

Dated: Aug 17, 2016.

**D.H. Sulouff,**

*District Bridge Chief, Eleventh Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2016-0725]

RIN 1625-AA00

#### Safety Zone; Lake Superior Dragon Boat Festival Fireworks Display; Superior Bay, Superior, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone in Superior Bay near Barkers Island in Superior, WI. This safety zone is intended to restrict vessels from specified waters in the Superior Bay during the Dragon Boat Festival Fireworks Display. This safety zone is necessary to protect spectators from the hazards associated with the fireworks display.

**DATES:** This rule is effective from 8:30 p.m. through 10:30 p.m. on August 26, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0725 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 email Lieutenant Junior Grade John Mack, Waterways management, MSU Duluth, Coast Guard; telephone 218-725-3818, email [John.V.Mack@uscg.mil](mailto:John.V.Mack@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

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 temporary 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 (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. Because the event is scheduled for August 26, 2016, there is insufficient time to accommodate the comment period. Thus, delaying the effective date of this rule to wait for the comment period to run would be both impracticable and contrary to public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with the event.

We are issuing this 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**. Delaying the effective date of this rule would be contrary to public interest as it would inhibit the Coast Guard's ability to protect spectator and vessels from the hazards associated with the event.

##### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Duluth (COTP) has determined that potential hazards associated with fireworks displays starting at 9:00 p.m. on August 26, 2016 will be a safety concern for anyone within a 350-foot radius of the launch site. The likely combination of recreational vessels, darkness punctuated by bright flashes of light, and fireworks debris falling into the water presents risks of collisions which could result in serious injuries or fatalities. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

##### IV. Discussion of the Rule

This rule establishes a safety zone from 8:30 p.m. through 10:30 p.m. August 26, 2016. The safety zone will cover all navigable waters within an area bounded by a circle with a 350-foot radius of the fireworks display launching site located in Superior, WI at coordinates 46°43'28" N, 092°03'47" W. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. No

vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

##### V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, 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 of promoting flexibility. 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.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of Superior Bay in Superior, WI for 2 hours and during a time of year when commercial vessel traffic is normally low. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

###### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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 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 have 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 Executive Order 13175 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.ID, 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 a safety zone lasting no more than 2 hours that will prohibit entry within a 350-foot radius from where a fireworks display will be conducted. 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 where indicated under **ADDRESSES**. 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.

#### 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 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.T09–0725 to read as follows:

#### § 165.T09–0725 Safety zone; Lake Superior Dragon Boat Festival Fireworks Display, Superior Bay, Superior, WI.

(a) *Location.* All waters of Superior Bay within an area bounded by a circle with a 350-foot radius at position 46°43'28" N., 092°03'47" W.

(b) *Effective period.* This safety zone is effective from 8:30 p.m. through 10:30 p.m. on August 26, 2016.

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

(3) The “on-scene representative” of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his 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 his on-scene representative to obtain permission to do so. 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 Duluth or his on-scene representative.

Dated: August 16, 2016.

**E.E. Williams,**

*Commander, U.S. Coast Guard, Captain of the Port Duluth.*

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