

Dated: June 17, 2019.

**K.B. Reed,**

*Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2019-0534]

RIN 1625-AA00

#### Safety Zone; Fireworks Display, Great Egg Harbor Bay, Ocean City, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the waters of the Great Egg Harbor Bay in Ocean City, NJ, from 9:30 p.m. to 10:30 p.m. on July 13, 2019, during the Ocean City Nights in Venice fireworks display. The safety zone is necessary to ensure the safety of participant vessels, spectators, and the boating public during the event. This regulation prohibits persons and non-participant vessels from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port (COTP) Delaware Bay or a designated representative.

**DATES:** This rule is effective from 9:30 p.m. through 10:30 p.m. on July 13, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0534 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 Thomas Welker, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; telephone (215) 271-4814, email [Thomas.j.welker@uscg.mil](mailto:Thomas.j.welker@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

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 is impracticable and contrary to the public interest to do so. There is insufficient time to allow for a reasonable comment period prior to the date of the event. The rule must be in force by July 13, 2019. We are taking immediate action to ensure the safety of spectators and the general public from hazards associated with the fireworks display. Hazards include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

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 immediate action is needed to mitigate the potential safety hazards associated with a fireworks displays in this location by July 13, 2019.

#### 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 Delaware Bay (COTP) has determined that potential hazards associated with this display will be a safety concern for anyone within a 600-foot radius of the barge launching the fireworks. 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 event.

#### IV. Discussion of the Rule

This rule establishes a temporary safety zone on the waters of the Great Egg Harbor Bay in Ocean City, NJ, during a fireworks display scheduled to take place between 9:30 p.m. and 10:30 p.m. on July 13, 2019. The fireworks will be set off from a barge in the bay, which will be anchored at approximate position latitude 39°17'23.65" N, longitude 074°34'31.29" W. The safety

zone includes all navigable waters within 600 feet of the fireworks barge. No person or vessel will be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the COTP Delaware Bay or a designated representative. If the COTP Delaware Bay or a designated representative grants authorization to enter, transit through, anchor in, or remain within the safety zone, all persons and vessels receiving such authorization must comply with the instructions of the COTP Delaware Bay or a designated representative. The Coast Guard will provide public notice of the safety zone by Local Notice to Mariners and Broadcast Notice to Mariners.

#### 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, the 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.

The impact of this rule is not significant for the following reasons: (1) The enforcement period will last one hour when vessel traffic is usually low; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP Delaware Bay or a designated representative, portions of the channel will remain open. Persons and vessels will be able to operate in the surrounding area during the enforcement period; (3) persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the COTP Delaware Bay or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners, Broadcast Notice to

Mariners, and on-scene actual notice from designated representatives.

#### 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 IV.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 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 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 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 made a 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 rule involves a safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the navigable water in the Great Egg Harbor Bay, during a fireworks display lasting approximately one hour. 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 5090.1. A Record of Environmental Consideration (REC) 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; 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.T05–0534 to read as follows:

#### § 165.T05–0534 Safety Zone; Fireworks Display, Great Egg Harbor Bay, Ocean City, NJ.

(a) *Location.* The following area is a safety zone: All waters of Great Egg Harbor Bay off Ocean City, NJ, within 600 feet of the barge anchored in approximate position latitude 39°17′23.65″ N, longitude 074°34′31.29″ W.

(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.

(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) No vessel may take on bunkers or conduct lightering operations within the safety zone during its enforcement period.

(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 approximately 9:30 p.m. to 10:30 p.m. on July 13, 2019.

Dated: July 9, 2019.

**Scott E. Anderson,**

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

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**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2018-0007]

RIN 1625-AA87

### Security Zones; Port of Palm Beach, Port Everglades, Port of Miami, and Port of Key West, Florida

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is modifying the existing security zone regulations for the Port of Palm Beach, Port Everglades, Port of Miami, and Port of Key West Florida. The amendments will create a new section for Sector Key West security zones; clarify when the Port Everglades fixed security zones will be in effect; modify and lengthen a portion of one Port Everglades fixed security zone; and update language and definitions throughout the regulation. The security zones are intended to protect the public and ports from potential subversive acts.

**DATES:** This rule is effective August 12, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0007 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 Lieutenant Samuel Rodriguez-Gonzalez, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone (305) 535-4307, email [Samuel.Rodriguez-Gonzalez@uscg.mil](mailto:Samuel.Rodriguez-Gonzalez@uscg.mil); or BMC Greg Bergstrom, Sector Key West Waterways Management Division, U.S. Coast Guard; telephone (305) 292-8772, email [Greg.C.Bergstrom@uscg.mil](mailto:Greg.C.Bergstrom@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

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

The Coast Guard published a notice of proposed rulemaking<sup>1</sup> (NPRM) on September 16, 2016. The comment period closed on November 15, 2016. The Coast Guard received two comments. Based on the comments received we made minute changes to specific coordinates of the proposed security zone listed in § 165.760(b)(3) to provide a larger security "standoff" distance. We issued a supplemental notice of proposed rulemaking<sup>2</sup> (SNPRM) on February 7, 2019 to provide the public with an opportunity to comment on these supplemental changes. The comment period on the SNPRM closed on March 11, 2019. We received two comments on the SNPRM, which are discussed below.

##### 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 purpose of this rule is to establish separate regulatory authority for Sector Key West, clarify when the Port Everglades fixed security zones will be in effect, modify and lengthen a portion of one of the Port Everglades fixed security zones, update language throughout the regulation for administrative reasons, and to protect the public and Ports from potential subversive acts.

##### IV. Discussion of the SNPRM and the Rule

As noted above, we received two comments on the SNPRM. The first commenter was in support of the security zone, but noted incorrect terms for landmarks used in the preamble. This commenter pointed out that the

<sup>1</sup> The NPRM was issued under docket number USCG-2016-0327 (see 81 FR 63728).

<sup>2</sup> The SNPRM was issued under docket number, USCG-2018-0007 (see 84 FR 2479).

SNPRM's preamble incorrectly referred to Berth 7 as the southern point of the fixed security zone encompassing the Port Everglades Turning Basin and cruise and petroleum berths. However, the commenter noted that the SNPRM's regulatory text in § 165.760(b)(3), correctly referred to the northern tip of Berth 22. The regulatory text that will appear in the final rule has the correct wording and uses latitude and longitude designations to avoid any confusion.

The same commenter noted that while the moving security zone would only apply to passenger vessels and other vessels carrying cargoes of a particular hazard, or liquefied hazardous gas, it might be necessary to extend that to other vessels at higher Maritime Security (MARSEC) levels using other existing Captain of the Port (COTP) authorities. The security zone discussed in this rule is a fixed security zone, and does not contain a moving security zone. At higher MARSEC levels, Port Everglades will increase their security measures accordingly to mitigate security vulnerabilities and ensure the safety of all vessels.

The second commenter asked how the Coast Guard would deal with the increase in patrols, and wanted to know if the Coast Guard is equipped to handle the extra workload. The Coast Guard works closely with Broward County Sheriff's Office to ensure the security zone is enforced in Port Everglades. Increased vessel traffic has been managed with success, and has not been a concern. The updated fixed security zone extends further south than the security zone it is replacing, but that is not expected to result in more patrols. The longer security zone will increase the geographic area that law enforcement vessels will patrol; however, the patrols are not expected to be conducted more often as a result of the updated security zone.

We note we erroneously mentioned in the preamble of the SNPRM that we were going to revise the regulatory text by using the names of state parks when referencing certain coordinates. It was determined that the names of the state parks did not add any clarity to the regulatory text; therefore, we did not propose this change after all.

With this final rule, we are finalizing the regulatory text proposed in the SNPRM without any further revisions.

##### 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