



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR PART 165

[Docket No. USCG-2013-0210]

RIN 1625-AA00

Safety Zone; Lubbers Cup Regatta; Spring Lake, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone on Spring Lake in Spring Lake, Michigan. This safety zone is intended to restrict vessels from a portion of Spring Lake due to the Lubbers Cup Regatta. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with a race competition involving 60-foot rowing vessels.

DATES: This rule is effective from 3 p.m. on April 12, 2013, until 3 p.m. on April 13, 2013. This rule will be enforced from 3 p.m. until 7 p.m. on April 12, 2013, and from 8 a.m. until 3 p.m. on April 13, 2013.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2013-0210 and are available online by going to [www.regulations.gov](http://www.regulations.gov),

inserting USCG-2013-0210 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, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414-747-7148 or Joseph.P.McCollum@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule

A. Regulatory History and Information

On February 11, 2013, the Coast Guard published an NPRM in the Federal Register that listed safety zones corresponding to annual marine events in the Sector Lake Michigan zone. This NPRM included the safety zone for the Lubber's Cup Regatta on April 12-13, 2013 (the subject of

this TFR). The Coast Guard received no comments on that docket (USCG-2013-0020) in regard to the Lubber's Cup Regatta. After the 30 day comment period for the NPRM closed, the Coast Guard submitted the final rule for publication.

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 with respect to this rule because it is unnecessary. The public already had an opportunity to comment on this rule and the Coast Guard received no comments.

Because the Lubber's Cup Regatta would occur within 30 days of the publication, the Coast Guard finds that good cause exists under 5 U.S.C. 553(d)(3), for making this rule effective less than 30 days after publication in the Federal Register. Waiting for a 30 day delayed effective date would be impracticable and contrary to the public

interest because it would inhibit the Coast Guard's ability to protect vessels from the hazards associated with the Lubbers Cup Regatta on April 12-13, 2013, which are discussed further below.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 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.

On April 12 and 13, 2013, the Lubbers Cup Regatta will be held on Spring Lake in Spring Lake, Michigan. This competition will extend for approximately one mile along the Lake and is expected to involve more than 60 rowing vessels and 500 spectators. The Captain of the Port, Sector Lake Michigan, has determined that this competition will pose a significant risk to public safety and property. Such hazards include the collision of race and recreational vessels in a congested area, and capsizing competitors and spectators' vessels.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port, Sector Lake Michigan, has determined that this

temporary safety zone is necessary to ensure the safety of persons and vessels during the Lubbers Cup Regatta on Spring Lake. This zone is effective from 3 p.m. on April 12, 2013, until 3 p.m. on April, 13, 2013. This zone will be enforced from 3 p.m. until 7 p.m. on April 12, 2013, and from 8 a.m. until 3 p.m. on April 13, 2013.

The safety zone will encompass all waters of Spring Lake within a rectangle that is approximately 6,300 by 300 feet. The rectangle will be bounded by the points beginning at 43°04'55"N, 086°12'32"W; then east to 43°04'57"N, 086°11'6"W; then south to 43°04'54"N, 086°11'5"W; then west to 43°04'52"N, 086°12'32"W; then north back to the point of origin (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

#### D. Regulatory Analyses

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

## 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be small and enforced for only two days. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities

during rulemaking. 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 Spring Lake in Spring Lake, Michigan on April 12 and 13, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be effective and thus subject to enforcement for only two days. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we will issue local Broadcast Notice to Mariners.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. 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 the person listed in the FOR FURTHER INFORMATION

CONTACT section above.

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.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications

for federalism.

#### 6. 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.

#### 7. 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.

#### 8. 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.

#### 9. 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.

#### 10. 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.

#### 11. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 12. Technical Standards

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

#### 13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket USCG-2013-0020 where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 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; 46 U.S.C. Chapters 701, 3306, 3703; 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.T09-0210 to read as follows:

§ 165.T09-0210 Safety Zone; Lubbers Cup Regatta; Spring Lake, Michigan.

(a) Location. The safety zone will encompass all waters of Spring Lake within a rectangle that is approximately 6,300 by 300 feet. The rectangle will be bounded by the points beginning at 43°04'55"N, 086°12'32"W; then east to 43°04'57"N, 086°11'6"W; then south to 43°04'54"N, 086°11'5"W; then west to 43°04'52"N, 086°12'32"W; then north back to the point of origin (NAD 83).

(b) Effective and enforcement period. This rule is effective from 3 p.m. on April 12, 2013, until 3 p.m. on April 13, 2013. This rule will be enforced from 3 p.m. until 7 p.m. on April 12, 2013, and from 8 a.m. until 3 p.m. on April 13, 2013.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port,

Sector Lake Michigan or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his on-scene representative.

Dated: March 27, 2013

M. W. SIBLEY  
Captain, U. S. Coast Guard  
Captain of the Port, Sector Lake Michigan

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