

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Parts 100 and 165**

[CGD 13-04-029]

RIN 1625-AA08 and 1625-AA00

**Special Local Regulation (SLR) and Safety Zone Regulations: Notice of Implementation for Seattle Seafair Unlimited Hydroplane Race and Blue Angels Air Show Performance 2004, Lake Washington, WA****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of implementation of regulations.

**SUMMARY:** The Coast Guard announces enforcement periods for Seattle Seafair Unlimited Hydroplane Race Special Local Regulation (SLR) as per 33 CFR 100.1301 and Seafair Blue Angels Air Show Performance Safety Zone Regulation as per 33 CFR 165.1319. This year's events will be held on Wednesday, August 4, 2004, through Sunday, August 8, 2004.

**DATES:** 33 CFR 100.1301 and 33 CFR 165.1319 will be enforced from 8:30 a.m. to 4 p.m. Pacific daylight time each day August 4th, 5th, 6th, 7th, and 8th 2004.

**FOR FURTHER INFORMATION CONTACT:** Captain of the Port Puget Sound, at (206) 217-6232.

Dated: June 28, 2004.

**Danny Ellis,***Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 04-15560 Filed 7-7-04; 8:45 am]

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**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 117**

[CGD08-04-022]

RIN 1625-AA09

**Drawbridge Operation Regulations; White River, Clarendon, AR****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the St. Louis Southwestern Railroad Drawbridge,

across the White River, mile 98.9 at Clarendon, Arkansas. This deviation allows the drawbridge to remain closed to navigation for 8 days from 6 a.m., August 15, 2004, until 6 p.m., August 22, 2004, Central Standard Time. The deviation is necessary to facilitate maintenance work on the bridge that is essential to the continued safe operation of the drawbridge.

**DATES:** This temporary deviation is effective from 6 a.m., August 15, 2004, through 6 p.m., August 22, 2004.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103-2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:**

Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103-2832, (314) 539-3900, extension 2378.

**SUPPLEMENTARY INFORMATION:** The Union Pacific Railroad requested a temporary deviation on May 14, 2004, to allow time to conduct preventative maintenance to the St. Louis Southwestern Railroad Drawbridge, across the White River, mile 98.9 at Clarendon, Arkansas. The St. Louis Southwestern Railroad Drawbridge currently operates in accordance with 33 CFR 117.139 which requires the drawbridge to open on signal for passage of vessel traffic if at least eight hours notice is given. In order to repair machinery, the bridge must be kept in the closed to navigation position. This deviation allows the bridge to remain closed to navigation for 8 days from 6 a.m., August 15, 2004 until 6 p.m., August 22, 2004. There are no alternate routes for vessels transiting through mile 98.9 on the White River. The drawbridge will be incapable of opening for emergencies during the 8-day repair period.

The St. Louis Southwestern Drawbridge provides a vertical clearance of 35 feet above pool stage in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due

speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 30, 2004.

**Roger K. Wiebusch,***Bridge Administrator.*

[FR Doc. 04-15561 Filed 7-7-04; 8:45 am]

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**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[CGD01-03-102]

RIN 1625-AA00

**Safety Zones; Coast Guard Activities New York Fireworks Displays****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing five permanent safety zones for fireworks displays located in Pierhead Channel, NJ; Lower New York Bay; Raritan Bay; Long Island Sound; the Hudson River; and revise the section title. This action is necessary to protect the life and property of the maritime public from the hazards posed by these events. Entry into or movement within these zones during the enforcement periods is prohibited without approval of the Captain of the Port (COTP), New York.

**DATES:** This rule is effective as of August 9, 2004.

**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 (CGD01-03-102) and are available for inspection or copying at the Waterways Oversight Branch, room 203, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354-4191.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

On April 27, 2004, we published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Coast Guard Activities New York Fireworks Displays in the **Federal Register** 69 FR 22753. We received no letters commenting on the

proposed rule. No public hearing was requested, and none was held.

### Background and Purpose

The Coast Guard is establishing five permanent safety zones that will be enforced for fireworks displays occurring throughout the year that are not held on an annual basis but are normally held in one of these five locations. The five locations are in Pierhead Channel, NJ, north of the Kill Van Kull Channel; Lower New York Bay, southeast of Midland Beach; Raritan Bay east of Wolfes Pond Park; Long Island Sound, east of Orchard Beach; and the Hudson River, east of Newburgh, NY. The Coast Guard received 14 applications for fireworks displays in these new areas between June and September 2003. There were no fireworks displays at these sites in calendar year 2000. A temporary safety zone was established for each display with limited notice for preparation by the U.S. Coast Guard and limited opportunity for public comment. Establishing five permanent safety zones by notice and comment rulemaking provided the public the opportunity to comment on the zone locations, size, and length of time the zones will be active. The Coast Guard has not received notice of any impact to waterway traffic resulting from the enforcement of the zones. Marine traffic will still be able to pass safely around the safety zones because the zone prohibits vessels from entering only the actual zone. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the safety zones.

This rule amends 33 CFR 165.168 by adding five permanent safety zones to the 34 existing ones and revises the section's title to identify the Coast Guard Captain of the Port zone where the safety zones are located instead of listing all affected waterways.

We also removed the four figures in the regulation showing the overview of the safety zone locations. These are available in the "USCG Notices" section online at: <http://www.harborops.com>. Mariners are also able to plot these positions on their own navigation charts.

This rule, and the current effective safety zones in 33 CFR 165.168, are for fireworks displays using 12" shells. We will enforce a smaller safety zone for displays in these locations that use fireworks shells smaller than 12". However, the boundary will still be located within the listed safety zone boundary of this regulation for fireworks

displays using shells smaller than 12". The five safety zones are:

### Pierhead Channel, NJ Safety Zone

The safety zone includes all waters of Pierhead Channel and the Kill Van Kull within a 360-yard radius of the fireworks barge in approximate position 40°39'18.8" N, 074°04'39.1" W (NAD 1983), about 315 yards north of the Kill Van Kull Channel. The safety zone prevents vessels from transiting a portion of Pierhead Channel and the Kill Van Kull and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic will still be able to pass safely through the eastern 175 yards of the 460-yard wide Pierhead Channel, and the southern 360 yards of the 400-yard wide Kill Van Kull.

### Midland Beach, Staten Island Safety Zone

The safety zone includes all waters of Lower New York Bay within a 500-yard radius of the fireworks barge in approximate position 40°34'12.0" N, 074°04'29.6" W (NAD 1983), about 800 yards southeast of Midland Beach. The safety zone prevents vessels from transiting a portion of Lower New York Bay and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic will still be able to pass safely around the safety zone. The size of this zone is 500 yards to allow for the vessels involved to be closer to shore if the Tides and Currents are favorable the night of the display. The size of the zone to be enforced during any fireworks display will be within 360-yards of the fireworks barge. This 360-yard safety zone will be wholly contained within this 500-yard safety zone.

### Wolfes Pond Park, Staten Island Safety Zone

The safety zone includes all waters of Raritan Bay within a 500 yard radius of the fireworks barge in approximate position 40°30'52.1" N 074°10'58.8" W (NAD 1983), about 540 yards east of Wolfes Pond Park. The safety zone prevents vessels from transiting a portion of Raritan Bay and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic will still be able to pass safely around the safety zone. The size of this zone is 500 yards to allow for the vessels involved to be closer to shore if the Tides and Currents are favorable the night of the display. The size of the zone to be enforced during any fireworks display will be within 360-yards of the fireworks barge.

This 360-yard safety zone will be wholly contained within this 500-yard safety zone.

### Orchard Beach, The Bronx, Safety Zone

The safety zone includes all waters of Long Island Sound in an area bound by the following points: 40°51'43.5" N 073°47'36.3" W; thence to 40°52'12.2" N 073°47'13.6" W; thence to 40°52'02.5" N 073°46'47.8" W; thence to 40°51'32.3" N 073°47'09.9" W (NAD 1983), thence to the point of origin. The safety zone prevents vessels from transiting a portion of Long Island Sound and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic will still be able to pass safely around the safety zone. This safety zone is shaped like a block to allow the sponsor the flexibility to use one or two barges per display.

### Newburgh, NY, Safety Zone

The safety zone includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 41°30'01.2" N 073°59'42.5" W (NAD 1983), about 930 yards east of Newburgh, NY. The safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect the maritime public from the hazards associated with a marine fireworks event. Marine traffic will still be able to pass safely around the safety zone.

The size of these safety zones was determined using National Fire Protection Association and New York City Fire Department standards for 12 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in the area. Barge locations and mortar sizes were adjusted to try and ensure the safety zone locations do not interfere with any known marinas or piers.

The Coast Guard does not know the actual dates that these safety zones will be enforced at this time. Coast Guard Activities New York will give notice of the enforcement of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners, electronic mail distribution, and on the Internet at <http://www.harborops.com>. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public. The Coast Guard expects that the notice of the enforcement of each permanent safety zone in this

rulemaking will normally be made between thirty and twenty one days before the zone is actually enforced. Fireworks barges used in the locations stated in this rulemaking will also have a sign on the port and starboard side of the barge labeled "FIREWORKS—STAY AWAY". This will provide on-scene notice that the safety zone is or will be enforced on that day. This sign will consist of 10" high by 1.5" wide red lettering on a white background. There will also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 15 minutes after its completion to enforce the safety zone.

The enforcement period for these safety zones is from 6 p.m. to 1 a.m. However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present.

#### Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to this rulemaking.

#### Regulatory Evaluation

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. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

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

This finding is based on the short amount of time that vessels will be restricted from the zones, and the small zone sizes positioned in low vessel traffic areas. Vessels may still transit through all Traffic Lanes to, and from, the Port of New York/New Jersey. Vessels may also still transit through Pierhead Channel, the Kill Van Kull, Lower New York Bay, Raritan Bay, western Long Island Sound, and the Hudson River during these events. Vessels will not be precluded from getting underway, or mooring at, any

piers or marinas currently located in the vicinity of the safety zones. Advance notifications will also be made to the local maritime community by the Local Notice to Mariners, electronic mail distribution, and in the "USCG Notices" section on the Internet at <http://www.harborops.com>. Marine information and facsimile broadcasts may also be made to notify the public. Additionally, the Coast Guard anticipates that these safety zones will only be enforced 18–20 times per year.

#### 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 might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Pierhead Channel, the Kill Van Kull, Lower New York Bay, Raritan Bay, western Long Island Sound, and the Hudson River, during the times these zones are enforced.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can pass safely around the safety zones. Vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the safety zones. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present. Before the effective period, we will issue maritime advisories widely available to users of the Port of New York/New Jersey by Local Notice to Mariners, electronic mail distribution, and in the "USCG Notices" section on the Internet at <http://www.harborops.com>. Marine information and facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will 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 will economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. However, we received no requests for assistance from small entities.

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 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 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 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 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 might 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 Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation.

A "Categorical Exclusion Determination" is available in the docket for inspection or copying 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; 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. In § 165.168—

■ a. Revise the section heading;

■ b. Revise paragraph (a) introductory text and add paragraphs (a)(10), (a)(11) and (a)(12);

■ c. Revise paragraph (b) introductory text and add paragraph (b)(11);

■ d. Revise paragraph (c) introductory text;

■ e. Revise paragraph (d) introductory text, and add paragraph (d)(12);

■ f. In paragraph (f), remove the word "Effective" from the paragraph heading and add in its place the word "Enforcement" and in the first sentence of the paragraph remove the words "is effective" and add in their place the words "will be enforced"; and

■ g. Remove figures 1 through 4 at the end of the section.

The revisions, removals, and additions read as follows:

### § 165.168 Safety Zones; Coast Guard Activities New York Fireworks Displays.

(a) *New York Harbor*. The following areas are safety zones:

\* \* \* \* \*

(10) *Pierhead Channel, NJ Safety Zone*: All waters of Pierhead Channel and the Kill Van Kull within a 360-yard radius of the fireworks barge in approximate position 40°39'18.8" N 074°04'39.1" W (NAD 1983), approximately 315 yards north of the Kill Van Kull Channel.

(11) *Midland Beach, Staten Island Safety Zone*: All waters of Lower New York Bay within a 500-yard radius of the fireworks barge in approximate position 40°34'12.0" N 074°04'29.6" W (NAD 1983), approximately 800 yards southeast of Midland Beach.

(12) *Wolfe Pond Park, Staten Island Safety Zone*: All waters of Raritan Bay within a 500-yard radius of the fireworks barge in approximate position 40°30'52.1" N 074°10'58.8" W (NAD 1983), approximately 540 yards east of Wolfe Pond Park.

(b) *Western Long Island Sound*. The following areas are safety zones:

\* \* \* \* \*

(11) *Orchard Beach, The Bronx, Safety Zone*: All waters of Long Island Sound in an area bound by the following points: 40°51'43.5" N 073°47'36.3" W; thence to 40°52'12.2" N 073°47'13.6" W; thence to 40°52'02.5" N 073°46'47.8" W; thence to 40°51'32.3" N 073°47'09.9" W (NAD 1983), thence to the point of origin.

(c) *East River*. The following areas are safety zones:

\* \* \* \* \*

(d) *Hudson River*. The following areas are safety zones:

\* \* \* \* \*

(12) *Newburgh, NY, Safety Zone*: All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 41°30'01.2" N 073°59'42.5" W (NAD 1983), approximately 930 yards east of Newburgh, NY.

\* \* \* \* \*

Dated: June 29, 2004.

**C.E. Bone,**

*Captain, U.S. Coast Guard, Captain of the Port, New York.*

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**BILLING CODE 4910–15–P**