



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0032]

RIN 1625-AA00

Safety Zone; Lake Pontchartrain, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone extending out approximately 3,000 feet from the South shores of Lake Pontchartrain adjacent to the East bank of the Lakefront Airport runways. This safety zone is necessary to protect persons and vessels from the potential safety hazards associated with high-speed aerobatic displays by the participants of the 1812 Blue Angels Air Show, during the War of 1812 Commemoration. The Air Show includes a 12,000' X 3,000' aerobatic display area and requires the surface of the water to be sterile of non-participants.

DATES: This rule is effective from 10:00 a.m. on April 19, 2012 until 5:00 p.m. on April 22, 2012. This rule will be enforced on April 19, 2012 through April 22, 2012 between the hours of 10:00 a.m. to 5:00 p.m.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2012-0032 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0032 in the "Keyword" box, and then clicking "Search." This material is 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 rule, call or e-mail Lieutenant Commander (LCDR) Marcie Kohn, Sector New Orleans, Coast Guard; telephone 504-365-2281, e-mail Marcie.L.Kohn@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 21, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone, Lake Pontchartrain, New Orleans, LA in the Federal Register (77 FR 9879). We received no comments on the proposed rule, and no requests for a public meeting. As part of this rulemaking we made available the environmental checklist showing no significant adverse environmental impacts are expected as described in the National Environmental Policy Act of 1969 (NEPA).

The Coast Guard is issuing this temporary final rule without full 30 day notice 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 full 30 day notice when the agency for good cause finds that such notice would be "impracticable, unnecessary, or contrary to the public interest." 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. The preceding NPRM provided for a comment period and noticed the public that this safety zone would be needed for the subject air show. The air show is scheduled in conjunction with the

events surrounding the War of 1812 Commemoration. The community and event sponsors have planned for the air show and are relying on the air show to take place accompanied by the necessary safety precautions provided by this safety zone. It is impracticable and unnecessary to interfere with the planned air show and surrounding events by delaying this safety zone rule for a full 30 days notice.

Basis and Purpose

In conjunction with the War of 1812 Commemoration celebrationstaking place in the city of New Orleans, the Coast Guard received an application request for a marine permit in support of the Blue Angels Air Show, to take place over the waters of Lake Pontchartrain. The request calls for a safety zone to be created on the lake to protect the public from the dangers inherent to an aerobatic air show. The Coast Guard determined that the safety zone is necessary to protect persons and vessels from the potential safety hazards associated with the high speed aerobatic displays of the air show participants.

Background

The Coast Guard is establishing this safety zone at the request of the event organizers and due to Federal Aviation Administration's requirement that the area be sterile of non-participants.

Discussion of Comments and Changes

No comments were received and no changes are made to the safety zone regulation as proposed.

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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The impacts on routine navigation are expected to be minimal because the enforcement periods are short in duration. Additionally, closure of the Inner Harbor Navigation Canal entrance to Lake Pontchartrain, in support of the Seabrook Surge Barrier construction project by the Army Corps of Engineers, restricts the majority of commercial traffic. As a result, the safety zone will have minimal impact, if any, on the area which is used primarily by recreational boaters.

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

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone will be activated, and thus subject to enforcement, for only 7 hours daily during the Air Show display. The small entities that may be affected include small entities engaged in the business of recreational boating in the area or other marine traffic in the area. Vessel traffic could pass safely around the safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), in

the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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 cause 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 create 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 that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone and as such is not categorically excluded, under figure 2-1, 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 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. 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. Add a temporary § 165.T08-0032 to read as follows:

§ 165.T08-0032 Safety Zone; Lake Pontchartrain, New Orleans, LA.

(a) Location. The following area is a temporary safety zone: All waters on the South shores of Lake Pontchartrain adjacent to the East bank of Lakefront Airport runways, extending along the Southern banks of the Lake, and including the Inner Harbor Navigational Canal entrance to Lake Pontchartrain.

The coordinates are:

latitude 30° 02' 38.37" N, longitude 90° 01' 53.56" W to latitude 30° 02' 38.37" N, longitude 90° 04' 10.05" W to

latitude 30° 02' 07.71" N, longitude 90° 04' 10.05" W to latitude 30° 02' 07.71" N, longitude 90° 01' 53.56" W.

(b) Effective Dates. This rule is effective April 19, 2012 through April 22, 2012 daily between the hours of 10:00 A.M. and 5:00 P.M. local time.

(c) Regulations. (1) In accordance with the general regulations in 33 CFR part 165 Subpart C of this title, entry into this zone is prohibited unless authorized by the Captain of the Port New Orleans. The Captain of the Port New Orleans may be contacted at (504) 365-2543.

(2) Vessels requiring entry into or passage through the Safety Zone must request permission from the Captain of the Port New Orleans, or a designated representative. They may be contacted on VHF 16, or by telephone at (504) 365-2543.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port New Orleans and designated personnel. Designated personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

Dated: April 4, 2012.

J.J. Arenstam,
Captain, U.S. Coast Guard
Acting Captain of the Port New Orleans

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