



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0034]

RIN 1625-AA00

Safety Zone; Duluth-Superior Harbor, Duluth, MN and Superior, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of Duluth-Superior Harbor encompassed by a box from Connor's Point Marina in Superior, WI to Rice's Point in Duluth, MN and extending 100 yards from four (4) barges placed across the waterway. This action is necessary to protect the safety of life on these navigable waters of Duluth-Superior Harbor near the Blatnik Bridge for an extreme sports event. This rulemaking would prohibit persons, vehicles, and vessels from entering, transiting, or anchoring in the safety zone unless authorized by the Captain of the Port Duluth or a designated representative.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through March 5, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0034 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 about this proposed rulemaking, call or email LT Abbie Lyons, Chief, Incident Management Division, U.S. Coast Guard; telephone 218-725-3818, email Abbie.E.Lyons@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 the temporary rule takes place after the closure of the Sault Saint Marie Locks on a frozen waterway with no anticipated vessel traffic. Further, delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the events taking place during Red Bull’s filming of the snowmachine stunts across the waterway.

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**. For the same reasons discussed in the preceding paragraph, waiting for a 30-day notice period to run would be impracticable and contrary to the public interest.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Duluth (COTP) has determined that this rule is necessary to protect the safety of people, vessels, vehicles, and the navigable waters within the safety zone immediately before, during, and after the

scheduled event.

IV. Discussion of the Rule

The COTP establishing a safety zone from 9 a.m. through 4 p.m. daily from February 25, 2021 through March 5, 2021. The safety zone covers all navigable waters from Connor's Point Marina, along the Blatnik Bridge (Interstate 535 Bridge) to Rice's Point Landing, extending 100 yards on either side of the barges along the waterway. The duration of the zone is intended to protect the safety of persons, vehicles, vessels, and these navigable waters immediately before, during, and after the scheduled event. No vessel, vehicle, or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

IV. 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 NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM 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 on the size, location, duration, and time-of-day of the safety zone. There is no expected vessel traffic on Lake Superior due to the closure of the Sault Saint Marie Locks and buildup of ice. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about

the zone, and under certain conditions, the rule would allow vessels to transit to seek permission to enter the zone from the COTP or a designated 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

There is no expected vessel traffic on Lake Superior due to the closure of the Sault Saint Marie Locks and buildup of ice, so there this proposed rule would 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 (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 call or email 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.

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 Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), 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 proposed rule involves a safety zone lasting four hours over six consecutive days that would prohibit entry within 100 yards of the barges alongside Blatnik Bridge (Interstate 535 Bridge). Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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 is proposing to amend 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: 46 U.S.C. 70034, 70051; 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.T09-0034 to read as follows:

§ 165.T09-0034 Safety Zone; Duluth-Superior Harbor, Duluth, MN and Superior, WI.

(a) *Location.* The following area is a safety zone: All waters of Duluth-Superior Harbor, from surface to bottom, encompassed by a box from Connor's Point Marina in Superior, WI to Rice's Point in Duluth, MN extending 100 yards from the four (4) barges placed across the waterway.

(b) *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 (COTP) Duluth or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP Duluth or a designated on-scene representative.

(3) The "on-scene representative" of the COTP Duluth is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP Duluth to act on his behalf.

(4) To seek permission to enter, contact the COTP Duluth or the COTP Duluth's representative by contacting Station Duluth at 218-529-3100. 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.

(c) *Enforcement periods.* This section will be enforced from 9 a.m. through 4 p.m. daily from February 25, 2021 through March 5, 2021.

Dated: February 17, 2021

Frances M. Smith
Commander, U.S. Coast Guard,
Captain of the Port Duluth