

**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.T08–0334 to read as follows:

**§ 165.T08–0334 Safety Zone; Upper Mississippi River, Miles 109.9–184, St. Louis, MO.**

(a) *Location.* The following area is a safety zone: All navigable waters of the Upper Mississippi River from mile marker (MM) 109.9 to MM 184. This section will be enforced on all navigable waters of the Upper Mississippi River from MM 109.9 to MM 184, unless reduced in scope by the Captain of the Port Sector Upper Mississippi River (COTP) as flood conditions warrant.

(b) *Effective period.* This section is effective without actual notice from June 7, 2019 until July 3, 2019, or until cancelled by the COTP, whichever occurs first. For the purposes of enforcement, actual notice will be provided on June 1, 2019 until June 7, 2019.

(c) *Period of enforcement.* This section will be enforced from June 1, 2019 through July 3, 2019, or until terminated by the Captain of the COTP, whichever occurs first.

(d) *Regulations.* (1) In accordance with the general safety zone regulations in § 165.23, entry of persons or vessels into this safety zone described in paragraph (a) of this section is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Upper Mississippi River.

(2) To seek permission to enter, contact the COTP or a designated representative via VHF–FM channel 16, or through USCG Sector Upper Mississippi River at 314–269–2332. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement, as well as reductions in size of the safety zone as flood conditions improve, through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: May 31, 2019.

**S.A. Stoermer,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.*

[FR Doc. 2019–11962 Filed 6–6–19; 8:45 am]

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**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket Number USCG–2019–0435]

**RIN 1625–AA00**

**Safety Zone, Dive Operations; Cape May Canal, Cape May, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters within a 100-yard radius of all vessels and equipment involved in diving and debris removal operations within the Cape May Canal in Cape May, New Jersey. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by dive operations and debris removal near the railroad bridge in the Cape May Canal. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Delaware Bay or his designated representative.

**DATES:** This rule is effective without actual notice from June 7, 2019 through 4 p.m. on June 13, 2019. For the purposes of enforcement, actual notice will be used from 6 a.m. on June 3, 2019, through June 7, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2019–0435 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 Petty Officer Edmund Ofalt, U.S. Coast Guard Sector Delaware Bay, Waterways Management Division; telephone 215–271–4889, email [Edmund.J.Ofalt@uscg.mil](mailto:Edmund.J.Ofalt@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**

In mid-May, the Coast Guard was notified that part of the fendering system for the Cape May Canal Railroad Bridge failed and fell into the Cape May Canal. The bridge owner has contracted services needed to remove the debris and, with it, the hazard it poses to waterway users.<sup>1</sup> Due to potential dangers associated with the debris removal, the Captain of the Port Delaware Bay (COTP) has determined that a safety zone is necessary to protect personnel, vessels, and the marine environment while the debris is recovered.

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. It is impracticable and contrary to the public interest to publish an NPRM because immediate action is needed to respond to the potential safety hazards associated with dive operations and debris removal scheduled to take place on June 3, 2019.

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 and contrary to the public interest because

<sup>1</sup> While the fallen debris poses a potential hazard to waterway users, due to the depth of the water, the Coast Guard has determined that waterway restrictions have not been needed to adequately address the threat prior to this time. The Coast Guard has been issuing safety marine information broadcasts every 6 hours to mariners regarding the hazard.

immediate action is needed to respond to the potential safety hazards associated with dive operations and debris removal. The rule must be in place by the time the dive operations and debris removal occur on June 3, 2019, to protect personnel, vessels, and the marine environment while the debris is recovered.

### 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 COTP has determined that potential hazards associated with diving and debris removal operations starting June 3, 2019, will be a safety concern for anyone within a 100-yard radius of associated dive vessels and working barges. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during diving and debris removal operations.

### IV. Discussion of the Rule

This rule establishes a safety zone from 6 a.m. on June 3, 2019 through 4 p.m. on June 13, 2019. The safety zone will cover all navigable waters within 100 yards of dive vessels and working barges being used for dive and debris recovery operations. Dive vessels and working barges refers to those vessels used as dive platforms and 40 foot by 15 foot flexi-float barges utilized for the purpose of debris removal. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the debris is recovered. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or his designated representative. Vessels with a beam greater than 15 feet must contact the working vessels via VHF-FM channel 13 or 16 at least 30 minutes prior to arrival in order to arrange safe passage.

### 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 and duration of the zone. Small vessels with a beam less than 15 feet will generally be able to pass through the zone as needed upon receiving authorization from the COTP or his designated representative. Vessels with a beam greater than 15 feet will be able to pass through the zone if at least 30 minutes notice is given prior to arrival. Diving and debris recovery operations will only take place from 7 a.m. through 4 p.m. daily beginning June 3, 2019 through June 13, 2019.

#### 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 (Pub. L. 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 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 prohibit entry within 100 yards of dive vessels and working barges being used for diving and debris recovery operations in the Cape May Canal. It is categorically excluded from further review under paragraph L[60a] in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. 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:** 46 U.S.C. 70034, 70051; 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.T05–0435 to read as follows:

#### § 165.T05–0435 Safety Zone, Dive Operations; Cape May Canal, Cape May, NJ.

(a) *Location*. The following area is a safety zone: All navigable waters within 100 yards of dive vessels and working barges being used for diving and debris recovery operations within the Cape May Canal.

(b) *Definitions* As used in this section—

*Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board

a federal, state, or local law enforcement vessel assisting the Captain of the Port (COTP), Delaware Bay in the enforcement of the safety zone.

*Working barges* means those vessels associated with debris removal near the Cape May Canal Railroad Bridge in the Cape May Canal.

*Dive vessels* means those vessels used for dive operations, and marked appropriately in accordance with navigation rules of the road, which are associated with debris removal near the Cape May Canal Railroad Bridge in the Cape May Canal.

(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.

(2) To seek permission to enter or remain in the zone, contact the COTP or the COTP's representative via VHF–FM channel 16 or 215–271–4807. 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.

(3) Vessels with a beam greater than 15 feet must contact working vessels, via VHF–FM channel 13 or 16, at least 30 minutes prior to arrival in order to arrange safe passage.

(4) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) *Enforcement*. 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 zone will be enforced from 6 a.m. on June 3, 2019, through 4 p.m. on June 13, 2019.

Dated: May 31, 2019.

**Scott E. Anderson,**

*Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.*

[FR Doc. 2019–11964 Filed 6–6–19; 8:45 am]

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#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2019–0409]

#### Safety Zones; Fireworks Displays in the Fifth Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation; changes of enforcement.

**SUMMARY:** The Coast Guard will enforce two safety zones for fireworks displays: The first taking place over the Chester River, at Kent Island Narrows, MD, on July 2, 2019, (an alternate date on July 3, 2019) and the second over the Chesapeake Bay, at Chesapeake Beach, MD, on July 3, 2019, (an alternate date on July 5, 2019). This action is necessary to ensure the safety of life on navigable waterways during these fireworks displays. Our regulation for recurring Fireworks Displays in the Fifth Coast Guard District identifies the safety zones for these fireworks display events. During the enforcement periods, vessels may not enter, remain in, or transit through the safety zones unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene.

**DATES:** The regulations in 33 CFR 165.506 will be enforced for the location listed in the table to § 165.506 at (b)(24) Coast Guard Sector Maryland-National Capital Region—COTP Zone from 8:30 p.m. through 11 p.m. on July 2, 2019. If necessary due to inclement weather, the fireworks display event will be rescheduled and the safety zone will be enforced from 8:30 p.m. through 11 p.m. on July 3, 2019.

The regulations in 33 CFR 165.506 will be enforced for the location listed in the table to § 165.506 at (b)(9) Coast Guard Sector Maryland-National Capital Region—COTP Zone from 8 p.m. until 10:30 p.m. on July 3, 2019. If necessary due to inclement weather, the fireworks display event will be rescheduled and the safety zone will be enforced from 8 p.m. through 10:30 p.m. on July 5, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region, Waterways Management Division; telephone 410–576–2674, email [D05-DG-SectorMD-NCR-MarineEvents@uscg.mil](mailto:D05-DG-SectorMD-NCR-MarineEvents@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone in the table to 33 CFR 165.506 at (b)(24) for the Kent Island Narrows, MD, fireworks display from 8:30 p.m. through 11 p.m. on July 2, 2019. If necessary due to inclement weather, the fireworks display event will be rescheduled and the safety zone will be enforced from 8:30 p.m. through 11 p.m. on July 3, 2019. This date is a slight change from the anticipated date and times of enforcement appearing in the CFR for this event—Thursday before July 4th (observed); and on July 4th, from 5:30 p.m. to 1 a.m. This action is being taken to provide for the safety of life on