



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG-2017-0789]

1625-AA00

Safety Zone; St. Marys River, Sault Ste. Marie, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters within a 200-yard radius of the position of the grounded vessel, M/V CALUMET on the north end of Sugar Island. The safety zone is needed to provide for the safety of life and property on the navigable waters during emergency salvage operations onboard a bulk carrier that ran aground. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sault Ste. Marie.

**DATES:** This rule is effective with actual notice from August 10, 2017 until August 17, 2017.. This rule is effective without actual notice on August 17, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0789 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 LTJG Sean V. Murphy, Waterways Management Chief, Sector Sault Ste. Marie, U.S. Coast Guard; telephone 906-635-3223, email Sean.V.Murphy@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
M/V	Motor Vessel

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 M/V CALUMET ran aground on the north side of Sugar Island in the St. Marys River on the night of 09 August 2017 and immediate action is needed to investigate the incident and respond to the potential safety hazards associated with salvage of the vessel. It is impracticable to publish an NPRM because the Coast Guard must establish this safety zone by 10 August 2017.

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. Delaying the effective

date of this rule would be impracticable because immediate action is needed to investigate the incident and respond to the potential safety hazards associated with emergency salvage operations of M/V CALUMET.

### 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 Sault Ste. Marie (COTP) has determined that potential hazards associated with emergency salvage operations starting 10 August 2017 will be a safety concern for anyone within a 200-yard radius of the aground vessel in position 46-29.3N 084-18.1W. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the incident is investigated and the vessel is salvaged.

### IV. Discussion of the Rule

This rule establishes a safety zone from August 10, 2017 to August 17, 2017. The safety zone will cover all navigable waters within 200 yards of the aground M/V CALUMET in position 46-29.3N 084-18.1W. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the incident is investigated and the vessel is salvaged. 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 Orders 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 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and limited duration of the safety zone. We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal and short-term impact on the economy, especially as balanced against the risk of serious environmental consequences and potential long-term delays and economic loss to industry posed by the grounded vessel if this rule is not enacted. Further, this regulatory action 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 of relatively small size and short duration, and it is designed to minimize the impact on navigation. Moreover, vessels may still transit through the regulated area when permitted by the Captain of the Port or his on-scene representative.

#### 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.

1) This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of the navigable waters in the St. Marys River, Sault Ste. Marie, MI.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: There is ample room in the channel for recreational vessels to transit outside of the safety zone. The Coast Guard will notify mariners before activating the zone by appropriate means which may include but are not limited to an Advisory Notice and Broadcast Notice to Mariners.

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 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, 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.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 7 days that will prohibit entry within 200 yards of the aground M/V CALUMET. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

## 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 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; 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.T09-0789 to read as follows:

§ 165.T09-0789 Safety Zone; St. Marys River, Sault Ste. Marie, MI.

(a) Location. The following area is a safety zone: All waters within a 200 yard radius from the aground M/V CALUMET, in position 46-29.3N 084-18.1W, from surface to bottom. These coordinates are based on WGS 84 .

(b) Definitions. As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sault Ste. Marie (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling the Sector Sault Ste. Marie Command Center at 906-635-3319. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement period. This section will be enforced between August 10, 2017 through August 17, 2017.

Dated: August 11, 2017

M. R. Broz

CAPTAIN, U.S. Coast Guard,

Captain of the Port Sault Ste. Marie.

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