



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0214]

RIN 1625-AA00

Safety Zones; Recurring Events in Captain of the Port Duluth Zone

AGENCY: Coast Guard, DHS.

ACTION: Final Rule

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SUMMARY: The Coast Guard will establish 8 permanent safety zones for annually recurring marine events in the Coast Guard Captain of the Port (COTP) Duluth zone. These safety zones are needed to protect both spectators and participants from the hazards associated with the events. During the enforcement period of the safety zones, persons and vessels are prohibited from entering, transitioning through, remaining, anchoring or mooring within the zone unless specifically authorized by the COTP or designated representative.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0214]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the

"SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 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 rule, call or e-mail Lieutenant Judson Coleman, Chief of Waterways Management Marine Safety Unit Duluth, U.S. Coast Guard; telephone (218) 720-5286, Extension 111 or by email [judson.a.coleman@uscg.mil](mailto:judson.a.coleman@uscg.mil). If you have questions on viewing or submitting material to 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

A. Regulatory History and Information

To this end, on May 31, 2013, the Coast Guard published an NPRM in the Federal Register (78 FR 12887). The NPRM proposed to establish permanent safety zones for annually recurring events in the Captain of the Port Duluth Zone. The NPRM was open for public comment for 30 days. At close of the comment period, the Coast Guard had not received any comments on the proposed rulemaking.

## B. Basis and Purpose

The purpose of this rule is to establish necessary safety zones for recurring events. This rule is being codified in order to safeguard against the hazards associated with annual marine events taking place in the Duluth Captain of the Port Zone.

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other 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.

## C. Discussion of the Final Rule

This rule establishes 8 new safety zones in 33 CFR Part 165 for annual marine events in the COTP Duluth Zone. These events include fireworks displays for the 4th of July holiday, specifically the Duluth fourth festival, Cornucopia fireworks, Ashland fireworks and the Madeline Island fireworks, and other historically recurring marine events, including the Lake Superior Dragon Boat Festival (LSDBF), The Superior Man Triathlon, and the Point to LaPointe swim.

As large numbers of spectator vessels are expected to congregate around the location of these events, the safety zones are needed to protect both spectators and participants from the hazards associated with the event. During enforcement of safety zones, persons and vessels are prohibited from entering,

transitioning through, remaining, anchoring, or mooring within the zone unless specifically authorized by the COTP or his designated representative. The Coast Guard may be assisted by other federal, state, and local agencies in the enforcement of these safety zones.

Certain safety zones are listed without known dates or times. The Coast Guard will give notice of the enforcement of these safety zones by all appropriate means to the effected segments of the public, including publication of a Notice of Enforcement in the Federal Register, Local Notice to Mariners, and Broadcast Notice to Mariners.

#### 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 and 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.

We conclude that this rule is not a significant regulatory

action because we anticipate that it will not adversely affect 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. These safety zones will only remain effective and thus subject to enforcement for brief durations annually. Additionally, the Coast Guard will give advance notice of the enforcement of these safety zones through means, including Broadcast Notice to Mariners and Local Notice to Mariners.

## 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 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. This 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 the location of the safety zones established by this rule during the enforcement periods.

The regulated areas will not have a significant economic

impact on a substantial number of small entities for the following reasons: the regulated areas will be of limited size and of short duration; vessels may safely navigate in all portions around these waterways except for the areas designated as regulated areas. Additionally, before the effective period, the Coast Guard will provide advance notice of enforcement, including Local Notice to Mariners and Broadcast Notice to Mariners.

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.

### 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, 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 INTFORMATION 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 establishing safety zones and 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 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. 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 AND 160.5; PUB L. 107-295, 116 STAT. 2064; DEPARTMENT OF HOMELAND SECURITY DELEGATION NO. 0170.1.

2. Add § 165.943 to read as follows:

§ 165.943 Annual events requiring safety zones in the Captain of the Port Duluth zone.

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

- (1) Bridgefest Regatta Fireworks; Houghton, MI. (i)

Location. All waters of the Keweenaw Waterway bounded by the arc of a circle with a 300-foot radius from the fireworks launch site with its center in position 47° 07' 28.35" N, 088° 35' 01.78" W.

(ii) Enforcement date and time. This event historically occurs in mid June. The Captain of the Port Duluth, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcast.

(2) Lake Superior Dragon Boat Festival Fireworks; Superior, WI. (i) Location. All waters of Superior Bay, WI within a 150-foot radius with its center at 46° 43' 23.52" N 092° 03' 45.19" W.

(ii) Enforcement date and time. This event historically occurs in late August. The Captain of the Port Duluth, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcast.

(3) Duluth Fourth Fest Fireworks; Duluth, MN. (i) Location. All U.S. navigable waters of the Duluth Harbor Basin Northern Section within a 900-foot radius of position 46° 46' 19.00" N, 092° 06' 11.00" W.

(ii) Enforcement date and time. This event historically occurs during the 4<sup>th</sup> of July week. The Captain of the Port Duluth, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcast.

(4) Cornucopia Fireworks; Cornucopia, WI. (i) Location. All waters of the area bounded by a circle with a 300-foot radius surrounding the fireworks launch site with its center in position 46° 51' 35.00" N, 091°06' 10.00" W.

(ii) Enforcement date and time. This event historically

occurs the week before, after or during 4<sup>th</sup> of July week. The Captain of the Port Duluth, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcast.

(5) LaPointe Fireworks; LaPointe, WI. (i) Location. All waters of Lake Superior bounded by the arc of a circle with a 375-foot radius from the fireworks launch site with its center in position 46° 46' 40.10" N, 090° 47' 22.00" W.

(ii) Enforcement date and time. This event historically occurs during the 4th of July week. The Captain of the Port Duluth, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcast.

(6) Ashland Fireworks; Ashland, WI. (i) Location. All waters of the Lake Superior bounded by the arc of a circle with a 600-foot diameter from the fireworks launch site with its center in position 46° 35' 50.37" N, 090° 52' 59.82" W.

(ii) Enforcement date and time. This event historically occurs during the 4th of July week. The Captain of the Port Duluth, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcast.

(7) Point to LaPointe Swim; LaPointe, WI. (i) Location. All waters between Bayfield, WI and Madeline Island, WI within an imaginary line created by the following coordinates: 46° 48' 50.97" N, 090° 48' 44.28" W, moving southeast to 46° 46' 44.90" N, 090° 47' 33.21" W, then moving northeast to 46° 46' 52.51" N

090° 47' 17.14" W, then moving northwest to 46° 49' 03.23" N 090° 48' 25.12" W and finally running back to the starting point.

(ii) Enforcement date and time. This event historically occurs in early August. The Captain of the Port Duluth, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcast.

(8) Superior Man Triathlon; Superior, WI. (i) Location. All waters of the Duluth Harbor Basin, Northern Section, including the Duluth Entry encompassed in an imaginary line beginning at point 46° 46' 36.12" N 092° 06' 06.99" W, running southeast to 46° 46' 32.75" N 092° 06' 01.74" W, running northeast to 46° 46' 45.92" N 092° 05' 45.18" W, running northwest to 46° 46' 49.47" N 092° 05' 49.35" W and finally running southwest back to the starting point.

(ii) Enforcement date and time. This event historically occurs in late August. The Captain of the Port Duluth, will establish enforcement dates that will be announced with a Notice of Enforcement and marine information broadcast.

(b) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring in this safety zone is prohibited unless authorized by the Captain of the Port Duluth, or the designated on-scene representative.

(2) This safety zone is closed to all vessel traffic except as authorized by the Captain of the Port Duluth, or the designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Duluth, is any Coast Guard commissioned, warrant, or petty officer who has been designated to act on behalf of the Captain of the Port Duluth. The on-scene representative of the Captain of the Port Duluth will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port Duluth, or the designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Duluth, or the designated on-scene representative to obtain permission to do so. Vessel operators given authorization to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Duluth, or the on-scene representative.

Dated: July 24, 2013

A. H. Moore Jr.

Commander, U.S. Coast Guard

Captain of the Port Duluth

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Date: 08/12/2013]