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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2010–0817]

RIN 1625–AA00

#### Safety Zone; Ocean City Beachfront Air Show, Ocean City, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in an area of the Atlantic Ocean, Ocean City, NJ. The temporary safety zone will restrict vessel traffic from a portion of the Atlantic Ocean during the Ocean City Beachfront Air Show, which is an aerial demonstration to be held over the waters of the Atlantic Ocean. The temporary safety zone is necessary to provide for the safety of mariners on navigable waters during the aerial demonstration.

**DATES:** This rule is effective from 12 p.m. to 3 p.m. on September 18, 2010 and from 12 p.m. to 4 p.m. on September 19, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0817 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0817 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Lieutenant Corrina

Ott, Chief of Waterways Management Branch, Coast Guard; telephone 215–271–4902, e-mail [Corrina.Ott@uscg.mil](mailto:Corrina.Ott@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory 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 publishing an NPRM is impracticable and contrary to the public interest. Delaying the effective date by first publishing an NPRM and holding a comment period would be contrary to the rule’s objectives of ensuring safety of life on the navigable waters during this air show, as immediate action is needed to protect persons and vessels from hazards associated with air shows.

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**. Any delay in the effective date of this regulation would be contrary to the public interest as immediate action is necessary to protect persons and vessels from hazards associated with air shows over the water.

##### Basis and Purpose

On September 18–19, 2010, the Ocean City Business and Neighborhood Development, Inc. will sponsor the Ocean City Beachfront Air Show. The event will consist of high performance jet aircraft performing low altitude aerial maneuvers over the waters of the Atlantic Ocean adjacent to Ocean City, New Jersey. A fleet of spectator vessels are expected to gather nearby to view the aerial demonstration. The temporary zone is necessary in order to prevent injury or damage to property from any falling object associated with the air

show. This rule is required due to the inherent dangers of high-speed aerial maneuvers involved with these types of events.

##### Discussion of Rule

The Coast Guard is establishing a temporary safety zone in the waters of the Atlantic Ocean in Ocean City, NJ from 12 p.m. to 3 p.m. on September 18, 2010 and from 12 p.m. to 4 p.m. on September 19, 2010. The temporary safety zone will restrict vessel traffic in the Atlantic Ocean in the immediate area of the Ocean City Airshow taking place inside a boundary described as originating at 39°16′28″ N, 074°33′38″ W, then southeasterly to 39°16′20″ N, 074°33′30″ W, then southwesterly to latitude 39°15′38″ N, 074°34′41″ W, then northwesterly to 39°15′47″ N, 074°34′51″ W, then returning northeasterly to 39°16′28″ N, 074°33′38″ W.

During the enforcement period of the safety zone, all persons and vessels will be prohibited from entering, transiting, mooring, or remaining within the zone unless specifically authorized by the Captain of the Port Delaware Bay, or designated representative.

##### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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. Due to the short duration of the safety zone and the ability of vessel traffic to transit around the safety zone, the regulatory impact is expected to be minimal.

##### Small Entities

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 will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit coastal waters in the vicinity of Ocean City, New Jersey during the event.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 12 p.m. to 3 p.m. on September 18, 2010 and from 12 p.m. to 4 p.m. on September 19, 2010. Vessel traffic will be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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.

#### Collection of Information

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

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and

would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### 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.

#### 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.

#### 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.

#### 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.

#### 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.

#### Energy Effects

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

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction and neither an environmental assessment or environmental impact statement is required. This rule involves a limited-duration safety zone around an aerial display intended to protect life and property on the navigable waterways of the Atlantic Ocean. An environmental analysis checklist 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 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. 1226, 1231; 46 U.S.C. Chapter 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.T05–0817, to read as follows:

### § 165.T05–0817 Safety Zone; Ocean City Beachfront Air Show, Ocean City, New Jersey.

(a) *Location.* The safety zone includes all coastal waters of the North Atlantic Ocean, immediately adjacent to the shoreline at Ocean City, NJ, inside a boundary described as originating from 39°16'28" N., 074°33'38" W., then southeasterly to 39°16'20" N., 074°33'30" W., then southwesterly to 39°15'38" N., 074°34'41" W., then northwesterly to 39°15'47" N., 074°34'51" W., then returning northeasterly to 39°16'28" N., 074°33'38" W.

#### (b) *Regulations:*

(1) Except for persons or vessels authorized by the Captain of the Port Delaware Bay or designated representative, no person or vessels may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

#### (c) *Definitions.*

(1) *Designative representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Delaware Bay to act on his or her behalf.

(2) *Official Patrol* means any vessel assigned or approved by Captain of the Port Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign as well as any assisting local law enforcement vessels.

(d) *Enforcement period.* This rule will be enforced from 12 p.m. to 3 p.m. on September 18, 2010 and from 12 p.m. to 4 p.m. on September 19, 2010.

Dated: August 30, 2010.

**R.T. Gatlin,**

*Captain, U.S. Coast Guard, Acting Captain of the Port Delaware Bay.*

[FR Doc. 2010–23177 Filed 9–15–10; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2010–0723]

RIN 1625–AA00

### Safety Zone; Ohio River, Wheeling, WV, Wheeling Heritage Port Sternwheel Foundation Fireworks Display

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone from Mile Marker 90.2 to Mile Marker 90.5 on the Ohio River extending the full width of the river. The safety zone is needed to protect spectators and marine traffic during the Wheeling Heritage Port Sternwheel Foundation fireworks display. Entry into the safety zone is prohibited, unless specifically authorized by the Captain of the Port Pittsburgh or a designated representative.

**DATES:** This rule is effective from September 18, 2010 through September 19, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket USCG–2010–0723 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0723 in the “Keyword” box, and then clicking “Search.” This material is also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail ENS Robyn Hoskins, Marine Safety Unit Pittsburgh, Coast Guard; telephone 412–644–5808 Ext. 2140, e-mail [Robyn.G.Hoskins@uscg.mil](mailto:Robyn.G.Hoskins@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory 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). A NPRM would be impracticable with respect to this rule because immediate action is needed to protect spectators and marine traffic during the Wheeling Heritage Port Sternwheel Foundation fireworks display that will occur in the city of Wheeling, WV.

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**. Delaying the effective date would be impracticable and contrary to public interest because immediate action is needed to protect spectators and marine traffic during the Wheeling Heritage Port Sternwheel Foundation fireworks display.

##### Basis and Purpose

The Coast Guard is establishing a safety zone from Mile Marker 90.2 to Mile Marker 90.5 on the Ohio River extending the full width of the river. The safety zone is needed to protect spectators and marine traffic during the Wheeling Heritage Port Sternwheel Foundation fireworks display.

##### Discussion of Rule

Vessels shall not enter into, depart from, or move within the safety zone without permission from the Captain of the Port Pittsburgh or his authorized representative. Persons or vessels requiring entry into or passage through the safety zone must request permission from the Captain of the Port Pittsburgh, or a designated representative. They may be contacted on VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465. This safety zone will be enforced from 8:45 p.m. to 10:15 p.m. on September 18, 2010. In the event of rain, this safety zone will be enforced from 8:45 p.m. to 10:15 p.m. on September 19, 2010. The Captain of the Port Pittsburgh will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

##### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses