

Dated: April 24, 2019

Kenneth E. Blair,

*Commander, U.S. Coast Guard, Acting
Captain of the Port Buffalo.*

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0221]

RIN 1625-AA00

Safety Zone for Fireworks Display; Upper Potomac River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish 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 Upper Potomac River at Washington, DC on July 4, 2019 (with alternate date of July 5, 2019) during a fireworks display to commemorate the July 4th holiday. This proposed rulemaking would prohibit 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. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 29, 2019.

ADDRESSES: You may submit comments identified by docket number USCG-2019-0221 using the Federal eRulemaking Portal at <http://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 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, Purpose, and Legal Basis

On March 26, 2019, the National Park Service notified the Coast Guard that, on behalf of the U.S., it will be conducting a fireworks display, called a "Salute to America," on July 4, 2019 at 9:09 p.m. The public event will be hosted at the Lincoln Memorial, and the fireworks display will be launched from the West Potomac Park, adjacent to the Upper Potomac River in Washington, DC. In previous years, the July 4th fireworks display has launched from the Lincoln Memorial Reflecting Pool grounds on the National Mall, but the NPS has decided to relocate the event to the West Potomac Park. Relocating the annual July 4th fireworks display from its expected to increase public attendance. In the event of inclement weather, the fireworks display will be scheduled for July 5, 2019. Hazards from the fireworks display includes accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP Maryland-National Capital Region has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within 1,000 feet of the fireworks discharge site.

The purpose of this rulemaking is to ensure the safety of vessels on the navigable waters of the Upper Potomac River, including the Tidal Basin, within 1,000 feet of the fireworks discharge site before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70034 (Previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP proposes to establish a temporary safety zone in the Upper Potomac River from 8 p.m. to 10:30 p.m. on July 4, 2019. The safety zone would cover all navigable waters of the Upper Potomac River, including the Tidal Basin, within 1,000 feet of the fireworks discharge site at West Potomac Park in approximate position latitude 38°53'07.1" N, longitude 077°02'49.5" W, located at Washington, DC. The area of the safety zone on the Upper Potomac River is approximately 617 yards in length and 220 yards in width. The duration of the safety zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:09 p.m. to 9:31 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, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Upper Potomac River for less than 3 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.

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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

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 (Public Law 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 contact 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 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 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 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 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 a safety zone lasting less than three hours that would prohibit entry within a portion of the Upper Potomac River, including the Tidal Basin. Normally such actions are 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 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 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.

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 <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact 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 <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://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 <http://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 proposes 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.T05–0221 to read as follows:

§ 165.T05–0221 Safety Zone for Fireworks Display; Upper Potomac River, Washington, DC.

(a) *Location.* The following area is a safety zone: All navigable waters of the Upper Potomac River, including the Tidal Basin, within 1,000 feet of the fireworks discharge site at West Potomac Park in approximate position latitude 38°53'07.1" N, longitude 077°02'49.5" W, located at Washington, DC. All coordinates refer to 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 designated 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 period.* This section will be enforced from 8 p.m. to 10:30 p.m. on July 4, 2019, or if necessary due to inclement weather, from 8 p.m. to 10:30 p.m. on July 5, 2019.

Dated: April 19, 2019.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2018-0770; FRL-9992-59-Region 6]

Withdrawal of Finding of Substantial Inadequacy of Implementation Plan and of Call for Texas State Implementation Plan Revision—Affirmative Defense Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed action.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 Regional Administrator is considering an

alternative interpretation regarding affirmative defense provisions in State Implementation Plans (SIPs) of states in EPA Region 6 that departs from the EPA's 2015 policy on this subject. In accordance with the Federal Clean Air Act (Act or CAA), the EPA Region 6 is proposing to make a finding that the affirmative defense provisions in the SIP for the state of Texas applicable to excess emissions that occur during certain upset events and unplanned maintenance, startup, or shutdown activities are narrowly tailored and limited to ensure protection of the National Ambient Air Quality Standards (NAAQS) and other CAA requirements, and would be consistent with the newly announced alternative interpretation if adopted. Accordingly, the EPA Region 6 also is proposing to withdraw the SIP call issued to Texas that was published on June 12, 2015.

DATES: Comments must be received on or before June 28, 2019.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2018-0770 at <https://www.regulations.gov> or via email to Shar.alan@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Alan Shar, (214) 665-6691, Shar.alan@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and

some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, (214) 665-6691, Shar.alan@epa.gov. To inspect the hard copy materials, please schedule an appointment with Mr. Shar.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, the following definitions apply:

i. The word *Act* or initials *CAA* mean or refer to the Clean Air Act.

ii. The term *affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding. The term *affirmative defense provision* means more specifically a state law provision in a SIP that specifies particular criteria or preconditions that, if met, would purport to preclude a court from imposing monetary penalties or other forms of relief for violations of SIP requirements in accordance with CAA section 113 or CAA section 304.

iii. The initials *EPA* mean or refer to the United States Environmental Protection Agency.

iv. The initials *HAP* mean Hazardous Air Pollutant.

v. The initials *MACT* mean Maximum Achievable Control Technology.

vi. The term *Malfunction* means a sudden and unavoidable breakdown of process or control equipment.

vii. The initials *NAAQS* mean National Ambient Air Quality Standards.

viii. The initials *PSD* mean Prevention of Significant Deterioration.

ix. The term *EPA Region 6* refers to the United States Environmental Protection Agency, Region 6, located in Dallas, Texas.

x. The initials *SIP* mean State Implementation Plan.

xi. The initials *SNPR* mean Supplemental Notice of Proposed Rulemaking.

xii. The word *State* means the state of Texas, unless the context indicates otherwise.

xiii. The term *Shutdown* means, generally, the cessation of operation of a source.

xiv. The initials *SSM* mean Startup, Shutdown, or Malfunction.

xv. The term *Startup* means, generally, the setting in operation of a source.

xvi. The term *TCEQ* means the Texas Commission on Environmental Quality.