



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

### Docket Number USCG-2021-0354

### RIN 1625-AA00

### Safety Zone; Ford Fireworks, Lake St. Clair, Harrison Twp, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary safety zones for navigable waters in Detroit River and Lake St. Clair, MI. The safety zones are necessary to protect spectators and vessels from potential hazards associated with the Ford Fireworks Display. Entry of vessels or persons into the zones is prohibited unless specifically authorized by the Captain of the Port Detroit or their representative.

**DATES:** This rule is effective from 8 a.m. on June 24, 2021 through 11:59 p.m. on June 28, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0354 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 Ms. Tracy Girard, U.S. Coast Guard; (313) 475-7475, [Tracy.M.Girard@uscg.mil](mailto:Tracy.M.Girard@uscg.mil).

### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking

## **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 is impracticable since this safety zone must be established by June 24, 2021 and the Coast Guard did not receive notice of the event with sufficient time to undergo notice and comment before that date. Thus, delaying the effective date of this rule to wait for a comment period to run would be contrary to the public interest and impracticable by inhibiting the Coast Guard’s ability to protect spectators and vessels from the hazards associated with a fireworks display with a potential blast zone.

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 contrary to the rule’s objectives in ensuring that the potential safety hazards associated with the Ford Fireworks display are effectively mitigated, and life and property on the navigable waters in the vicinity are protected.

## **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 Detroit (COTP) has determined that potential hazards associated with the Ford Fireworks display starting June 24, 2021, will be a safety concern during the loading, transit, and execution of the Ford fireworks.

This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the work is being completed.

#### **IV. Discussion of the Rule**

This rule establishes three safety zones from 8 a.m. on June 24, 2021 through 11:59 p.m. June 28, 2021. In the case of inclement weather on June 28, 2021, all three safety zones will be enforced the subsequent day. The first of the three safety zones is established to encompass all U.S. navigable waters of the Detroit River within a 1,300-foot radius of fireworks loading site at 42°17.418' N, 083°06.897' W (WGS 84). This first safety zone will be enforced from 8 a.m. on June 24, 2021 through 8 a.m. on June 28, 2021. The second safety zone is a 1300-foot radius surrounding each barge while transiting in U.S. waters of the Detroit River from the loading site to the fireworks launch site on Lake St. Clair in the vicinity of the beach at the Lake St. Clair Metro Park. The second safety zone will be enforced from 8 a.m. through 7 p.m. on June 28, 2021. A third safety zone is established to encompass all U.S. navigable waters of Lake St. Clair within a 1300-foot radius at the fireworks launch site in the vicinity of the beach at Lake St. Clair Metro Park. The third safety zone will be enforced from 7 p.m. through 11:59 p.m. on June 28, 2021. The duration of these safety zones is intended to protect personnel, vessels, and the marine environment in these navigable waters while fireworks are being prepared, ignited, and after the display in the event of unexploded fireworks. 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. 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).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will not be able to safely transit around these safety zones in certain places which will impact a small designated area of the Detroit River and Lake St. Clair River for various times throughout the duration of the 4 days. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow 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 (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 rule involves a safety zone in various locations and times throughout a 4 day period that will prohibit entry within 1300 yards radius of fireworks barges. It is categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

*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 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:** 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.T09-0354 to read as follows:

**§ 165.T09-0354 Safety Zones; Ford Fireworks, Lake St. Clair, Harrison Twp, MI.**

(a) *Location.* The first of three safety zones is established to encompass all U.S. navigable waters of the Detroit River within a 1,000-foot radius of fireworks loading site at 42°17.418' N, 083°06.897' W (WGS 84). The second safety zone is a 1300 foot radius surrounding each barge while transiting in U.S. waters of the Detroit River from the loading site to the fireworks launch site on Lake St. Clair in the vicinity of the beach at the Lake St. Clair Metro Park. A third safety zone is established to encompass all U.S. navigable waters of Lake St. Clair within a 1300-foot radius at the fireworks launch site in the vicinity of the beach at Lake St. Clair Metro Park.

(b) *Enforcement period.* The first safety zone described in paragraph (a) of this section will be enforced from 8 a.m. on June 24, 2021 through 8 a.m. on June 28, 2021. The second safety zone described in paragraph (a) of this section will be enforced from 8 a.m. through 7 p.m. on June 28, 2021. The third safety zone described in paragraph (a) of this section will be enforced from 7 p.m. through 11:59 p.m. on June 28, 2021. In the case of inclement weather on June 28, 2021, all three safety zones will be enforced the subsequent day. The Captain of the Port Detroit will announce specific enforcement periods for these safety zones by Broadcast Notice to Mariners (BNM).

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within these safety zones is prohibited unless authorized by the Captain of the Port Detroit or a designated on-scene representative.

(2) The safety zones are closed to all vessel traffic, except as may be permitted by the COTP Detroit or a designated on-scene representative.

(3) The “on-scene representative” of the Captain of the Port Detroit is any Coast Guard commissioned, warrant or petty officer or a federal, state, or local law enforcement officer designated by the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zones must contact the Captain of the Port Detroit or an on-scene representative to obtain permission to do so. The Captain of the Port Detroit or an on-scene representative may be contacted via VHF Channel 16. 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 Detroit or an on-scene representative.

Dated: Jun 14, 2021

Brad W. Kelly,  
Captain, U. S. Coast Guard,  
Captain of the Port Detroit.

[FR Doc. 2021-13344 Filed: 6/23/2021 8:45 am; Publication Date: 6/24/2021]