

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. Pennsylvania does not regulate any Native Tribal lands.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether

this rule would have a significant economic impact, the Department relied upon data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the Pennsylvania submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the Pennsylvania submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 938**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 7, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

**PART 938—PENNSYLVANIA**

■ 1. The authority citation for part 938 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

**§ 938.16 [Amended]**

■ 2. Section 938.16 is amended by removing and reserving paragraph (fff).

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD09-03-261]

RIN 1625-AA00

**Safety Zone; Lake Michigan, Chicago, IL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety for the Chicago to Saint Joseph sailboat race. The safety zone encompasses a portion of Lake Michigan. This safety zone is necessary to ensure vessel safety in the vicinity of the race start area, protecting both competitors and spectators from hazards associated with this sail boat race. This safety zone is intended to restrict vessel traffic from a portion of southern Lake Michigan.

**DATES:** This temporary final rule is effective from 7 a.m. until 10 a.m. on August 29, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CDG09-03-261 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, 215 W. 83rd Street, Burr Ridge, Illinois 60527 between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986-2125.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

### Background and Purpose

During the start of the Chicago to Saint Joseph sailboat race, the Coast Guard is establishing a safety zone encompassing the starting area. The Coast Guard expects approximately 150 vessels to participate in this event. This safety zone is required to ensure the safety of vessels and spectators from hazards associated with this sailing event. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Chicago or the designated On-Scene Representative. The Captain of the Port Chicago or the designated On-Scene Representative on scene may be contacted on VHF Channel 16.

### Discussion of Rule

The safety zone will encompass all waters of Lake Michigan bounded by the arc of a circle with a 1000-foot radius with its center in approximate position 41°52'67" N; 087°35'24" W. These coordinates are based upon North American Datum 1983 (NAD 83). All vessels except those officially participating in this event are prohibited from entering the safety zone without the permission of the Captain of the Port Chicago or his on-scene representative.

### Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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 this rule under that order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is in an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect for 3 hours on the day of the event.

The designated area is being established to allow for maximum use of the waterway for commercial vessels to enjoy the sailboat race in a safe manner. In addition, commercial vessels transiting the area can transit around the area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

### 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 so that they can better evaluate its effects and participate in the rulemaking process. 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 Marine Safety Office Chicago (*see ADDRESSES.*)

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).

### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have

implications for federalism under that Order.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that 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 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This proposed rule would not effect 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 proposed 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

The Coast Guard has analyzed this proposed 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

### Energy Effects

We have analyzed this proposed 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### 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.

### 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 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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. A new temporary safety zone § 165.T09–261 is added to read as follows:

#### § 165.T09–261 Safety Zone; Lake Michigan, Chicago, Illinois.

(a) *Location.* The following is a safety zone: All waters of Lake Michigan bounded by the arc of a circle with a 1000-foot radius with its center in approximate position 41° 52'67" N; 087° 35'24" W (NAD 83).

(b) *Effective period.* This section is effective from 7 a.m. until 10 a.m. on August 29, 2003.

(c) *Regulations.* In accordance with § 165.23, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated On-Scene Representative. Section 165.23 also contains other general requirements.

Dated: August 12, 2003.

**Terrence W. Carter,**

*Captain, U.S. Coast Guard, Captain of the Port Chicago.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD09–03–260]

RIN 1625–AA00

#### Safety Zone; APBA Silver Cup Race, Lake Michigan, Grand Haven, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for APBA Silver Cup Race. The safety zone is necessary to protect participants and spectators during the event. This safety zone is intended to restrict vessels from a portion of Lake Michigan.

**DATES:** This temporary final rule is effective from 1 p.m. until 7 p.m. (local) on August 31, 2003. A rain date is scheduled for September 1, 2003 from 12 a.m. (noon) until 7 p.m. (local).

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CDG09–03–260] and are available for inspection or copying at Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois 60527, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2155.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. 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 permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this

event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

##### Background and Purpose

For the duration of the APBA Silver Cup Race, the Coast Guard is establishing a safety zone encompassing the race area to protect participating vessels and spectators from the hazards associated with a power boat race. The Coast Guard expects approximately 30 to 40 vessels to participate in this event. The likely combination of large numbers of recreational vessels and congested waterways could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the race area will help ensure the safety of persons and property of these events and help minimize the associated risks. All persons and vessels shall comply with the directions of the Coast Guard Captain of the Port or the designated On-Scene Representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Chicago or his designated On-Scene Representative and may be reached via VHF radio channel 16.

##### Discussion of Rule

The safety zone will include all navigable waters of Lake Michigan encompassed by a line connecting the following points beginning at South Pier Head, 43°03.4' N, 86°15.4' W; then heading west to 43°03.2' N, 86°16.2' W; then south to 43°01.1' N, 86°15.3' W; then east to 43°01.4' N, 86°14.2' W; then north to 43°03.5' N, 86°15.0' W; then back to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 1983).

##### Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 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. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.