



**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:** Final rule.

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**SUMMARY:** The Coast Guard is establishing 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 during 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:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-1066 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email If you have questions about this rule, call or email LT John Ramos, Marine Safety Unit

(MSU) 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	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

Each year, many swim events occur on Lake Michigan in Chicago Harbor, near the Ohio Street Beach in Chicago, IL. These events take place more frequently in the summer months. 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. In response, on February 6, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Ohio Street Beach Swim Course, Lake Michigan, Chicago Harbor, Chicago, IL (USCG-2017-1066). The NPRM addressed the need for the safety zone and invited the public to comment on the proposed regulatory action. During the comment period that ended March 8, 2018, the Coast Guard received four comments.

**III. Legal Authority and Need for Rule**

The 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 is issuing 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.

#### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, four comments were received the NPRM published February 6, 2018. All four comments had mixed concerns with the duration of the safety zone. For clarification, the safety zone will be in effect no longer than the time necessary to ensure the safety of the participants during each specific swim event. Another comment questioned how the safety zone will be marked and what repercussions there are for entering the safety zone. Safety zones are not typically marked by physical markers or buoys. The safety zone’s specific enforcement period will be disseminated by the Captain of the Port, Lake Michigan or a designated on-scene representative, broadcasted via Local Notice to Mariners, Broadcast Notice to Mariners, and/or shared via the Coast Guard’s webpage and social media platforms. Pursuant to 33 U.S.C. 1232 and 33 CFR 27.3, any person who operates a vessel in this safety zone without permission from the Coast Guard Captain of the Port, Lake Michigan or designated representative may be subject to applicable civil or criminal penalties. The last comment regarded the definition of large-scale event. After review, the Coast Guard amended this final rule by removing the verbiage “large-scale” event.

The Captain of the Port, Lake Michigan has determined that this safety zone is necessary to ensure the safety of the public during 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 safety zone in this 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.

## **V. Regulatory Analyses**

The Coast Guard 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. 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, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone, which would impact the designated area of Lake Michigan in Chicago Harbor for no longer than the time necessary to ensure the safety of the 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 received no comments from the Small Business Administration on this 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.

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 (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 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION

CONTACT section.

*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 and Commandant Instruction M16475.1D, 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 lasting no longer than the time necessary to ensure the safety of the swim events that take place on Lake Michigan in Chicago Harbor, near the Ohio Street Beach in Chicago, IL. It is categorically excluded from further review under paragraph L(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:** 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, IL.

(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 33 CFR 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 news 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: April 26, 2018

THOMAS J. STUHLREYER,  
Captain, U.S. Coast Guard,  
Captain of the Port, Lake Michigan.

[FR Doc. 2018-10674 Filed: 5/17/2018 8:45 am; Publication Date: 5/18/2018]