



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0490]

RIN 1625-AA00

Safety Zone; Mercury Powerboat Race; Sheboygan Harbor, Sheboygan, Wisconsin

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones in Lake Michigan for certain navigable waters in and around Sheboygan Harbor in Sheboygan, WI. The safety zones are needed to protect personnel, vessels, and the marine environment from potential hazards associated from the Mercury Powerboat Race event. This rule will prohibit persons and vessels from entering the safety zones unless authorized by the Captain of the Port Lake Michigan or a designated representative.

DATES: This rule is effective from 8 a.m. on August 11 to 6:30 p.m. on August 13, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0490 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 about this proposed rulemaking, call or email Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414-747-7136, email brianna.m.henry@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary 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 insufficient time remains before the event to publish an NPRM and receive public comments prior to 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**. Delaying the effective date of this rule to wait for a comment period to run would be contrary to the public interest by inhibiting the Coast Guard’s ability to protect personnel, vessels, and the marine environment in these navigable waters during the race events.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP Lake Michigan has determined a safety zone is needed to protect the public from potential hazards association from the Mercury Powerboat Race event.

IV. Discussion of the Rule

The COTP is establishing two safety zones from 8:00 a.m. on August 11 to 6:30 p.m. on August 13, 2023. One of the safety zones will be located offshore of Sheboygan, WI and will cover all navigable waters within the offshore course located within the following coordinates: NW corner 43°44'54.32"N87°42'5.77"W, NE corner 43°44'54.10"N87°41'3.21"W, SW corner, 43°42'27.10"N87°42'10.11"W, SE corner 43°42'26.73"N87°40'54.66"W. The other safety zone will be in a triangular area within Sheboygan Harbor and will cover all navigable waters within the following coordinates: 43°44'56.76", N 87°41'05.60" W, 43°45'07.29" N 87°41'51.07" W, 43°44'57.24" N87°42'05.24" W. The duration of the zones is intended to protect personnel, vessels, and the marine environment in these navigable waters during the race events. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the COTP or a 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 the need to ensure the safety of public during the powerboat race event.

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. 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 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

establishment of a temporary safety zone intended to ensure the safety of participants in these navigable waters before, during, and after the swim portion of the Tri CLE Rock Roll Run triathlon. It is categorically excluded from further review under paragraph L63(b) 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.T09-0490 to read as follows:

§ 165.T09-0490 Safety Zone; Mercury Powerboat Race; Sheboygan Harbor, Sheboygan, Wisconsin

(a) *Location.* All navigable waters within the offshore course located within the following coordinates: NW corner 43°44'54.32"N87°42'5.77"W, NE corner 43°44'54.10"N87°41'3.21"W, SW corner, 43°42'27.10"N87°42'10.11"W, SE corner 43°42'26.73"N87°40'54.66"W, and all navigable waters located in a triangular area within Sheboygan Harbor within the following coordinates: 43°44'56.76", N 87°41'05.60" W, 43°45'07.29" N 87°41'51.07" W, 43°44'57.24" N87°42'05.24" W.

(b) *Enforcement Period.* 8 a.m. on August 11 to 6:30 p.m. on August 13, 2023

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23, entry, transiting, or anchoring within this safety zones are prohibited unless authorized by the Captain of the Port Lake Michigan (COTP) or a designated representative.

(2) These safety zones are closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) The "designated representative" of the COTP is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Persons and vessel operators desiring to enter or operate within the safety zones must contact the COTP or an on-scene representative to obtain permission to do so. The COTP or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the COTP or an on-scene representative.

Dated: July 25, 2023.

Joseph B. Parker,
Captain, U.S. Coast Guard,
Captain of the Port Lake Michigan.

