



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0622]

RIN 1625-AA00

Safety Zone; Pacific Ocean, Huntington Beach, California

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing a safety zone offshore of Huntington Beach, CA in support of the Pacific Airshow. This action is necessary to provide for the safety of life on these navigable waters in the area of the air and water demonstrations and to protect the high concentration of people attending the event. This regulation prohibits vessels from entering into, transiting through, or remaining within the designated area unless specifically authorized by the Captain of the Port, Sector Los Angeles – Long Beach (COTP), or a designated representative.

DATES: This rule is effective from 9:30 a.m. on September 29, 2023 through 5 p.m. on October 1, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0622 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 rule, call or email LCDR Kevin Kinsella, U.S. Coast Guard Sector Los Angeles – Long Beach; telephone (310) 467-2099, e-mail D11-SMB-SectorLALB-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Los Angeles – Long Beach
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

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 it is impracticable. The Coast Guard received final details for this event on August 30, 2023 and the final details for a related and adjacent marine event impacting the drafting of this rule on July 14, 2023. There was insufficient time to undergo the full rulemaking process, including providing a reasonable comment period and considering those comments, because the Coast Guard must establish this temporary safety zone by September 29, 2023.

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 contrary to the public interest because immediate action is needed to address potentially hazardous conditions associated with high-speed maneuvers from aircraft and waterborne vessels for a search and rescue demonstration.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that potential hazards associated with navigational safety may arise due to multiple low flying aircraft flight paths and stunt performances over the waters off Huntington Beach. This air show will consist of numerous military and civilian aircraft performing aerobatic maneuvers at high speed within the lateral limits of an aerobatic box that would extend from the surface of the water to 15,000 feet above mean sea level (MSL). The event at Huntington Beach generates over 800 spectator craft in attendance each year. This safety zone is to ensure the safety of and reduce the risk to the public and mariners in the vicinity of the aerobatic performance.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:30 a.m. on September 29, 2023, through 5 p.m. on October 1, 2023. Based on the safety risks described above, the Coast Guard is proposing to establish a safety zone in the vicinity of Huntington Beach for the Pacific Air Show. The safety zone would encompass all navigable waters from the surface to the sea floor in an area bound by the following coordinates: 33° 38.391'N; 117° 58.820'W, 33° 37.984'N; 117° 59.187'W, 33° 39.184'N; 118° 1.111'W, 33° 39.591'N; 118° 0.745'W. All coordinates displayed are referenced by North American Datum of 1983. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled race. No vessel or person will be permitted to enter the safety zone without obtaining permission from 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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866, as amended by Executive Order 14094. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. The size of the zone is the minimum necessary to provide adequate protection for the waterway’s users, adjoining areas, and the public. The zone will be enforced during the scheduled times of 9:30 a.m. to 5 p.m. on three days. Commercial vessel traffic will not be affected by the establishment of the safety zone due to its overall proximity to the shore. Recreational water users will be able to transit around the safety 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. 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 a safety zone encompassing an area in vicinity of Huntington Beach and the Huntington Beach Pier. It is categorically excluded from further review under paragraph L60(a), in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. It is categorically excluded from further review under paragraph 60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

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 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.T11-140 to read as follows:

§ 165.T11-140 Safety Zone; Pacific Ocean, Huntington Beach, California.

(a) *Location.* The following area is a safety zone: All navigable waters from the surface to the sea floor consisting of a line connecting the following coordinates: 33° 38.391'N; 117° 58.820'W, 33° 37.984'N; 117° 59.187'W, 33° 39.184'N; 118° 1.111'W, 33° 39.591'N; 118° 0.745'W. These coordinates are based on North American Datum of 1983.

(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 Los Angeles-Long Beach (COTP) in the enforcement of the safety zone.

(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 representative by hailing Coast Guard Sector Los Angeles – Long Beach on VHF–FM Channel 16 or calling at (310) 521-3801. 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.* The temporary safety zone will be enforced from 9:30 a.m. to 5 p.m. each day from September 29, 2023, to October 1, 2023. The marine public will be notified of this safety zone via Broadcast Notice to Mariners. If the COTP determines that the zone need not be enforced during this entire period, the Coast Guard will announce via Broadcast Notice to Mariners when the zone will no longer be subject to enforcement.

Dated: September 21, 2023.

R. D. Manning,

Captain, U.S. Coast Guard,

Captain of the Port Los Angeles - Long Beach.

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