

Dated: September 12, 2024.

Kate F. Higgins-Bloom,
Captain, U.S. Coast Guard, Captain of the
Port, Sector Delaware Bay.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2024-0775]

RIN 1625-AA00

Safety Zone: Chelsea Day Fireworks, Boston Inner Harbor, Mystic River, Chelsea MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Boston Inner Harbor within a 300-yard radius of the fireworks barge in the vicinity of Admiral's Hill, Mystic River, Chelsea, Massachusetts. This action is needed to protect the maritime public and event participants from potential hazards created by a fireworks event taking place in a heavily trafficked harbor scheduled for September 21, 2024, with a rain date of September 22, 2024. Entry of vessels or persons into this zone is prohibited unless authorized by the Captain of the Port Sector Boston, or a designated representative.

DATES: This rule is effective from 7:30 p.m. through 10 p.m. on September 21, 2024, with a rain date effective from 7:30 p.m. through 10 p.m. on September 22, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov> type USCG-2024-0775 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Timothy W. Chase, Sector Boston, Waterways Management, phone (617) 447-1620, email Timothy.W.Chase@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Boston
DHS Department of Homeland Security
FR Federal Register
MA Massachusetts

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 under authority in 5 U.S.C. 553(b)(B). This statutory 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." The Coast Guard finds that good cause exists for not publishing a Notice of Proposed Rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard was not made aware of the fireworks event with sufficient time to publish an NPRM, take public comments, consider those comments, and issue a final rule by the scheduled date of the event. It is impracticable to publish an NPRM because we must establish this safety zone by September 21, 2024.

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 because prompt action is needed to respond to the potential safety hazards associated with a fireworks event taking place in a heavily trafficked harbor.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Boston (COTP) has determined that potential hazards exist with a fireworks event occurring in a heavily trafficked harbor in the vicinity of Admiral's Hill, Boston Inner Harbor, Mystic River, Chelsea, Massachusetts. This rule is needed to protect the maritime public and event participants from the hazards associated with the fireworks event.

IV. Discussion of the Rule

This rule establishes a safety zone from 7:30 p.m. to 10 p.m. on September 21, 2024, with a rain date of September 22, 2024. The safety zone will cover all the navigable waters of a portion of Boston Inner Harbor in the vicinity of Admiral's Hill, Mystic River, Chelsea, specifically within a 300-yard radius of the fireworks barge in approximate position 42°23'08" N, 071°3'03" W. The duration of the zone is intended to protect event participants, support personnel, vessels, and the marine environment in these navigable waters

during the fireworks event. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

Requests to enter the zone will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at (856) 416-3015 or can be reached by VHF-FM channel 16. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed to minimize wake and comply with all lawful directions issued by the COTP or the designated representative.

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. This rule has not been designated a "significant regulatory action," under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small, designated area of Boston Inner Harbor in the vicinity of Admiral's Hill, Mystic River, Chelsea, MA, in support of a fireworks event on September 21, 2024, with a rain date of September 22, 2024. Additionally, this safety zone will be of limited duration, two- and one-half hours, to minimize any adverse impacts to vessels who seek to transit the navigable waters. Moreover, the Coast Guard will issue a Local Notice to Mariners well in advance of the event and a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the zone prior to commencement of the event, and the rule allows vessels to seek permission to enter 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 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. 121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email 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.

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, Rev. 1, associated implementing instructions, 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 lasting for a period of 2.5 hours that will prohibit entry within the designated safety zone during a fireworks event. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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; 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T01–0775 to read as follows:

§ 165.T01–0775 Safety Zone; Chelsea Day Fireworks Celebration, Boston Inner Harbor, Mystic River, Chelsea MA.

(a) *Regulated area.* The following area is a safety zone: all navigable waters of a portion of Boston Inner Harbor in the vicinity of Admiral’s Hill, Mystic River, Chelsea, MA, specifically within a 300-yard radius of the fireworks barge in approximate position: 42°23’08” N, 071°03’03” W.

(b) *Definitions.* As used in this section—*Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Boston (COTP) in the enforcement of the regulations in this section.

Participant means all persons registered with the event sponsor as a participant in the event.

(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, contact the COTP or the COTP’s designated via VHF–FM Marine Channel 16 or by contacting the Coast Guard Sector Boston Command Center at (857) 416–3015. 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 period.* This section will be enforced from 7:30 p.m. through 10 p.m. on September 21, 2024, with a

rain date scheduled on September 22, 2024.

J.J. Schock,

Commander, U.S. Coast Guard, Acting
Captain of the Port Sector Boston.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2020–0060]

RIN 0651–AD50

Rules Governing Motion To Amend Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board

AGENCY: Patent Trial and Appeal Board, United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) modifies its rules of practice governing amendment practice in trial proceedings under the Leahy-Smith America Invents Act (AIA) to make permanent certain provisions of the Office’s motion to amend pilot program (MTA pilot program) and to revise the rules that allocate burdens of persuasion in connection with motions to amend (MTAs). These rules provide a patent owner with the option of issuance of preliminary guidance in response to an MTA and the option of filing one additional revised MTA. Further, these rules clarify that a preponderance of evidence standard applies to any new ground of unpatentability raised by the Board, and that when exercising the discretion to grant or deny an MTA or to raise a new ground of unpatentability, the Board may consider all evidence of record in the proceeding. The rules further provide that the Board may consider information identified in response to a Board-initiated request for examination assistance, and that the results of that assistance will be added to the record. The rules better ensure the Office’s role of issuing robust and reliable patents, and the predictability and certainty of post-grant trial proceedings before the Board. These rules relate to the Office trial practice for *inter partes* review (IPR), post-grant review (PGR), and derivation proceedings that implemented provisions of the AIA providing for trials before the Office.

DATES: This rule is effective October 18, 2024.

FOR FURTHER INFORMATION CONTACT:

Miriam L. Quinn, Acting Senior Lead Administrative Patent Judge; or Melissa Haapala, Vice Chief Administrative Patent Judge, at 571–272–9797, Miriam.Quinn@uspto.gov or Melissa.Haapala@uspto.gov, respectively.

SUPPLEMENTARY INFORMATION:

Background

Development of the Final Rule

On September 16, 2011, the AIA was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)), and in 2012, the Office implemented rules to govern Office trial practice for AIA trials, including IPR, PGR, covered business method (CBM), and derivation proceedings pursuant to 35 U.S.C. 135, 316, and 326 and AIA 18(d)(2). See 37 CFR part 42; Rules of Practice for Trials before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions, 77 FR 48612 (August 14, 2012); Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 FR 48680 (August 14, 2012); Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention, 77 FR 48734 (August 14, 2012). Additionally, the Office published a Patent Trial Practice Guide (Practice Guide) for the rules to advise the public on the general framework of the regulations, including the structure and times for taking action in each of the new proceedings. See 84 FR 64280 (November 21, 2019); <https://www.uspto.gov/TrialPracticeGuide> *Consolidated*. The Practice Guide provides a helpful overview of the Patent Trial and Appeal Board (PTAB or Board) process. See, e.g., Practice Guide at 5–8 (AIA trial process), 66–72 (motions to amend).

In 2019, the Office implemented a pilot program (MTA Pilot Program) for motions to amend filed in AIA proceedings before the PTAB. Notice Regarding a New Pilot Program Concerning MTA Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board, 84 FR 9497 (March 15, 2019) (MTA pilot program notice). The MTA Pilot Program addressed public comments on a previously proposed procedure for MTAs, the Board’s MTA practice generally, and the allocation of burdens of persuasion after *Aqua Products, Inc. v. Matal*, 872 F.3d 1290 (Fed. Cir. 2017)

(en banc) (*Aqua Products*)). See RFC on MTA Practice and Procedures in Trial Proceedings under the America Invents Act before the Patent Trial and Appeal Board, 83 FR 54319 (October 29, 2018) (2018 RFC). The MTA pilot program was extended through September 16, 2024. Extension of the Patent Trial and Appeal Board Motion to Amend Pilot Program, 87 FR 60134 (October 4, 2022).

In 2020, the Office, through notice and comment rulemaking, published a final rule that allocated burdens of persuasion in relation to motions to amend and the patentability of substitute claims. See 37 CFR 42.121(d), 42.221(d); Rules of Practice to Allocate the Burden of Persuasion on Motions to Amend in Trial Proceedings before the Patent Trial and Appeal Board, 85 FR 82936 (December 21, 2020) (“the burden-allocation rules”). These burden-allocation rules assign the burden of persuasion to the patent owner to show, by a preponderance of the evidence, that an MTA complies with certain statutory and regulatory requirements. 37 CFR 42.121(d)(1), 42.221(d)(1). The burden-allocation rules also assign the burden of persuasion to the petitioner to show, by a preponderance of the evidence, that any proposed substitute claims are unpatentable. 37 CFR 42.121(d)(2), 42.221(d)(2).

Finally, the burden-allocation rules further specify that irrespective of those burdens, the Board may, in the “interests of justice,” exercise its discretion to grant or deny an MTA, but “only for reasons supported by readily identifiable and persuasive evidence of record.” 37 CFR 42.121(d)(3), 42.221(d)(3); *Hunting Titan, Inc. v. DynaEnergetics Europe GmbH*, IPR2018–00600 (PTAB July 6, 2020) (Paper 67) (*Hunting Titan*). Situations meeting the interests of justice standard were stated to include, for example, those in which “the petitioner has ceased to participate in the proceeding or chooses not to oppose the motion to amend, or those in which certain evidence regarding unpatentability has not been raised by either party but is so readily identifiable and persuasive that the Board should take it up in the interest of supporting the integrity of the patent system, notwithstanding the adversarial nature of the proceedings.” 85 FR 82924, 82927 (citing *Hunting Titan*, Paper 67 at 12–13, 25–26). The burden-allocation rules further provide that in instances where the Board exercises its discretion in the interests of justice, the Board will provide the parties with an opportunity to respond before rendering a final decision on the