



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0497]

RIN 1625-AA00

Safety Zone; North Hero Air Show; North Hero, VT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters east of North Hero Island in Lake Champlain for the North Hero Air Show, an event to be held over the water. This temporary final rule is necessary to provide for the safety of life on the navigable waters east of North Hero Island during an air show of low-flying, high-speed, and high-performance acrobatic aircraft that could pose an imminent hazard to vessels operating in the area. This zone will close all waters in an area approximately 2 nautical miles by  $\frac{1}{2}$  nautical mile east of North Hero Island in North Hero, VT for the duration of the air show. Persons or vessels may not enter into this zone unless authorized by the Captain of the Port, Sector Northern New England.

DATES: This rule is effective from 9 a.m. on August 11, 2013,

until 9 p.m. on August 12, 2013. This rule will be enforced from 9 a.m. until 9 p.m. daily on August 11, 2013, and August 12, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0497]. 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 Lieutenant Megan L. Drewniak, Waterways Management Division at Coast Guard Sector Northern New England, telephone 207-741-5421, e-mail [Megan.L.Drewniak@uscg.mil](mailto:Megan.L.Drewniak@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

|      |                                 |
|------|---------------------------------|
| DHS  | Department of Homeland Security |
| FR   | <u>Federal Register</u>         |
| NPRM | Notice of Proposed Rulemaking   |

## A. Regulatory History and Information

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 the Coast Guard did not receive the necessary information for this even in sufficient time to publish an NPRM. The nature of this event has changed and the sponsor would like to include a low flying aerobatic air show over the water and drop grapefruits at a water target as part of a fundraising event. Per Federal Aviation Administration requirements, no vessels are permitted to transit during aerobatic maneuvers. This regulation is necessary to ensure the immediate safety of users of the waterway.

## B. Basis and Purpose

The legal basis for the temporary rule is 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Pub. L.

107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones.

The safety zone is being issued to ensure the safety of persons and vessels east of North Hero Island for the duration of the air show.

#### C. Discussion of the Rule

During this air show there will be low flying planes conducting aerobatic maneuvers east of North Hero Island in Lake Champlain within the confines of the safety zone and dropping grapefruits onto water targets as part of a fundraising event. This safety zone will be in effect from 9 a.m. to 9 p.m. on August 11 and August 12, 2013.

#### 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.

The economic effect of this rule will not be significant for the following reasons: the safety zone will be of limited duration. Vessels may be authorized to transit the zone with permission of the Captain of the Port, Sector Northern New England. The aerobatic box is a rectangle 2 nautical miles by ½ nautical mile, parallel to the shoreline, with its western edge 500 feet offshore. Vessels transiting to or from the shoreline may transit around the safety zone with limited delay. Additionally, maritime advisories will be broadcasted during the duration of the enforcement period.

## 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 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.

(1) 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 rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the safety zone. However, this rule will not have a significant economic impact on a substantial number of small entities due to the geographic location in which this rule takes place and advance notifications will be made to the local community by marine information broadcasts. Additionally, mariners may transit around the safety zone to gain access to or from the shoreline without a significant delay.

### 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 INTFORMATION 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 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 will be available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, and 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. 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.

2. Add § 165.T01-0497 to read as follows:

§165.T01-0497 Safety Zone; North Hero Air Show, North Hero, VT.

- (a) Location. The safety zone will include all navigable waters surface to bottom beginning with the following coordinate: 44°48'24"N, 73°17'02"W;

thence southeast approximately 500 feet to position 44°48'22"N, 73°16'46"W; thence southwest to position 44°47'53"N, 73°16'54"W; thence northwest to position 44°47'54"N, 73°17'09" W.

(b) Enforcement and Effective dates. This rule is effective from 9 a.m. on August 11, 2013, until 9 p.m. on August 12, 2013. This rule will be enforced from 9 a.m. until 9 p.m. daily on August 11, 2013, and August 12, 2013.

(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) This temporary safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port or his designated on-scene patrol personnel. 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 on-scene 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: June 24, 2013

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B. S. GILDA  
Captain, U. S. Coast Guard  
Captain of the Port Sector Northern New England

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