



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2015-1127]

RIN 1625-AA00

Safety Zone; 2016 Wings over Vermont Air Show, Lake Champlain, Burlington, VT

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for an aerobatic demonstration over the navigable waters of Lake Champlain along the shoreline in Burlington, VT. This temporary safety zone will be necessary to protect spectators and vessels from hazards associated with the air show. Entry into, transit through, mooring or anchoring within this regulated area will be prohibited unless authorized by the Captain of the Port (COTP) Sector Northern New England (SNNE).

**DATES:** This rule is effective from 9 a.m. on August 12, 2014, through 6 p.m. on August 14, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG- USCG-2015-1127 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 about this rulemaking, call or e-mail Chief Marine Science Technician Chris Bains, Waterways Management Division

at Coast Guard Sector Northern New England, telephone (207) 347-5003, or e-mail  
Chris.D.Bains@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
SLR	Special Local Regulation
U.S.C.	United States Code
COTP	Captain of the Port
NPRM	Notice of Proposed Rulemaking

**II. Background Information and Regulatory History**

On April 19, 2016, the Coast Guard published an NPRM in the Federal Register titled 2016 Wings over Vermont Air Show (81 FR 22944). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action. No public comments or request for a public meeting were received during the NPRM process.

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

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP is establishing a safety zone for the Wings over Vermont Air Show from 9 a.m. to 6 p.m. on August 12- 14, 2016 on Lake Champlain, along the shoreline of Burlington, VT. The safety zone will cover all navigable waters, extending to and including the breakwater bounded by the following coordinates: 44° 29'24"N / 073° 14'44"W; 44° 29'24"N / 073° 14'03"W; 44° 28'56"N / 073° 14'03"W; 44° 28'50"N / 073° 13'48"W; 44° 28'12"N / 073° 13'33"W; 44° 27'47"N / 073° 14'03"W; 44° 27'25"N / 073° 14'03"W; 44° 27'25"N / 073° 14'44"W. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before,

during, and after the scheduled 10 a.m. to 5 p.m. aerobatic displays. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text appears at the end of this document.

The purpose of this rulemaking is to ensure the safety of spectator vessels and other traffic using the navigable waters near or around the designated aeronautical box.

#### **IV. 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. 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, the rule has not been reviewed by the Office of Management and Budget.

The Coast Guard has determined that this rule is not a significant regulatory action for the following reasons: the safety zone will be of limited duration and will only be in effect during a portion of three days, it will allow vessels to transit in waters directly adjacent to the safety zone, and coordinated efforts have been made to direct ferry traffic around the safety zone so not to disrupt regularly scheduled ferry service on Lake Champlain. Additionally, maritime advisories will be posted in the Local Notice to Mariners and the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine Channel 16 prior to and during the entire duration of the

enforcement period.

### 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 IV.A 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 the 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 will 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 would 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 made a determination 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 a portion of three days and will prohibit entry into without permission from the COTP. Normally such actions are categorically excluded from further review under paragraph 34 of figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist supporting this is 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 record keeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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 and Department of Homeland Security Delegation No. 0170.1

2. Add §165.T01-1127 to read as follows:

§165.T01-1127 Safety Zone; 2016 Wings Over Vermont Air Show, Lake Champlain; Burlington, VT.

(a) Location. The following area is a Safety Zone: All navigable waters, from surface to bottom, of Lake Champlain, Burlington, VT, within an aeronautical box extending to and including the breakwater bounded by the following coordinates: 44° 29'24"N / 073° 14'44"W; 44° 29'24"N / 073° 14'03"W; 44° 28'56"N / 073° 14'03"W; 44° 28'50"N / 073° 13'48"W; 44° 28'12"N / 073° 13'33"W; 44° 27'47"N / 073° 14'03"W; 44° 27'25"N / 073° 14'03"W; 44° 27'25"N / 073° 14'44"W

(b) Enforcement period. This safety zone described in paragraph (a) above will be enforced from 9 a.m. until 6 p.m. on August 12-14, 2016.

(c) Regulations. (1) The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entry into, transiting, mooring, anchoring or remaining within this safety zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his designated representatives.

(3) Persons and vessels may request permission to enter the safety zone by contacting the COTP or the COTP's designated representative on VHF-16 or via phone at 207-767-0303.

(4) The "designated representative" is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, or onboard a local or state agency vessel that is authorized to act in support of the Coast Guard. Additionally, the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(5) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

Dated: July 13, 2016

M. A. Baroody  
Captain, U. S. Coast Guard  
Captain of the Port  
Sector Northern New England

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