



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-1066]

RIN 1625-AA00

Safety Zone; Ohio Street Beach Swim Course, Lake Michigan, Chicago Harbor, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone on Lake Michigan in Chicago Harbor, near the Ohio Street Beach in Chicago, IL. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and after large scale swim events that occur throughout each calendar year. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Lake Michigan.

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-2017-1066 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email
LT John Ramos, Marine Safety Unit Chicago, U.S. Coast Guard; telephone (630) 986-2155, email D09-DG-
MSUChicago-Waterways@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

II. Background, Purpose, and Legal Basis

Each year, many large-scale swim events occur on Lake Michigan in Chicago Harbor, near the Ohio Street Beach in Chicago, IL. These events take place on a monthly and sometimes weekly basis. The Captain of the Port, Lake Michigan has determined that the size and nature of these events will pose a significant risk to public safety and property. The potential hazards associated with these events would be a safety concern for participants as well as recreational and commercial traffic in or around the course where the events take place.

This purpose of the rulemaking is to ensure the safety of vessels, persons and the navigable waters before, during, and after a scheduled event. The specific hazards include collisions among event participants, recreational traffic, and commercial traffic that may cause injury or marine casualties. The Coast Guard proposes this rulemaking under authority in 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.

III. Discussion of Proposed Rule

With these hazards in mind, the Captain of the Port, Lake Michigan has determined that this safety zone is necessary to ensure the safety of the public during large-scale swim events that take place on Lake Michigan in Chicago Harbor, near the Ohio Street Beach in Chicago, IL. The Captain of the Port will notify the public when the permanent safety zone in this proposed rule will be enforced by all appropriate means to the affected segments of the public, including publication in the Federal Register, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification will include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners.

This zone will encompass all waters bound by a line drawn from 41°53.7767'N, 087°36.48'W then North to 41°53.9517'N, 087°36.505'W then Northwest to 41°54.1533'N, 087°36.6933'W then Southwest to 41°54.065'N, 087°37.1517'W then Southeast to 41°53.6033'N, 087°36.8333'W then East to 41°53.6317'N, 087°36.7017'W and then along the shoreline back to the point of origin (NAD83).

All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Lake Michigan or his or her designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port or his or her designated representative. The Captain of the Port or his or her designated representative may be contacted via VHF Channel 16. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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, 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 Lake Michigan in Chicago Harbor for no more than a few hours during a swim 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 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 above 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 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. If you believe this 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 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 proposed rule under Department of Homeland Security Directive 023-01, which guides 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 for large-scale swim events that take place on Lake Michigan in Chicago Harbor, near the Ohio Street Beach in Chicago, IL. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is 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 view 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 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.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments,

will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 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 § 165.932 to read as follows:**

§ 165.932 Safety Zone; Ohio Street Beach Swim Course, Lake Michigan, Chicago Harbor, Chicago,

II.

(a) Location. All U.S. navigable waters of Lake Michigan bound by a line drawn from 41°53.7767'N, 087°36.48'W then North to 41°53.9517'N, 087°36.505'W then Northwest to 41°54.1533'N, 087°36.6933'W then Southwest to 41°54.065'N, 087°37.1517'W then Southeast to 41°53.6033'N, 087°36.8333'W then East to 41°53.6317'N, 087°36.7017'W and then along the shoreline back to the point of origin (NAD83).

(b) Enforcement Period. The safety zone established by this section will be enforced only upon

notice by the Captain of the Port, Lake Michigan. The Captain of the Port, Lake Michigan will publish notices of enforcement in accordance with §165.7(a) and in a manner that provides as much notice as possible. The primary method of notification will be through publication to the Federal Register. The Captain of the Port, Lake Michigan, may also provide notice through other means, such as Broadcast Notice to Mariners, Local Notice to Mariners, local new media, distribution in leaflet form, and on-scene oral notice.

(c) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Lake Michigan or a designated on-scene representative.

(3) The “on-scene representative” of the Captain of the Port, Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Lake Michigan to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Lake Michigan or an on-scene representative to obtain permission to do so.

The Captain of the Port, Lake Michigan or an on-scene representative may be contacted via VHF Channel 16 or at (414) 747-7182.

Dated: January 22, 2018

THOMAS J. STUHLREYER,
Captain, U.S. Coast Guard,

Captain of the Port, Lake Michigan

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