

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165**

[CGD09-03-203]

RIN 2115-AA97

**Safety Zones; Captain of the Port Chicago Zone****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish fifteen permanent safety zones for annual fireworks displays throughout the Captain of the Port Chicago Zone. These safety zones are necessary to control vessel traffic within the immediate vicinity of fireworks launch sites and to ensure the safety of life and property during each event. These safety zones are intended to restrict vessels from the area encompassed by the safety zone for the duration of each fireworks display.

**DATES:** Comments and related material must reach the Coast Guard on or before March 17, 2003.

**ADDRESSES:** You may mail or hand-deliver comments and related material to Commanding Officer, U.S. Coast Guard Marine Safety Office (MSO) Chicago, 215 W. 83rd Street Suite D, Burr Ridge, IL. 60527. MSO Chicago maintains the public docket for this rulemaking. Comments and material received from the public, as well as the documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Chicago between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** MST3 Kathryn Varela, MSO Chicago, at (630) 986-2175.

**SUPPLEMENTARY INFORMATION:****Request for Comments**

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. Persons submitting comments should include their name and address, identify this rulemaking (CGD09-03-203) and indicate the specific event and section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for photocopying and electronic filing. Persons wanting acknowledgement for receipt of comments should enclose a

stamped, self-addressed envelope or postcard.

The Coast Guard will consider all comments and material received during the comment period. We may change this proposal in view of them.

**Public Meeting**

The Coast Guard does not plan to hold a public hearing. Persons may request a public meeting by writing to Marine Safety Office Chicago at the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

Each year, various organizations in Illinois and Michigan sponsor fireworks displays at the same locations during the same general time periods. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazards associated with these events, the Captain of the Port Chicago has determined that fireworks launches in close proximity to watercraft pose a risk to public safety and property. The likely combination of large numbers of inexperienced recreational boaters, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement will ensure the safety of persons and property at these events and help minimize the associated risk.

In the past, and for those reasons stated above, the Captain of the Port has annually promulgated separate temporary rulemaking for each fireworks event. This proposed rule would merely consolidate past temporary rulemakings into one rulemaking, would include other events for the purpose of uniformity, and would allow for a more thoughtful, timely rulemaking process. This rulemaking would create a permanent rule listing the safety zones for each fireworks launch platform used for each fireworks display. All geographic coordinates are based upon North American Datum 1983 (NAD 83).

**Discussion of Proposed Rule**

The Coast Guard is proposing to establish a safety zone around all annual fireworks events in the Captain of the Port Chicago area. The proposed size was determined by using the National Fire Protection Association standards.

The Coast Guard believes these proposed rules will not pose any

additional problems for commercial vessels transiting the area. In the unlikely event that shipping is affected by these proposed rules, commercial vessels may request permission from the Captain of the Port Chicago, or his designated representative, to transit through the safety zone. No commercial shipping lanes would be impacted as a result of this rulemaking.

The Coast Guard would announce the exact dates and times for these events by publishing a Notice of Implementation in the **Federal Register** at least ten days prior to the beginning of the event, and by publishing this information in the Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and, for those who request it from MSO Chicago, by facsimile (fax).

**Regulatory Evaluation**

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 on Regulatory Planning and Review and therefore 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 non-significant under Department of Transportation regulatory policies and procedures (DOT) (44 FR 11040, February 26, 1979). If comments are received to indicate otherwise, the Captain of the Port may reconsider this determination. The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone.

**Small Entities**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the Captain of the Port Chicago has determined that this rule will not 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 vessels intending to transit or anchor in a portion of an activated

safety zone. The safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a few hours on the day of the event on an annual basis. Vessel traffic could safely pass outside the proposed safety zone during the events, traffic would be allowed to pass through the safety zone only with the permission of the Captain of the Port Chicago's on-scene representative which will be the U.S. Coast Guard Patrol Commander. At least ten days before the effective period, the Coast Guard will publish a Notice of Implementation in the **Federal Register**. In addition, the exact times and dates will be published in the Ninth Coast Guard District Local Notice to Mariners, broadcasts made via the Broadcast Notice to Mariners and facsimile sent to operators of vessels who might be in the affected area who request such. 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 (Public Law 104-121), the Coast Guard wants 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**.)

#### 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) 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 proposed 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

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under figure 2-1, paragraph 32(g) of Commandant Instruction M16475.1C, 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**.

#### 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. 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.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reason discussed in the preamble, the Coast Guard proposes to amend 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(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. Add § 165.918 to read as follows:

#### § 165.918 Safety Zones; Annual Fireworks Displays in the Captain of the Port Chicago Zone

(a) *Safety zones.* The following areas are designated safety zones:

(1) Evanston Fourth of July Fireworks—Evanston, IL

(i) *Location.* All waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 42°02'58" N, 087°40'22" W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(2) Independence Day Fireworks—Manistee, MI.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 44°14'51" N, 086°20'46" W (NAD 83) (Off First Street Beach).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(3) Independence Day Fireworks—Lake Kalamazoo, Saugatuck, MI.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 42°38'52.5" N, 086°12'18.5" W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(4) Independence Day Fireworks—White Lake, Whitehall, MI.

(i) *Location.* All waters and adjacent shoreline of White Lake, Whitehall, MI. within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position of 43°24'33.5" N, 086°21'28.5" W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(5) Pentwater July 3rd Fireworks—Lake Michigan, Pentwater, MI.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan and the Shipping Channel, Pentwater, MI. within the arc of a circle with a 1000-foot radius from the fireworks launch site on the North Breakwall with its center in approximate position of 43°46'56.5" N, 086°26'38" W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(6) Venetian Night Fireworks—Lake Kalamazoo, Saugatuck, MI.

(i) *Location.* All waters and adjacent shoreline of Lake Kalamazoo, Saugatuck, MI. within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 42°38'52.5" N, 086°12'18.5" W (NAD 83).

(ii) *Expected date and time.* The fourth weekend in July; or the first weekend in August; sunset to termination of display.

(7) Venetian Night Fireworks—Lake Michigan, Hammond, IN.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, Hammond, IN. within the arc of a circle with a 840-foot radius from the fireworks launch site with its center in approximate position of 41°41'54" N, 087°30'46" W (NAD 83).

(ii) *Expected date and time.* The first weekend in August; sunset to termination of display.

(8) Venetian Night Fireworks—Monroe Street Harbor—Chicago, IL.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, Chicago, IL. within the arc of a circle with a 1000-foot radius from the fireworks launch site at Monroe Street Harbor with its center in approximate position of 41°52'41" N, 087°36'37" W (NAD 83).

(ii) *Expected date and time.* The fourth weekend in July; or the first weekend in August; sunset to termination of display.

(9) Wings Over the Lake Air Show—Michigan City, IN.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, off

Washington Park, Michigan City, IN. encompassed by a line drawn between the following coordinates starting at 41°43'39" N, 086°54'32" W; northwest to 41°44'06" N, 086°54'44" W; northeast to 41°44'21" N, 086°53'52" W; southeast to 41°43'55" N, 086°53'40" W; then southwest back to the point of origin (NAD 83). The box starts approximately 250-feet from the East Pierhead and 250-feet from Washington Park Beach.

(ii) *Expected date and time.* The first week in July.

(10) YMCA Lake Michigan Swim—Ferrysburg, MI.

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, off the Ferrysburg North Pier within 100-feet of a straight line from 43°03.45' N, 086°13.4' W; to 43°05' N, 086°15.24' W (NAD 83).

(ii) *Expected date and time.* The third week in July; from 8 a.m. (local) until the end of the event.

(11) Team Aquatics Ski Show—Grand River, Grand Haven, MI.

(i) *Location.* All waters and adjacent shoreline of the Grand River, Grand Haven, MI. from 43°04'08" N, 086°14'13" W; thence east to 43°04'06" N, 086°14'07" W; thence southwest to 43°03'53" N, 086°14'14" W; and east to 43°03'51.5" N, 086°14'07.5" W (NAD 83).

(ii) *Expected date and time.* The fourth week in July; from 6 p.m. (local) until 8:30 p.m. (local).

(12) Chicago Flatwater Classic—Chicago River, Chicago, IL.

(i) *Location.* All waters and adjacent shoreline of the Chicago River from a line drawn across the river at mile marker 323 to a line drawn across the river at mile marker 331.

(ii) *Expected date and time.* The second weekend in August; from 9 a.m. (local) until 3:30 p.m. (local).

(13) Navy Pier Summer Fireworks—Lake Michigan, Chicago, IL.

(i) *Locations.*

(A) *Primary launch site.* All waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius from the fireworks launch platform with its center in approximate position 41°53'18" N, 087°36'08" W (NAD 83).

(B) *Alternate launch site.* In the case of inclement weather, the alternate launch site is all waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius with its center in approximate position 41°53'24" N, 087°35'44" W (NAD 83).

(ii) *Expected dates and times.* Every Wednesday and Saturday evening from 9 p.m. (local) until termination of display from June 1 thru September 1.

(14) Navy Pier 4th of July Fireworks—Lake Michigan, Chicago, IL.

(i) *Locations.*

(A) *Primary launch site.* All waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius from the fireworks launch platform with its center in approximate position 41°53'18" N, 087°36'08" W (NAD 83).

(B) *Alternate launch site.* In the case of inclement weather, the alternate launch site is all waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius with its center in approximate position 41°53'24" N, 087°35'44" W (NAD 83).

(ii) *Expected date and time.* The first week of July; sunset to termination of display.

(15) St. Joseph's River Marathon Swim—St. Joseph, MI.

(i) *Location.* All the waters of Lake Michigan (off of St. Joseph, MI.), and the St. Joseph River, within 100-feet of the race course.

(ii) *Expected date and time.* The 3rd week in July; from 11 a.m. (local) until the end of the event.

(b) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed. U.S. Coast Guard Auxiliary, representatives of the event organizer, and local or state officials may be present to inform vessel operators of this regulation and other applicable laws.

(3) In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Chicago to transit the safety zone. Approval in such cases will be case-by-case. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via Channel 16, VHF-FM.

(c) Captain of the Port Chicago will announce the exact time and location of the annual events listed in this section by publication of a Notice of Implementation in the **Federal Register** at least ten days prior to the beginning of the event, Broadcast Local Notice to Mariners, or any other means deemed appropriate.

Dated: January 30, 2003.

**L.M. Henderson,**

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

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL-7452-2]

#### Approval and Promulgation of Implementation Plans; Rhode Island; One Hour Ozone Attainment Demonstration for the Rhode Island Ozone Nonattainment Area

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to fully approve the one-hour ozone attainment demonstration State Implementation Plan (SIP) for the Rhode Island serious ozone nonattainment area, submitted by the Rhode Island Department of Environmental Protection on January 27, 2003. This action is based on the requirements of the Clean Air Act as amended in 1990, related to one-hour ozone attainment demonstrations.

**DATES:** Comments must be received on or before March 17, 2003.

**ADDRESSES:** Written comments (two copies if possible) should be sent to: David B. Conroy at the EPA Region I (New England) Office, One Congress Street, Suite 1100-CAQ, Boston, Massachusetts 02114-2023.

Copies of the state submittal and EPA's technical support document (TSD) are available for public inspection during normal business hours (9 A.M. to 4 P.M.) at the following addresses: U.S. Environmental Protection Agency, Region 1 (New England), One Congress St., 11th Floor, Boston, Massachusetts, telephone (617) 918-1664, and at the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, Rhode Island 02908-5767. Please telephone in advance before visiting.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Burkhart, (617) 918-1664.

**SUPPLEMENTARY INFORMATION:** This notice provides an analysis of the one-hour ozone attainment demonstration SIP submitted by the Rhode Island Department of Environmental Management (Rhode Island DEM) in proposed form on January 27, 2003 for the Rhode Island serious ozone nonattainment area. This revision is

being proposed under a procedure called parallel processing. Under parallel processing, EPA proposes action on a state submission before it has been formally submitted to EPA, and will take final action on its proposal if the final submission is substantially unchanged from the submission on which proposal is based, or if significant changes in the final submission are anticipated and adequately described in EPA's proposal as a basis for EPA's proposed action.

The Rhode Island DEM will hold a public hearing on its proposed SIP revision on February 27, 2003. The SIP revision that Rhode Island has proposed includes all the basic elements of what EPA is proposing to approve. If the proposed attainment demonstration plan is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will approve the state's plan consistent with this proposal and any submitted comments. Before EPA can finally approve this SIP revision, Rhode Island must finally adopt the SIP revision and submit it formally to EPA for incorporation into the SIP.

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#### I. Clean Air Act Requirements for Serious Ozone Nonattainment Areas

The Clean Air Act (CAA) requires EPA to establish national ambient air quality standards (NAAQS or standards) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. CAA sections 108 and 109. In 1979, EPA promulgated the one-hour 0.12 parts per million (ppm) ground-level ozone standard. 44 FR 8202 (February 8, 1979). Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-

level ozone. NO<sub>x</sub> and VOC are referred to as precursors of ozone.

An area exceeds the one-hour ozone standard each time an ambient air quality monitor records a one-hour average ozone concentration of 0.125 ppm or higher.<sup>1</sup> An area is violating the standard if, over a consecutive three-year period, more than three exceedances are expected to occur at any one monitor. The area's 4th highest ozone reading at a single monitor is its design value. The CAA, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one-hour ozone standard, generally based on air quality monitoring data from the three-year period from 1987-1989. CAA section 107(d)(4); 56 FR 56694 (November 6, 1991). The CAA further classified these areas, based on the area's design value, as marginal, moderate, serious, severe, or extreme. CAA section 181(a). Marginal areas were suffering the least significant air pollution problems while the areas classified as severe and extreme had the most significant air pollution problems.

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas were required to attain the one-hour ozone standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The Rhode Island ozone nonattainment area is classified as serious and its attainment date is November 15, 1999.

Under section 182(c)(2) of the CAA, serious areas were required to submit by November 15, 1994 demonstrations of how they would attain the one-hour ozone standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year. In some cases, NO<sub>x</sub> emission reductions can be substituted for the required VOC emission reductions.

In general, an attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the control

<sup>1</sup> The one-hour ozone standard is 0.12 ppm. EPA's long-standing practice is that monitored values of 0.125 ppm or higher are rounded up, and thus considered an exceedance of the NAAQS and values less than 0.125 ppm are rounded down and are not an exceedance.