

Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

(e) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from the requirements in this section.

(f) *Waiver.* For any vessel, the Captain of the Port Lake Michigan or a designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: June 5, 2007.

**Bruce C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

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**BILLING CODE 4910-15-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD09-07-007]

RIN 1625-AA00

#### Safety Zone; Chicago Harbor, Navy Pier East, Chicago, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has established a Safety Zone in Chicago Harbor. This zone will restrict vessels from portions of Chicago Harbor during fireworks displays that pose a hazard to public safety. This zone is necessary to protect the public from the hazards associated with fireworks displays.

**DATES:** This rule is effective June 28, 2007.

**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 [CGD09-07-007] and are available for inspection or copying at Coast Guard Sector Lake Michigan (spw), 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747-7154.

### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

On May 7, 2007, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone, Chicago Harbor, Navy Pier East, Chicago, IL, in the **Federal Register** (72 FR 25720). We received no letters commenting on the rule. No public meeting 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**. Any delay encountered in the regulation's effective date would be contrary to the public interest since the safety zone is needed to prevent traffic from transiting a portion of Chicago Harbor during fireworks displays, thus ensuring that the maritime public is protected from any potential harm associated with such an event.

#### Background and Purpose

This safety zone is necessary to protect vessels and people from the hazards associated with fireworks displays. Such hazards include the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

#### Discussion of Comments and Changes

No comments were received concerning this final rule. No changes were made.

#### 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.

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. The Coast Guard's use of this safety zone will be periodic in nature and will likely not exceed 10, one-hour events per year. This safety zone will only be enforced during the time the safety zone is actually in use. Furthermore, this safety zone has been designed to allow vessels to transit unrestricted to portions of the harbor not affected by the zone. The Coast Guard expects insignificant adverse impact to mariners from the activation of this zone.

#### 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.

#### 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. 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 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 may disproportionately affect children.

#### Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that this safety zone and fishing rights protection need not be incompatible. We have also determined that 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

#### 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 and Department of Homeland Security Management Directive 5100.1, 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 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. This rule establishes a safety zone and as such is covered by this paragraph.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are 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; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 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. Add § 165.933 to read as follows:

#### § 165.933 Safety Zone, Chicago Harbor, Navy Pier East, Chicago IL.

(a) *Location.* The following area is a safety zone: The waters of Lake Michigan within Chicago Harbor between the east end of Navy Pier and the Chicago Harbor breakerwater beginning at 41°53'37" N, 087°35'26" W; then south to 41°53'24" N, 087°35'26" W; then east to 41°53'24" N, 087°35'55" W; then north to 41°53'37" N, 087°35'55" W; then back to the point of origin.

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Lake Michigan to monitor this safety zone, permit entry into this zone, give legally enforceable orders to persons or vessels within this zone and take other actions authorized by the Captain of the Port.

(2) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(c) *Regulations.* (1) The general regulations in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Lake Michigan or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain of the Port Lake Michigan or a designated representative to enter, move within or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Lake Michigan or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(d) *Notice of Enforcement or Suspension of Enforcement.* The safety zone established by this section will be enforced only upon notice of the Captain of the Port. The Captain of the

Port Lake Michigan will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Lake Michigan will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended.

(e) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from the requirements in this section.

(f) *Wavier.* For any vessel, the Captain of the Port Lake Michigan or a designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: June 6, 2007.

**Bruce C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 51 and 52**

[EPA-HQ-OAR-2001-0004; FRL-8324-6]

RIN 2060-AN92

**Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Removal of Vacated Elements**

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is amending its regulations to eliminate the pollution control project (PCP) and clean unit (CU) provisions included in its December 31, 2002 rulemaking entitled "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Baseline Emissions Determination, Actual-to-future-actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects." This final rule conforms the regulations to the decision by the U.S. Court of Appeals for the D.C. Circuit, *New York v. EPA*, 413 F.3d 3 (D.C. Cir. 2005), vacating the PCP and CU provisions. This action is exempt from notice-and-comment rulemaking because it is ministerial in nature.

**DATES:** This final rule is effective on June 13, 2007.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID

No. EPA-HQ-OAR-2001-0004. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Painter, Office of Air Quality Planning and Standards, (C504-03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5515, fax number (919) 541-5509, e-mail: *painter.david@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Does This Regulation Apply to Me?**

Entities potentially affected by this final action include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups.

Industry group	SIC <sup>a</sup>	NAICS <sup>b</sup>
Electric Services .....	491	221111, 221112, 221113, 221119, 221121, 221122.
Petroleum Refining .....	291	32411.
Chemical Processes .....	281	325181, 32512, 325131, 325182, 211112, 325998, 331311, 325188.
Natural Gas Transport .....	492	48621, 22121.
Pulp and Paper Mills .....	261	32211, 322121, 322122, 32213.
Paper Mills .....	262	322121, 322122.
Automobile Manufacturing .....	371	336111, 336112, 336712, 336211, 336992, 336322, 336312, 33633, 33634, 33635, 336399, 336212, 336213.
Pharmaceuticals .....	283	325411, 325412, 325413, 325414.

<sup>a</sup> Standard Industrial Classification  
<sup>b</sup> North American Industry Classification System.

Entities potentially affected by this final action also include State, local, and tribal governments that are delegated authority to implement these regulations. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in

parts 51 and 52 of title 40 of the Code of Federal Regulations.

**II. Background and Rationale for Action**

On December 31, 2002, EPA published a final rule (67 FR 80186) which established CU and expanded upon provisions pertaining to PCP which were initially promulgated on July 21, 1992 (57 FR 32314). On June 24, 2005, the United States Court of Appeals for the District of Columbia

Circuit (the Court) issued an opinion vacating those portions of the 2002 and 1992 rules that pertained to CU and PCP. *New York v. EPA*, 413 F.3d 3 (D.C. Cir.), reh'g. and reh'g. en banc den. 431 F.3d 801 (2005).

This action removes from the Code of Federal Regulations (CFR) all provisions for CU and PCP containing the provisions vacated by the Court. It should be noted that nearly identical CU and PCP provisions are found in 40 CFR 52.21, 51.165, and 51.166, and that the