



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0790]

RIN 1625-AA00

Safety Zone; Jacksonville Sea and Sky Spectacular, Atlantic Ocean; Jacksonville Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone for certain waters of the Atlantic Ocean off Jacksonville Beach, Florida during the Jacksonville Sea and Sky Spectacular air show. The event is scheduled to take place from October 22 through October 25, 2015. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Jacksonville or a designated representative.

The Coast Guard invites your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2015-0790 using any one of the following methods:

(1) Federal eRulemaking Portal: <http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Allan Storm, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone 904-564-7563, e-mail [Allan.H.Storm@uscg.mil](mailto:Allan.H.Storm@uscg.mil). If you have questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On December 31, 2014, the City of Jacksonville submitted a marine event application to the Coast Guard for the Jacksonville Sea and Sky Spectacular air show that will take place from 10 a.m. to 4:30 p.m. on October 22 through October 25, 2015. The air show will consist of various flight demonstrations over the Atlantic Ocean, just offshore from Jacksonville Beach, FL. Over the years, there have been unfortunate instances of aircraft mishaps that involve crashing during performances at various air shows around the world. During aircraft crashes, there is typically a wide area of scattered debris that can damage property or cause significant injury or death to the public observing the air shows. The Captain of the Port (COTP) Jacksonville has determined that a safety zone is necessary to protect the general public from hazards associated with aerial flight demonstrations.

The purpose of the rulemaking is to ensure the safety of vessels and persons during the air show on the navigable waters of the Atlantic Ocean in Jacksonville Beach, FL. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

### **III. Discussion of Proposed Rule**

The COTP proposes to establish a safety zone from 9 a.m. to 5:30 p.m. on October 22 through October 25, 2015. The safety zone will encompass all waters within an area approximately three nautical miles parallel to the shoreline, and one half mile out into the Atlantic Ocean offshore from Jacksonville Beach, Florida. The duration of the zone is intended to ensure the safety of the public and these navigable waters before, during, and after the aerial flight demonstrations. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text the Coast Guard is proposing appears at the end of this document.

### **IV. Regulatory Analyses**

The Coast Guard developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. A summary of the statutory analyses, analyses of E.O.s, and discussion of First Amendment rights of protestors is included below.

#### A. Regulatory Planning and Review

E.O.s 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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Atlantic Ocean for eight and a half hours on each of the three days the air show is occurring. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the 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 proposed rule would 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 proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would 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 E.O. 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 proposed rule under that Order, and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule would not result in such an expenditure, the Coast Guard discusses the effects of this rule elsewhere in this preamble.

#### F. Environment

The Coast Guard analyzed this proposed 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 preliminary 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 proposed rule involves a safety zone that will help protect the general public from hazards associated with aerial flight demonstrations occurring during the air show, and will be in effect from 9 a.m. to 5:30 p.m. on October 22 through October 25, 2015.

It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are 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 proposed 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.

### **V. Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

#### A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on the comment option on the line associated with this NPRM. As stated in

the ADDRESSES section, you may also submit your comments by fax, mail, or hand delivery. Please use only one of these four submittal methods.

The Coast Guard views public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you go to the online docket by following instructions in the next paragraph, and sign up for email alerts, you will be notified whenever comments are submitted or a final rule is published.

#### B. Viewing Comments and Documents

To view comments, as well as 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 the Open Docket Folder option on the line associated with this notice of proposed 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.

#### C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316). We allow anonymous submissions.

#### **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 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; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-0790 to subpart F under the undesignated center heading Seventh Coast Guard District to read as follows:

§ 165.T07-0790 Safety Zone; Jacksonville Sea and Sky Spectacular, Atlantic Ocean, Jacksonville Beach, FL.

(a) Regulated Area. The following regulated area is a safety zone located offshore from Jacksonville Beach, FL. All waters of the Atlantic Ocean encompassed within an imaginary line connecting the following points: starting at Point 1 in position 30°15'52.3"N, 081°23'0.18"W; thence east to Point 2 in position 30°15'57.91"N, 081°22'24.22"W; thence north to Point 3 in position 30°18'40.81"N, 081°22'57.97"W; thence west to Point 4 in position 30°18'35.19" N, 081°23'33.93"W; thence south back to origin.

(b) Definition. The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated area.

(c) Regulations. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Jacksonville or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Jacksonville by telephone at 904-564-7511, or a designated representative via VHF-FM radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative.

(3) The Coast Guard will provide notice of the regulated area through Broadcast Notice to Mariners via VHF-FM channel 16.

(d) Effective date and enforcement periods. This rule is effective from October 22, 2015 through October 25, 2015 and will be enforced daily from 9 a.m. to 5:30 p.m. on October 22, 2015 through October 25, 2015.

Dated: August 26, 2015.

J. F. Dixon

Captain, U.S. Coast Guard,

Captain of the Port Jacksonville

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