



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0472]

RIN 1625-AA00

Safety Zone; St. Ignace Fireworks Displays, St. Ignace, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Captain of the Port, Sault Sainte Marie zone. This safety zone is intended to restrict vessels from certain portions of Lake Huron during firework displays in East Moran Bay. This temporary safety zone is necessary to protect spectators and vessels from the potential hazards associated with the fallout from the aerial displays.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] to 10:00 p.m. on September 10, 2017. For purposes of enforcement, actual notice will be used from 10:00 p.m. on June 24, 2017 to [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: 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 rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Sector Sault Sainte Marie Waterways Management Division, U.S. Coast Guard; telephone 906-253-2443, email SSMPrevention@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this 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) (3) (B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so

would be impracticable. The Coast Guard received the safety zone request on March 9, 2017. The Coast Guard did not receive the final details of the requested safety zone with sufficient time for a comment period to run before the start of the fireworks display. Thus, delaying this rule to wait for a notice and comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect the public from the potential hazards associated with the fireworks display.

We are issuing this final rule, and under 5 U.S.C. 553(d) (3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the Federal Register. For the same reasons discussed in the preceding paragraph, a 30 day notice period would be impracticable.

III. Legal Authority and Need for Rule

The legal basis for the rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05-1, 160.5; Department of Homeland Security Delegation No. 0170.1.

On every Saturday from June 24th to September 9th, 2017 and on July 4th 2017, St. Ignace will have fireworks displays at the end of the Arnold Transit Mill Slip. The state of Michigan regulates fireworks displays. This action is only for the safety zone. The Captain of the Port Sault Sainte Marie has determined that the pyrotechnics display will pose a significant risk to

public safety and property. Such hazards include premature and accidental detonations, falling and burning debris, and collisions among spectator vessels. The special design of water shells requires a safety zone of at least 1,400 feet.

IV. Discussion of the Rule

This rule is necessary to ensure the safety of vessels during the aforementioned displays. The temporary safety zone will encompass all U.S. waters of Lake Huron within a 1,400 foot radius from the end of Arnold Transit Mill Slip located at 45° 52'24.6" N, 084° 43'18.1" W. The safety zone will be enforced from 10:00 p.m. to 11:30 p.m. on June 24, 2017, from 10:00 p.m. to 11:30 p.m. on July 4, 2017, from 10:00 p.m. to 11:30 p.m. on July 8, 2017, from 9:45 p.m. to 11:15 p.m. on July 15, 2017, from 9:45 p.m. to 11:15 p.m. on July 22, 2017, from 9:30 p.m. to 11:00 p.m. on July 29, 2017, from 9:30 p.m. to 11:00 p.m. on August 5, 2017, from 9:30 p.m. to 11:00 p.m. on August 12, 2017, from 9:30 p.m. to 11:00 p.m. on August 19, 2017, from 9:30 p.m. to 11:00 p.m. on August 26, 2017, from 9:30 p.m. to 11:00 p.m. on September 2, 2017, from 9:00 p.m. to 10:00 p.m. on September 9, 2017. If the fireworks are cancelled on Saturday due to inclement weather, then this section will be enforced on the following day. The rule will be enforced with actual notice as-needed to mitigate risks associated with the display.

Entry into, transiting, or anchoring within the safety zone

is prohibited unless authorized by the Captain of the Port Sault Sainte Marie, or a designated on-scene representative. The Captain of the Port or a designated on-scene representative may be contacted via VHF Channel 16 or telephone at 906-635-3233.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes and E.O.s and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and promoting flexibility.

Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs"), directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process." This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not

been reviewed by the Office of Management and Budget.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

We conclude that this rule is not a significant regulatory action because we anticipate that 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 is confined to area encompassing the potential firework fallout area and will be enforced only for the duration of the display. Under certain conditions, moreover, vessels may still transit through the safety zones when permitted by the Captain of the Port.

B. 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 will affect the following entities, some of which might be small entities: the owners or operators of the vessels intending to transit or anchor in the vicinity of the safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons identified in the Regulatory Planning and Review section. Further, the Coast Guard will give advance notice to the public via a Broadcast Notice to Mariners so the public can plan accordingly.

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.

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.

C. 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).

D. Federalism and Indian Tribal Governments

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 it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Also, this rule does not have tribal implications under E.O. 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. 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.

F. 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 (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 establishment of a safety zone and, therefore, is categorically

excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the ADDRESSES section of this preamble. However, we seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. Technical Standards

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirement, 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; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0472 to read as follows:

§ 165.T09-0472 Safety Zone; St. Ignace Fireworks Displays,

St. Ignace, Michigan.

(a) *Location.* The following areas are temporary safety zones: All U.S. navigable waters of Lake Huron within a 1,400 foot radius from the end of Arnold Transit Mill Slip located at 45° 52'24.6" N, 084° 43'18.1" W.

(b) *Effective and enforcement period.* This rule is effective from 10:00 p.m. on June 24, 2017 to 10:00 p.m. on September 10, 2017. The safety zone will be enforced from 10:00 p.m. to 11:30 p.m. on June 24, 2017, from 10:00 p.m. to 11:30 p.m. on July 4, 2017, from 10:00 p.m. to 11:30 p.m. on July 8, 2017, from 9:45 p.m. to 11:15 p.m. on July 15, 2017, from 9:45 p.m. to 11:15 p.m. on July 22, 2017, from 9:30 p.m. to 11:00 p.m. on July 29, 2017, from 9:30 p.m. to 11:00 p.m. on August 5, 2017, from 9:30 p.m. to 11:00 p.m. on August 12, 2017, from 9:30 p.m. to 11:00 p.m. on August 19, 2017, from 9:30 p.m. to 11:00 p.m. on August 26, 2017, from 9:30 p.m. to 11:00 p.m. on September 2, 2017, from 9:00 p.m. to 10:00 p.m. on September 9, 2017. If the fireworks are cancelled on Saturday due to inclement weather, then this section will be enforced on the following day. The rule will be enforced with actual notice as-needed to mitigate risks associated with the display.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within these safety zones are 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 or her behalf. The on-scene representative of the Captain of the Port, Sault Sainte Marie will be aboard a Coast Guard 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 or telephone at 906-635-3233. 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 23, 2017.

M. R. Broz,
Captain, U.S. Coast Guard,
Captain of the Port, Sault Sainte Marie.
[FR Doc. 2017-14740 Filed: 7/13/2017 8:45 am; Publication Date: 7/14/2017]