



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0206]

RIN 1625-AA00

Safety Zone; Temporary Change for Air and Water Shows within the Captain of the Port Lake Michigan zone.

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement periods of three permanent safety zone regulations for recurring air and water shows that occur within the Captain of the Port Lake Michigan zone. These regulations apply to only the enforcement periods of three recurring Air and Water Shows. These safety zones are necessary to provide for the safety of life on navigable waters during these potentially dangerous events. This action is intended to notify the public about the temporary changes to the published enforcement periods for these three events.

DATES: This rule is effective from July 3, 2012 through August 19, 2012..

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0206 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0206 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email BM1 Adam Kraft, Prevention Department, Coast Guard, Sector Lake Michigan, Milwaukee, WI, telephone (414) 747-7148, email Adam.D.Kraft@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final 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 publishing an NPRM is unnecessary as we previously published an NPRM (see 76 FR 30072) for the annual events listed in 33 CFR 165.929. When the NPRM was made available for comment, there were no objections to these events. This regulation represents the re-scheduling of the following events listed in § 165.929: the Gary Air and Water Show, the Chicago Air and Water Show, and the Milwaukee Air and Water Show. In addition, waiting for a comment period to run would inhibit the Coast Guard from performing its statutory function of protecting life on navigable waters from the hazards associated with air and water shows. Thus, waiting for a notice and comment period to run would also be impractical and contrary to the public interest.

Background and Purpose

The Gary Air and Water Show, the Chicago Air and Water Show, and the Milwaukee Air and Water are held annually on or adjacent to U.S. navigable waters within the Captain of

the Port Lake Michigan zone. Because of their recurring nature, a permanent safety zone with specific enforcement periods has been established for each event in 33 CFR 165.929. The organizers for these events, however, have temporarily rescheduled these events for the summer of 2012.

The Gary Air and Water Show is normally scheduled to occur from 10:00 a.m. to 9:00 p.m. on Friday, Saturday, and Sunday during the 2nd weekend of July each year.

This year, however, the event will take place on Tuesday, Thursday, Friday, Saturday, and Sunday during the first week of July. The enforcement times this year will be from 12:00 p.m. to 5:00 p.m. on Tuesday and Thursday, from 2:30 p.m. to 9:30 p.m. on Friday, and then from 10:00 a.m. to 5:00 p.m. on Saturday and Sunday.

The Milwaukee Air and Water show is normally scheduled to occur from 10 a.m. to 5 p.m. on the first Thursday, Friday, Saturday, and Sunday of each August. This year, however, the event will take place on the second Friday, Saturday, and Sunday of August. The enforcement times will be from 8:00 a.m. to 4:00 p.m. each day.

The Chicago Air and Water Show is normally scheduled to occur from 9:00 a.m. to 6:00 p.m. on the third Thursday, Friday, Saturday, and Sunday of August each year. This

year, however, the event will take place on the third Wednesday, Friday, Saturday, and Sunday of August. The enforcement times will be from 12:00 p.m. to 3:00 p.m. on Wednesday and from 9:00 a.m. to 4:00 p.m. on Friday through Sunday.

Discussion of Rule

This rule temporarily amends the regulations found in 33 CFR § 165.929, Annual Events requiring safety zones in the Captain of the Port Lake Michigan zone. Specifically, this rule will temporarily suspend § 165.929 (a) (42), (a) (43), and (a) (64) and temporarily add § 165.929 (a) (76), (a) (77), and (a) (78). The amendments will temporarily modify the enforcement dates and times of the three aforementioned events. These modifications are necessary to protect vessels and people from the hazards associated with large scale air and water shows.

The safety zone located at 33 CFR § 165.929(a) (42) for the Gary Air and Water Show will be enforced on July 3 and 5, 2012 from 12 p.m. to 5 p.m., on July 6, 2012 from 2:30 p.m. to 9:30 p.m., and on July 7-8, 2012, from 10:00 a.m. to 5:00 p.m.

The safety zone located at 33 CFR § 165.929(a) (43) for the Milwaukee Air and Water show will be enforced on August 15, 2012 from 12 p.m. to 3 p.m. and on August 17-19, 2012,

from 9:00 a.m. to 4:00 p.m.

The safety zone located at 33 CFR § 165.929(a)(64) for the Chicago Air and Water Show will be enforced on August 10-12, 2012 from 8:00 a.m. to 4:00 p.m.

Entry into, transiting, or anchoring within these safety zones during an enforcement period is prohibited without the authority of the Captain of the Port, Sector Lake Michigan, or his or her designated representative. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF Channel 16. All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Lake Michigan, or his or her designated representative.

The Captain of the Port Lake Michigan will notify the public when the zones in this rule will be enforced by all appropriate means, in keeping with 33 CFR 165.7(a). In addition to publishing this rule in the Federal Register, such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is cancelled.

Regulatory Analyses

We developed this rule after considering numerous

statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders. We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones discussed in this rule will be relatively small and enforced for relatively short time. Also, each safety zone is designed to minimize its impact on navigable waters. Furthermore, each safety zone has been designed to allow vessels to transit unrestricted to portions of the waterways not affected by

the safety zones. Thus, restrictions on vessel movement within any particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through a safety zone when permitted by the Captain of the Port, Sector Lake Michigan. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the enforcement of these safety zones.

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" 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 would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in any one of the below established safety zones while the safety zone is being enforced. These safety zones will not have a

significant economic impact on a substantial number of small entities for the following reasons: each safety zone in this rule will be enforced for only a few hours within any given 24 hour period and only for a few days.

Furthermore, these safety zones have been designed to allow traffic to pass safely around each zone. Moreover, vessels will be allowed to pass through each zone at the discretion of the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

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 could better evaluate its effects on them and participate in the rulemaking process. 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.

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 (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.

Taking of Private Property

This rule will not affect 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 concern 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it 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 Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule establishes a safety zone, and thus, paragraph (34)(g) of the Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping 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; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. From July 3, 2012 through August 19, 2012, amend § 165.929 as follows:

- a. Suspend paragraphs (pp), (qq), and (lll); and
- b. Add paragraphs (sss), (ttt), and (uuu) to read as follows: follows:

§ 165.929 Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone.

* * * * *

(sss) Gary Air and Water Show; Gary, IN.

(i) Location. All waters of Lake Michigan bounded by a line drawn from 41°37'42" N, 087°16'38" W; then east to 41°37'54" N, 087°14'00" W; then south to 41°37'30" N, 087°13'56" W; then west to 41°37'17" N, 087°16'36" W; then north returning to the point of origin (NAD 83).

(ii) Enforcement date and time. July 3 and 5, 2012 from 12 p.m. to 5 p.m.; July 6, 2012 from 2:30 p.m. to 9:30 p.m.; and on July 7-8, 2012, from 10:00 a.m. to 5:00 p.m.

(ttt) Milwaukee Air and Water Show; Milwaukee, WI.

(i) Location. All waters and adjacent shoreline of Lake Michigan and Bradford Beach located within a 4000-yard by 1000-yard rectangle. The rectangle will be bounded by the points beginning at points beginning at 43°02'50" N, 087°52'36" W; then northeast to 43°04'33" N, 087°51'12" W; then northwest to 43°04'40" N, 087°51'29" W; then southwest to 43°02'57" N, 087°52'53" W; the southeast returning to the point of origin (NAD 83).

(ii) Enforcement date and time. August 15, 2012 from 12 p.m. to 3 p.m.; August 17-19, 2012, from 9:00 a.m. to 4:00 p.m.

(uuu) Chicago Air and Water Show; Chicago, IL.

(i) Location. All waters and adjacent shoreline of Lake Michigan and Chicago Harbor bounded by a line drawn from $41^{\circ}55'54''$ N at the shoreline, then east to $41^{\circ}55'54''$ N, $087^{\circ}37'12''$ W, then southeast to $41^{\circ}54'00''$ N, $087^{\circ}36'00''$ W (NAD 83), then southwestward to the northeast corner of

the Jardine Water Filtration Plant, then due west to the shore.

(ii) Enforcement date and time. August 10-12, 2012 from 8:00 a.m. to 4:00 p.m.

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Dated: Mar 14 2012

M. W. SIBLEY
Captain, U.S. Coast Guard
Captain of the Port Sector Lake Michigan

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