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DEPARTMENT OF HOMELAND SECURITY

COAST GUARD

33 CFR PART 165

USCG-2004-19416-31

[CGD05-04-185]

RIN 1625-AA00

Safety Zone: Atlantic Ocean, Virginia Beach Va

AGENCY: Coast Guard, DHS

ACTION: Temporary final rule

SUMMARY: The Coast Guard is establishing a safety zone for the Neptune Festival Fireworks display to be held at the Virginia Beach Fishing Pier, Virginia Beach, Va.

This action is intended to restrict vessel traffic on the Atlantic Ocean, within a 840-foot radius of the fireworks display. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

DATES: This rule is effective from 8:30 p.m. to 10:30 p.m. eastern time on September 25, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05-04-185 and are available for inspection or copying at USCG Marine Safety Office Hampton Roads, 200 Granby Street, Suite 700, Norfolk, Virginia, 23510, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Eric Wozniak, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 668-5560

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## SUPPLEMENTARY INFORMATION:

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. It is impracticable and contrary to the public interest to delay in publishing this rule. The event will take place between 9:00 p.m. and 9:45 p.m. and is expected to attract a large number of spectator craft near the event area. Due to the dangers posed by the fireworks display, it is in the public interest to have these regulations in effect during the event.

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. Spectators will be observing from both the shore and from vessels. Because of the hazards associated with the fireworks display, a limited access area is necessary to provide for the safety of spectators.

### Background and Purpose

On September 25, 2004, the display will be held at the Neptune Festival Fireworks at Virginia Beach Fishing Pier, Virginia Beach, Va. Spectators will be observing from both the shore and from vessels. Due to the need for protection of mariners and spectators from the hazards associated with the fireworks display, vessel traffic will be temporarily restricted.

### Discussion of Rule

The Coast Guard is establishing a safety zone on specified waters of the Atlantic Ocean. The regulated area will consist of a 840-foot radius zone extending around the

fireworks launch point on the pier. This safety zone will be enforced from 8:30 p.m. to 10:30 p.m. eastern time September 25, 2004. General navigation in the safety zone will be restricted during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

#### Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a) (3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to the regulated area, the effect of this rule will not be significant because: (i) the COTP may authorize access to the safety zone; (ii) the safety zone will be in effect for a limited duration; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” include 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. section 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in that portion of the Atlantic Ocean from 8:30 p.m. to 10:30 p.m. on September 25, 2004. The safety zone will not a significant impact on a substantial number of small entities, because the zone will only be in place for a few hours and maritime advisories will be issued, so the mariners can adjust their plans accordingly.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under FOR FURTHER INFORMATION CONTACT for assistance in understanding this rule.

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).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### 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 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

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.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a

significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34) (g), of the Instruction, from further environmental documentation. Under figure 2-1, paragraph (34) (g) of the Instruction, an “Environmental Analysis Checklist” and a “Categorical Exclusion Determination” are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting & Record Keeping Requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 Subpart C 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(g), 6.04-1, 6.04-6 AND 160.5 and Department of Homeland Security Delegation No. 0170.1

2. Add Temporary § 165.T05-185, to read as follows:

§ 165.T05-185 Safety Zone: Atlantic Ocean, Virginia Beach, Va.

(a) Location. The following area is a safety zone: All waters within 840 feet of the pier at Virginia Beach Fishing Pier, Virginia Beach Va in the Captain of the Port, Hampton Roads zone as defined in 33 CFR § 3.25-10.

(b) Definitions:

(1) Captain of the Port: Any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(2) The Captain of the Port, Hampton Roads and the Command Duty Officer at the Marine Safety Office, Norfolk, Virginia can be contacted at telephone Number (757) 668-5555 or (757) 484-8192.

(3) The Coast Guard vessels enforcing the safety zone can be contacted on VHF-FM channels 13 and 16.

(c) Regulation:

(1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia, or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(d) Effective date: This regulation is effective from 8:30 p.m., September 25, 2004 and shall terminate at 10:30 p.m., September 25, 2004.

Dated: 9/20/04



S. M. HANEWICH

Commander, U.S. Coast Guard

Acting Captain of the Port Hampton Roads