



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0699]

RIN 1625-AA00

Safety Zone; Seafair Blue Angels Air Show Performance, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a safety zone on the waters of Lake Washington, Seattle, WA. This action is necessary to safeguard participants and spectators from the safety hazards associated with the Seafair Blue Angels Air Show Performance which include low flying high speed aircraft and will do so by prohibiting entry into the safety zone is unless authorized by the Captain of the Port, Puget Sound or his Designated Representative.

DATES: This rule is effective from 9:00 a.m. on August 2, 2012 through 4:00 p.m. on August 5, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0699. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the

"SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 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 rule, call or e-mail Ensign Nathaniel P. Clinger, Coast Guard Sector Puget Sound Waterways Management Division,; telephone 206-217-6045, e-mail SectorPugetSoundWWM@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:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is establishing this rule because the current regulation associated with the Seafair Blue Angels Air Show performance (33 CFR 165.1319) is not large enough to safeguard participants and spectators from the safety hazards of this air performance.

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 would be impracticable since the event would be over before notice could be given and comments taken. Notice and comment would also be contrary to the public interest because the public expects to be provided a safe area to observe the Seafair Blue Angels air show. Absent this temporary final rule, the zone provided in 33 CFR 165.1319 will be too small to encompass the anticipated safe flight pattern of the demonstrating aircraft, and would expose spectators to hazards associated with low-flying aircraft over water.

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, because to do so would be contrary to the public interest since the event would be over before notice could be given and comments taken, and it is immediately necessary to protect the event's spectators from the hazards associated with the Seafair Blue Angels Air Show Performance.

## B. Basis and Purpose

The legal basis for this rule is 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, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1. which collectively authorize the Coast Guard to define regulatory safety zones.

The Coast Guard is establishing this safety zone to ensure the safety of the maritime public during the Seattle Blue Angels Air Show. The safety zone in 33 CFR 165.1319 has been determined to be too small to accommodate the anticipated flight pattern of the Blue Angels. This temporary final rule extends the northern boundary line of the existing regulation northward by 500 yards. The remainder of the safety zone contained at 33 CFR 165.1319 remains unchanged.

## C. Discussion of the Final Rule

As described in 69 FR 35249, the Coast Guard established a final rule for the Blue Angels Air Show Performance. This rule was meant to protect the public from dangers including excessive noise and falling objects from any potential accidents caused by these low-flying military aircraft. The regulation contained in 33 CFR 165.1319 encompasses "[a]ll waters of Lake Washington, Washington State, enclosed by the following points: Near the termination of Roanoke Way 47°35'44" N, 122°14'47" W; thence to 47°35'48" N, 122°15'45" W; thence to 47°36'02.1" N, 122°15'50.2" W; thence to 47°35'56.6" N, 122°16'29.2" W; thence to 47°35'42"

N, 122°16'24" W; thence to the east side of the entrance to the west highrise of the Interstate 90 bridge; thence westerly along the south side of the bridge to the shoreline on the western terminus of the bridge; thence southerly along the shoreline to Andrews Bay at 47°33'06" N, 122°15'32" W; thence northeast along the shoreline of Bailey Peninsula to its northeast point at 47°33'44" N, 122°15'04" W; thence easterly along the east-west line drawn tangent to Bailey Peninsula; thence northerly along the shore of Mercer Island to the point of origin. [Datum: NAD 1983]"

However, the aircraft in question have a flight pattern that will extend past the northern boundary of the regulation in 33 CFR 165.1319. As such, an extension is necessary in order to protect the spectating public.

This rule encompasses the northern portion of the Seafair Blue Angels Air Show Performance Safety Zone, starting at point 47°36'17.28"N, 122°16'58.56"W, thence east to point 47°36'17.28"N, 122°14'49.44"W, thence south to point 47°35'45.3"N, 122°14'49.44"W, thence south west along the shore line to the I-90 bridge at point, 47°35'23.16"N, 122°15'17.1"W, thence west along the I-90 bridge to point, 47°35'25.44"N, 122°17'9.48"W, and north along the shoreline back to the point of origin. This rule is effective from 9:00 a.m. on August 2, 2012 through 4:00 p.m. on August 5, 2012.

During the periods the safety zone is in effect no person or

vessel may enter into, transit, or remain in the safety zone without the permission of the Captain of the Port or his Designated Representative.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. 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 Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This expectation is based on the fact that the regulated area established by the regulation is not frequented by commercial navigation, and it is small in size, and short in duration.

##### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this portion of Lake Washington during the time this regulation is in effect. The zone will not have a significant economic impact because it is limited in size and short in duration. The only vessels likely to be impacted will be recreational boaters and small passenger vessel operators.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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, above.

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.

#### 4. 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).

#### 5. Federalism

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 determined that this rule does not have implications for federalism.

#### 6. 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.

## 7. 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.

## 8. Taking of Private Property

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

## 9. 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.

## 10. 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.

#### 11. 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.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

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

#### 14. 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 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 the establishment of a safety zone. This rule 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.

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; 46 U.S.C. Chapters 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. Add § 165.T13-226 to read as follows:

§ 165.T13-226 Safety Zone; Seafair Blue Angels Air Show

Performance, Seattle, WA

(a) Location. The following area is designated as a safety zone: Lake Washington, Seattle, WA. All waters of Lake Washington encompassed by the following points: 47°36'17.28"N, 122°16'58.56"W, thence east to point 47°36'17.28"N, 122°14'49.44"W, thence south to point 47°35'45.3"N, 122°14'49.44"W, thence south west along the shore line to the I-

90 bridge at point, 47°35'23.16"N, 122°15'17.1"W, thence west along the I-90 bridge to point, 47°35'25.44"N, 122°17'9.48"W, and north along the shoreline back to the point of origin.

(b) Regulations. In accordance with the general regulations in 33 CFR part 165, subpart C, no person or vessel may enter or remain in the safety zone created by this section without the permission of the Captain of the Port (COTP) or his Designated Representative. Designated Representatives are Coast Guard Personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. See 33 CFR part 165, subpart C, for additional information and requirements. The COTP may be assisted by other federal, state or local agencies with the enforcement of this safety zone.

(c) Effective Period. This rule is effective from 9:00 a.m. on August 2, 2012 through 4:00 p.m. on August 5, 2012.

DATED: July 19, 2012

S. J. Ferguson  
Captain, U. S. Coast Guard,  
Captain of the Port, Puget Sound

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Date: 07/30/2012]