

The Coast Guard is issuing this temporary 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 it would be impracticable to complete a notice-and-comment rulemaking by the date of the fireworks display, October 27, 2018.

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 an enforcement regulation is needed on October 27, 2018, to respond to the potential safety hazards associated with the fireworks display.

### **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 Columbia River (COTP) has determined that potential hazards associated with the fireworks display on October 27, 2018, will be a safety concern for anyone within a 450-yard radius of launch site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters from these potential hazards within the safety zone before, during and after the scheduled event.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from 6:40 p.m. until 9 p.m. on October 27, 2018. The safety zone will cover all navigable waters within 450 yards of the barge being used to launch the fireworks display from position 45°30'23.00" N, 122°40'4.71" W, on the Willamette River in Portland, OR. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 7:40 p.m. to 8 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-day 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 Willamette River for less than 2.5 hours during the evening when vessel traffic is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule allows vessels to seek permission 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 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 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 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 approximately 2.5 hours that will prohibit entry within 450 yards of a fireworks barge. 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.T13-0901 to read as follows:

**§ 165.T13-0901 Safety Zone; Willamette River, Portland, OR.**

(a) **Safety zone.** The following area is a safety zone: Waters of the Willamette River between the Tilikum and Marquam bridges, within a 450-yard radius of the fireworks barge located at 45°30'23.00" N, 122°40'4.71" W in Portland, OR.

(b) **Regulations.** Under § 165.23, no person may enter or remain in the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Columbia

River or his designated representative. Also, under §165.23, no person may bring into, or allow to remain in this safety zone any vehicle, vessel, or object unless authorized by the Captain of the Port Columbia River or his designated representative.

(c) Enforcement period. This section will be enforced from 6:40 p.m. to 9 p.m. on October 27, 2018.

Dated: September 19, 2018.

D. F. Berliner,  
Captain, U.S. Coast Guard,  
Acting Captain of the Port Columbia River.

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