

(3) Vessels may freely transit this portion of the Shark River from 9 p.m. to 9 a.m. Monday through Thursday. Vessels are requested to contact the dredge via VHF-FM channel 13 or 16 to make satisfactory passing arrangement and maintain a safe speed when transiting the main navigational channel during times of channel openings.

(5) This section applies to all vessels except those engaged in the following operations: enforcing laws, servicing aids to navigation and emergency response vessels.

(c) *Definitions.* As used in this section:

*Captain of the Port Delaware Bay* means the Commander, U.S. Coast Guard Sector Delaware Bay, Philadelphia, PA.

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

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

(e) *Enforcement periods.* This section will be enforced weekly from 9 a.m. to 9 p.m. Monday through Thursday, through October 31, 2016.

Dated: September 27, 2016.

**Benjamin A. Cooper,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2016-0899]

RIN 1625-AA00

#### Safety Zone; Diving Operations, Delaware River, Philadelphia, PA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Delaware River in Philadelphia, PA, on October 3, 2016, from 7 a.m. through 11 a.m. During the period of enforcement, the safety zone will restrict vessel traffic on the waters of the Delaware River, adjacent to Penn's Landing, Philadelphia, PA. The safety zone is intended to provide for the

safety of personnel involved in diving operations.

**DATES:** This rule is effective from 7 a.m. through 11 a.m. on October 3, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0899 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 MST1 Thomas Simkins, Sector Delaware Bay Waterways Management Division, U.S. Coast Guard; telephone 215-271-4889, email [Tom.J.Simkins@uscg.mil](mailto:Tom.J.Simkins@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

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 a safety zone is needed to ensure safety of life and property for those vessels involved in the diving operations and those persons transiting the Delaware River. In this case, waiting for a comment period to run would be contrary to the public interest of protecting life and property. In addition, publishing an NPRM is impracticable as the requestors did not provide sufficient notice to the Coast Guard relating to the expected date of the diving operations. Therefore, delay in taking action is both impracticable and contrary to public interest.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule

would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with diving operations.

##### III. Legal Authority and Need for Rule

The legal basis for the rule is provided by 33 U.S.C. 1231. On October 3, 2016, diving operations will be conducted from the Penn's Landing pier. Due to the proximity of the pier to the navigable channel, and the diving operations, vessel traffic will be restricted from entering the safety zone during the designated date and time, which accounts for staging as well as the actual diving operations. This rule is required in order to safely facilitate diving operations and protect both life and property on the navigable waterways of the Delaware River.

##### IV. Discussion of the Rule

To mitigate the risks associated with necessary diving operations, the Captain of the Port, Delaware Bay is establishing a temporary safety zone in the vicinity of the diving site. The safety zone will encompass all waters of Delaware River, adjacent to Penn's Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at latitude 39°56'31.2" N., longitude 075°08'28.1" W.; thence to latitude 39°56'29.1" N., longitude 075°07'56.5" W., and bounded on the north by the Benjamin Franklin Bridge. The safety zone will be effective and enforced from 7 a.m. through 11 p.m. on Monday, October 3, 2016. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Delaware Bay, or his on-scene representative. The Captain of the Port, Delaware Bay, or his on-scene representative may be contacted via VHF channel 16.

##### V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order 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 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of

harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This safety zone will impact the waters affected by this rule from 7 a.m. through 11 a.m. on October 3, 2016, during a time of year when vessel traffic is normally low. In addition, notifications will be made to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly. Such notifications will be updated as necessary, to keep the maritime community informed of the status of the safety 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 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 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 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 establishing a temporary safety zone lasting four hours that will prohibit entry into a portion of the Delaware River. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are 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 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.

#### 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:** 33 U.S.C. 1231; 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.T05–0899 to read as follows:

#### § 165.T05–0899 Safety Zone; Diving Operations, Delaware River, Philadelphia, PA.

(a) *Regulated area.* The following area is a safety zone: All waters of Delaware River, adjacent to Penn’s Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at latitude 39°56′31.2″ N., longitude 075°08′28.1″ W.; thence to latitude 39°56′29.1″ N., longitude 075°07′56.5″ W., and bounded on the north by the Benjamin Franklin Bridge.

(b) *Regulations.* The general safety zone regulations found in § 165.23 apply to the safety zone created by this temporary section, § 165.T05-0899.

(1) All vessels and persons are prohibited from entering into or moving within the safety zone described in paragraph (a) of this section while it is subject to enforcement, unless authorized by the Captain of the Port, Delaware Bay, or by his designated representative.

(2) Persons or vessels seeking to enter or pass through the safety zone must contact the Captain of the Port, Delaware Bay, or his designated representative to seek permission to transit the area. The Captain of the Port, Delaware Bay can be contacted at telephone number 215-271-4807 or on Marine Band Radio VHF Channel 16 (156.8 MHz).

(3) The Coast Guard vessels enforcing this safety zone can be contacted on VHF-FM marine band radio channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel operating under the authority of the COTP Delaware Bay, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The COTP Delaware Bay and his designated representatives can be contacted at telephone number 215-271-4807.

(c) *Definitions.* As used in this section:

*Captain of the Port Delaware Bay* means the Commander, U.S. Coast Guard Sector Delaware Bay, Philadelphia, PA.

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

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

(e) *Enforcement period.* This section will be enforced from 7 a.m. through 11 a.m. on October 3, 2016.

**Benjamin A. Cooper,**

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

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket Number USCG-2016-0912]

RIN 1625-AA00

**Safety Zone; Allegheny River, Ohio River, Monongahela River, Pittsburgh, PA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the University of Pittsburgh Fireworks show, Pittsburgh, PA. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Pittsburgh.

**DATES:** This rule is effective from 10 p.m. until 11:30 p.m. on October 1, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0912 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 Charles Morris, Marine Safety Unit Pittsburgh, U.S. Coast Guard; at telephone 412-221-0807, email [Charles.F.Morris@uscg.mil](mailto:Charles.F.Morris@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
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§ 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 the event sponsor submitted event application on September 21, 2016. After receiving and fully reviewing the event information, circumstances, and exact location, the Coast Guard determined that delaying this regulation's effective date for comment would be contrary to the public interest since a safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display on the navigable waterway. It would be impracticable to complete the full NPRM process for this safety zone because it needs to be established by October 1, 2016. The fireworks display has been advertised and the local community has prepared for the event.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to public interest of ensuring the safety of spectators and vessels during the event. Immediate action is necessary to prevent possible loss of life and property during the hazards created by a barge-based fireworks display near and over the navigable waterway.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Pittsburgh (COTP) has determined that a safety zone is needed on October 1, 2016. This rule is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display.

**IV. Discussion of the Rule**

This rule establishes a safety zone from 10 p.m. to 11:30 p.m. on October 1, 2016. The safety zone will cover all navigable waters on the Allegheny River mile 0.0-0.25, Ohio River mile 0.0-0.1, Monongahela River mile 0.0-0.1. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based firework 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