



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0189]

RIN 1625-AA00

Safety Zone; National Cherry Festival Air Show and Fireworks Display, West Grand Traverse Bay, Traverse City, MI.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing two temporary safety zones in the Captain of the Port, Sault Sainte Marie zone. These safety zones are intended to restrict vessels from certain portions of water areas within Sector Sault Sainte Marie Captain of the Port zone. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays and aircraft involved in the National Cherry Festival.

DATES: These regulations are effective from 12 p.m. on June 28, 2013, until 11:30 p.m. on July 6, 2013. The Air Show safety zone will be enforced daily from 12 p.m. until 3 p.m. from June 28, 2013, to June 30, 2013. The Fireworks

safety zone will be enforced from 10 p.m. until 11:30 p.m. on July 6, 2013.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2013-0189 and are available online by going to [www.regulations.gov](http://www.regulations.gov), inserting USCG-2013-0189 in the "SEARCH" 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, call or e-mail MST1 Thomas Link, U.S. Coast Guard Sector Sault Sainte Marie, telephone 906-253-2443, email at [Thomas.a.link@uscg.mil](mailto:Thomas.a.link@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 May 1, 2013, the Coast Guard published an NPRM in the Federal Register (78 FR 25407) regarding two temporary safety zones for the National Cherry Festival fireworks display and air show. At the close of the comment period, no comments were received in response to the NPRM. Additionally, 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. The final details for this event were not received by the Coast Guard with sufficient time for a delayed effective period to run before the start of the event. Thus, delaying this rule to wait for a delayed effective period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the potential hazards associated with maritime fireworks displays.

B. Basis and Purpose

From June 28 to 30, 2013, the National Cherry Festival in Traverse City, MI will host an air show over the West Arm of Grand Traverse Bay. At the conclusion of the

National Cherry Festival on July 6, 2013, fireworks will be launched in Grand Traverse Bay. The Captain of the Port, Sault Sainte Marie has determined that the air show and fireworks display pose various potential hazards to the public, including premature detonations, dangerous projectiles, and falling or burning debris.

With these potential hazards in mind, the Captain of the Port Sault Sainte Marie will be establishing temporary safety zones pursuant to the authority granted in the Ports and Waterways Safety Act (33 U.S.C. § 1221 et seq.)

C. Discussion of Rule

To safeguard against the dangers posed by the National Cherry Festival air show and fireworks display, the Captain of the Port, Sault Sainte Marie has determined that temporary safety zones are necessary. Thus, the Captain of the Port, Sault Sainte Marie will be establishing two safety zones for the air show and fireworks display over the West Arm of Grand Traverse Bay.

The safety zone for the air show will be established on June 28 through the 30, 2013, in a position over West Grand Traverse Bay bounded by a line drawn from 44°46'48" N, 085°38'18" W, then southeast to 44°46'30" N, 085°35'30" W, then southwest to 44°46'00" N, 085°35'48" W, then

northwest to 44°46'18" N, 085°38'18" W, then back to the point of origin.

The air show safety zone will be effective and enforced daily from 12 p.m. until 3 p.m. on June 28-30, 2013.

A safety zone will be established on 6 July for the National Cherry Festival Fireworks display over West Grand Traverse Bay within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 44°46'12" N, 085°37'06" W.

The safety zone for the fireworks will be effective and enforced from 10 p.m. to 11:30 p.m. on July 6, 2013.

Entry into, transiting, or anchoring within the safety zones is prohibited unless authorized by the Captain of the Port, Sault Sainte Marie, or his on-scene representative. All persons and vessels authorized to enter the safety zones shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. The Captain of the Port or his 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 numerous 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, 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 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 zones established by this rule will be relatively small and enforced for a relatively short time. Also, the safety zones are designed to minimize their impacts on navigable waters in that vessels may still transit unrestricted portions of the waterways. Under certain conditions, moreover, vessels may still transit through the safety zones when permitted by the Captain of the Port, Sault Sainte Marie. On the whole, the Coast Guard expects minimal impact to mariners from the

enforcement of this rule.

## 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this rule on small entities. 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 would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit around West Grand Traverse Bay, Traverse City, Michigan, between 12:30 p.m. and 3 p.m. on June 28 to June 30, 2013, and from 10 p.m. to 11:30 p.m. on July 6, 2013.

These safety zones will not have a significant economic impact on a substantial number of small entities for the reasons discussed in the Regulatory Planning and Review section above.

## 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. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Technical Standards

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

14. 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-2013-0246 where indicated under ADDRESSES.

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; 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.T09-0189 to read as follows:

§ 165.T09-0189 Safety Zone; National Cherry Festival Air Show and Fireworks Display, West Grand Traverse Bay, Traverse City, MI.

(a) National Cherry Festival Fireworks Display; Traverse City, MI. (1) Location. All U.S. navigable waters and adjacent shoreline of the West Arm of Grand Traverse Bay within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 44°46'12" N, 085°37'06" W [DATUM: NAD 83].

(2) Effective and enforcement period. This regulation is effective and will be enforced from 10 p.m. until 11:30 p.m. on July 6, 2013.

(b) National Cherry Festival Air Show; Traverse City, MI.

(1) Location. All U.S. navigable waters of the West Arm of Grand Traverse Bay bounded by a line drawn from 44°46'48" N, 085°38'18" W, then southeast to 44°46'30" N, 085°35'30" W, then southwest to 44°46'00" N, 085°35'48" W, then northwest to 44°46'30" N, 085°38'30" W, then back to the point of origin [DATUM: NAD 83].

(2) Effective and enforcement period. This regulation is effective and will be enforced from 12 p.m. until 3 p.m. daily from June 28 to 30, 2013.

(i) The Captain of the Port, Sault Sainte Marie may suspend enforcement of the safety zones established under this section.

(ii) The Captain of the Port, Sault Sainte Marie will notify the public of the enforcement and suspension of enforcement of the safety zones established by this section in accordance with 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and Local Notice to Mariners.

(c) 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, Sault Sainte Marie to monitor these safety zones, permit entry into these safety zones, give legally enforceable orders to persons or vessels within these safety zones, or take other actions authorized by the Captain of the Port.

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

(d) 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, Sault Sainte Marie or his on-scene representative.

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

(3) The "on-scene representative" of the Captain of the Port, Sault Sainte Marie is any Coast Guard commissioned,

warrant or petty officer who has been designated by the Captain of the Port, Sault Sainte Marie to act on his behalf. The on-scene representative of the Captain of the Port, Sault Sainte Marie will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sault Sainte Marie, or his on-scene representative to obtain permission to do so. The Captain of the Port, Sault Sainte Marie 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, Sault Sainte Marie or his on-scene representative.

Dated: June 14, 2013

S. C. TESCHENDORF

Captain, U. S. Coast Guard  
Captain of the Port, Sault Sainte Marie

[FR Doc. 2013-15164 Filed 06/24/2013 at 8:45 am;

Publication Date: 06/25/2013]