

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09-03-206]

RIN 1625-AA00

RIN 1625-AA11

Regulated Navigation Area and Safety Zone; Huntington Cleveland Harborfest and Parade of Sail, Cleveland, OH, July 9-14, 2003

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary Regulated Navigation Area (RNA) during the Huntington Cleveland Harborfest and a moving safety zone during the Parade of Sail in the Port of Cleveland, Ohio. These regulations are necessary to manage vessel traffic and ensure the safety of both spectators and participant vessels. These regulations are intended to restrict vessel traffic from a portion of Lake Erie in the vicinity of Cleveland Harbor.

DATES: This rule is effective from 12 p.m. on Wednesday, July 9, 2003 through 1 p.m. on Monday, July 14, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD09-03-206) and are available for inspection or copying at U.S. Coast Guard Marine Safety Office (MSO) Cleveland between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Allen Turner, Chief Port Operations Department, Coast Guard MSO Cleveland (216) 937-0128.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On Wednesday, April 16, 2003, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Regulated Navigation Area and Safety Zone; Huntington Cleveland Harborfest and Parade of Sail, Cleveland Harbor, Cleveland, OH in the **Federal Register** (68 FR 18579). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

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 of 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 with regard to this event.

Background and Purpose

During Huntington Cleveland Harborfest, tall ships will moor in Cleveland Harbor at the Cleveland Port Authority and along Cleveland's Inner Harbor. A Regulated Navigation Area (RNA) will be established inside Cleveland's break wall to protect tall ships and spectators from other vessels passing at excessive speed and creating large wakes. The RNA will also aid in preventing obstructed waterways.

A moving Safety Zone will be established around the Parade of Sail during the transit through Cleveland Harbor and Lake Erie. Vessel congestion is expected, and the Safety Zone will ensure that spectator craft do not impede the path of the parade vessels.

Discussion of Rule

The RNA will be established from 12 p.m. (noon) on Wednesday, July 9, 2003 until 1 p.m. on Monday, July 14, 2003. The RNA will encompass Cleveland Harbor, between Dock 28 of Cleveland Port Authority and the western edge of Burke Lake Front Airport, and include the Inner Harbor. No vessel shall exceed 5 mph nor produce a wake within the RNA. Any vessel within the RNA shall not pass within 20 feet of a moored tall ship. Any vessel within the RNA must adhere to the direction of the Patrol Commander or other official patrol craft.

On July 9, 2003, from 2 p.m. until the conclusion of the Parade of Sail, the moving Safety Zone will be established around and between all tall ships participating in the parade. The Safety Zone will extend 100 yards ahead of the first vessel in the parade, 50 yards abeam each vessel and the line formed by the parade, and 50 yards astern of the last vessel in the parade. The parade will begin approximately 2 miles northwest of Cleveland Harbor inlet and pass through Cleveland Harbor via the main entrance channel. The parade will travel east through the harbor inside the eastern end of the break wall and exit through the eastern inlet. The parade will turn around in Lake Erie east of the harbor, and then reenter the harbor through the eastern inlet of the break wall south of the original track. The parade will terminate once the vessels are moored. The Safety Zone will be in effect until the last vessel moors at approximately 6 p.m.

Regulatory Evaluation

This rule is not "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 the 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.

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

This determination is based on the short amount of time that vessels will be restricted from the zones, and the actual location of the safety zones within the waterways.

Small Entities

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

Assistance for Small Entities

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 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 Cleveland (see **ADDRESSES**.)

Collection of Information

This 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 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) 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This 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 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 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.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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

The Coast Guard has 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. 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.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1C, this 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.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, 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. From 12 p.m. on July 9, 2003 through 1 p.m. on July 14, 2003 add temporary § 165.T09–206 to read as follows:

§ 165.T09–206 Regulated Navigation Area: Huntington Cleveland Harborfest, Cleveland, Ohio.

(a) *Regulated navigation area.*—(1) *Location.* All waters of Cleveland Harbor, including the Inner Harbor, encompassed by a line starting at 41°30′49.38″ N, 081°41′37.2″ W (northwest corner of Burke Lakefront Airport); then northwest to 41°31′1.2″ N, 081°41′49.2″ W; then southwesterly following the breakwall to 41°30′41.4″ N, 081°42′25.2″ W; then southeasterly to 41°30′27″ N, 081°42′13.3″ W (extending directly across the harbor from the northwestern corner of Dock 28 of the Cleveland Port Authority to the breakwall); then following the contours of the waterfront back to the point of origin including all portions of the Rock and Roll Museum inner harbor. These

coordinates are based upon North American Datum 1983 (NAD 83).

(2) *Enforcement period.* This section is effective from 12 p.m. (noon) on Wednesday, July 9, 2003 through 1 p.m. on Monday, July 14, 2003. Paragraph (a) of this section will be enforced during this same period.

(3) *Special regulations.* Vessels within the Regulated Navigation Area (RNA) shall not exceed 5 miles per hour or shall proceed at no-wake speed, which ever is slower. Vessels within the RNA shall not pass within 20 feet of a moored tall ship. Vessels within the RNA must adhere to the direction of the Patrol Commander or other official patrol craft.

(b) *Safety zone.*—(1) *Location.* The following is a moving safety zone: All navigable waters and adjacent shoreline 100 yards ahead of the first official parade vessel, 50 yards abeam of each parade vessel, and 50 yards astern of the last vessel in the parade between the muster point at 41°31′30″ N, 081°45′00″ W until each official parade vessel is moored. All coordinates are NAD 83.

(2) *Enforcement period.* This rule is effective from 12 p.m. on Wednesday, July 9, 2003 through 1 p.m. on Monday, July 14, 2003. Paragraph (b) of this section enforced from 2 p.m. through 8 p.m., or until the conclusion of the parade when the last tall ship has moored, whichever is later, on Wednesday, July 9, 2003.

(3) *Regulations.* All vessel operators shall comply with the instructions of the U.S. Coast Guard Captain of the Port Cleveland, Ohio, or his on scene representative, the Patrol Commander. Permission to deviate from the above rules must be obtained from the Captain of the Port or the Patrol Commander via VHF/FM radio, Channel 6 or by telephone at (216) 937–0111.

Dated: July 1, 2003.

Ronald F. Silva,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–222]

RIN 1625–AA00

Safety Zone; Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.