



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2020-0061]

RIN 1625-AA00

**Safety Zone for Fireworks Displays; Upper Potomac River, Washington Channel,
DC**

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Upper Potomac River. This action is necessary to provide for the safety of life on these navigable waters of the Washington Channel adjacent to The Wharf DC, Washington, DC, for recurring fireworks displays from April 4, 2020, through December 31, 2020. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 31, 2020. For the purposes of enforcement, actual notice will be used from April 4, 2020, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0061 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 Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, email 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 Information and Regulatory History

On January 9, 2020, Pyrotecnico, Inc., of New Castle, PA, notified the Coast Guard that it will be conducting seven fireworks displays, sponsored by The Wharf DC, from 7 p.m. to 11:59 p.m. for various events from April 4, 2020, through December 31, 2020. The fireworks are to be launched from a barge in the Washington Channel, adjacent to The Wharf DC in Washington, DC. The fireworks company has provided dates for two of the events, April 4, 2020, and December 5, 2020. However, the dates for the remaining five events have not yet been finalized.

On February 14, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Safety Zone for Fireworks Displays; Upper Potomac River,

Washington Channel, DC" (85 FR 8507). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to these fireworks displays. During the comment period that ended March 16, 2020, 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 the fireworks displays, including the 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 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with the fireworks to be used in these displays will be a safety concern for anyone within 200 feet of the fireworks barge. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled events.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published February 14, 2020. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary recurring safety zone in the Washington Channel from April 4, 2020, through December 31, 2020. The safety zone will cover all

navigable waters of the Washington Channel within 200 feet of the fireworks barge. It is anticipated that the safety zone will be activated for seven separate events during 2020. For each event, the barge will be located within an area bounded on the south by latitude 38°52'30" N, and bounded on the north by the Francis Case (I-395) Memorial Bridge, located at Washington, DC. The safety zone will be enforced from 7 p.m. until 11:59 p.m. for each fireworks display scheduled from April 4, 2020, through December 31, 2020. Prior to enforcement, the COTP will provide notice by publishing a Notice of Enforcement at least 2 days in advance of the event in the **Federal Register**, as well as issuing a Local Notice to Mariners and Broadcast Notice to Mariners at least 24 hours in advance. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 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, duration, and time-of-day of the safety zone. It is anticipated that the safety zone will be activated for seven separate events during 2020. Although vessel traffic will not be able to safely transit around this safety zone when being enforced, the impact will be for 5 hours or less for each of the 7 fireworks events (35 total enforcement hours or fewer) during the evening when vessel traffic in Washington Channel is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about 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 no 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 call or email 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.

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, Rev. 1, associated implementing instructions, 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 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 that will be in effect for the entire year, however, when activated, it will last less than 5 hours and prohibit entry within a portion of the Washington Channel. 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. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the

docket, see the ADDRESSES section of this preamble.

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.

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: 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.T05-0061 to read as follows:

§ 165.T05-0061 Safety Zone for Fireworks Displays; Upper Potomac River, Washington Channel, Washington, DC.

(a) *Location.* The following area is a safety zone: All navigable waters of the Washington Channel within 200 feet of the fireworks barge which will be located within an area bounded on the south by latitude 38°52'30" N, and bounded on the north by the southern extent of the Francis Case (I-395) Memorial Bridge, located at Washington, DC.

These coordinates are based on datum NAD 1983.

(b) *Definitions.* As used in this section---

(1) *Captain of the Port (COTP)* 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 enforcing the safety zone described in paragraph (a) of this section.

(c) *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. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 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).

(3) 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.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement.* This safety zone will be enforced April 4, 2020, through December 31, 2020, from 7 p.m. to 11:59 p.m. each day that a barge with a "FIREWORKS—DANGER—STAY AWAY" sign on the port and starboard sides is on-

scene or a “FIREWORKS—DANGER—STAY AWAY” sign is posted on land adjacent to the shoreline, near the location described in paragraph (a) of this section. The enforcement times of this section are subject to change, but the duration of each enforcement of the zone is expected to be 5 hours or less. Prior to enforcement, the COTP will provide notice by publishing a Notice of Enforcement at least 2 days in advance of the event in the **Federal Register**, as well as issuing a Local Notice to Mariners and Broadcast Notice to Mariners at least 24 hours in advance.

Dated: March 26, 2020

Joseph B. Loring,
Captain, U.S. Coast Guard
Captain of the Port Maryland-National Capital Region.
[FR Doc. 2020-07094 Filed: 4/13/2020 8:45 am; Publication Date: 4/14/2020]