



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2019-0727]**

**RIN 1625-AA00**

**Safety Zone; Port Valdez, Valdez, AK**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone in the navigable waters, from the surface to seabed, within a 150 yard radius of the fireworks launching point located at Sea Otter Park in position 61°07'22" North and 146°21'13" West in the vicinity of the mouth of the Small Boat Harbor, Port Valdez, Alaska, to limit access for the duration of the New Year's fireworks display. The purpose of the safety zone is to ensure the safety of mariners and vessels during the fireworks display. 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-2019-0727 using the Federal eRulemaking Portal at <https://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 MST2 Chelsea Zimmerman, U.S. Coast Guard; telephone 907-835-7233, or email Chelsea.M.Zimmerman@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

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

**II. Background, Purpose, and Legal Basis**

On August 07, 2019, the City of Valdez notified the Coast Guard that it will be conducting a fireworks display from 10:00 p.m. to 10:30 p.m. on December 31, 2019, in celebration of the New Year. The fireworks are to be launched from land at Sea Otter Park, located near the mouth of the Valdez small boat harbor in Valdez, AK. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Coast Guard proposes to establish a Safety Zone to ensure the safety of vessels on the navigable waters within a 150 yard radius of the fireworks launch site before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).]

**III. Discussion of Proposed Rule**

The COTP is proposing to establish a safety zone from 9:30 p.m. to 11:00 p.m. on December 31st, 2019. The safety zone would cover all navigable waters within a 150

yard radius of where the fireworks will be launched at Sea Otter Park for the City of Valdez New Year's Eve Fireworks Display. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 10:00 p.m. to 10:30 p.m. fireworks display. 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 time-of-day of the safety zone. The Coast Guard's enforcement of the proposed safety zone will be of short duration. Furthermore, vessels may be authorized to transit

through the proposed safety zones with the permission of the Captain of the Port Prince William Sound, Alaska.

*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.

This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit, anchor, or fish in a portion of Port Valdez in the vicinity of the Small Boat Harbor entrance during the period of enforcement of the proposed safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons; this rule will be enforced for a short duration and vessel traffic will be able to navigate safely around the proposed safety zone. Before and during the enforcement period, we will also issue maritime advisories widely available to the mariners that transit Port Valdez and Prince William Sound.

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 (Pub. L. 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 call or email 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 call or email 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 and Environmental Planning COMDTINST 5090.1 (series), 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 proposed rule involves the establishment of a temporary safety zone on the navigable waters of Port Valdez, in the vicinity of the Valdez Small Boat Harbor. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. 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 call or email 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 <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email 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 <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://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 <https://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 is proposing 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:** 46 U.S.C. 70034, 70051; 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.T17-0727 to read as follows:

§ 165.T17-0727 Safety Zone; City of Valdez New Year's Eve Fireworks, Port Valdez; Valdez, AK.

(a) Location. The following area is a safety zone: All navigable waters of Port Valdez within a 150 yard radius from a position of 61°07'22" North and 146°21'13" West. This includes the entrance to the Valdez small boat harbor.

(b) Regulations. (1) Under the general safety zone regulations in subpart C of

this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via Channel 16 or (907) 835-7205. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

Dated: November 1, 2019.

**M. R. Franklin,**

*Commander, U.S. Coast Guard,*

*Captain of the Port Prince William Sound, Alaska.*

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