



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2024-0222]

RIN 1625-AA00

**Safety Zone; 2024 Duluth Air Spectacular, Lake Superior, Duluth, MN**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for certain waters of Lake Superior. This action is necessary to provide for the safety of life on these navigable waters near Canal Park in Duluth, MN during an air show on July 31, 2024. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Marine Safety Unit Duluth or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2024-0222 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Chief Petty Officer Kyle Weitzell, Marine Safety Unit Duluth, Waterways Management Division, U.S. Coast Guard; telephone 218-725-3825, email Kyle.W.Weitzell@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
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On October 10, 2023, the Coast Guard was notified of an air show that will take place over the waters of Lake Superior near Canal Park in Duluth, MN from 3 p.m. to 6 p.m. on July 31, 2024. During this air show, planes will be flying low over the water within the boundary of a zone marked by buoys and small boat on scene. Hazards from this air show include low flying aircraft and jet exhaust produced by the engines and distraction to the pilots if general boating traffic were to be present within this area. The Captain of the Port Marine Safety Unit Duluth (COTP) has determined that potential hazards associated with the air show at this location would be a safety concern for anyone within an area defined by the following positions, beginning at N 46° 47' 34.81", W 092° 03' 46.70", then proceeding southwest to N 46° 46' 52.73", W 092° 05' 05.47", then proceeding southwest to N 46° 46' 48.00", W 092° 05' 28.02", the following the shoreline northward to N 46° 48' 1.98", W 092° 04' 16.02", and then returning to the starting point.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within this area before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

### **III. Discussion of Proposed Rule**

The COTP is proposing to establish a safety zone from noon to 9 p.m. on July 31, 2024. The safety zone would cover all navigable waters of Lake Superior within an area defined by the following positions, beginning at N 46° 47' 34.81", W 092° 03' 46.70", then proceeding southwest to N 46° 46' 52.73", W 092° 05' 05.47", then proceeding southwest to N 46° 46' 48.00", W 092° 05' 28.02", the following the shoreline northward to N 46° 48' 1.98", W 092° 04' 16.02", and then returning to the starting point near Canal Park in Duluth, MN. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 3 p.m. to 6 p.m. air show. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

### **IV. Regulatory Analyses**

We developed this proposed 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 NPRM has not been designated a "significant regulatory action," under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the short duration and small size of the safety zone as well as the ability for most boats to transit between the Duluth

Shipping Canal and Lake Superior without entering 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 proposed rule would 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 IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would 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 proposed rule has implications for federalism or Indian Tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*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 proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed 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 made a preliminary determination 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 not more than 9 hours that would prohibit entry within an area under the flight path of aircraft participating in an air show.

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. A preliminary 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. 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.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the

Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2024-0222 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. Also, if you click on the Dockets tab and then the proposed rule, you should see a "Subscribe" option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### **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, 70124; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T09-0222 to read as follows:

**§ 165.T09-0222 Safety Zone; 2024 Duluth Air Spectacular, Lake Superior, Duluth, MN.**

(a) *Location.* The following area is a safety zone: All navigable waters of Lake Superior within an area defined by the following positions, beginning at N 46° 47' 34.81", W 092° 03' 46.70", then proceeding southwest to N 46° 46' 52.73", W 092° 05' 05.47", then proceeding southwest to N 46° 46' 48.00", W 092° 05' 28.02", the following the shoreline northward to N 46° 48' 1.98", W 092° 04' 16.02", and then returning to the starting point near Canal Park in Duluth, MN

(b) *Enforcement period.* July 31, 2024, from noon to 9 p.m. The specific time frame for waterway closure will be announce via Broadcast Notice to Mariners.

(c) *Definitions.* The following definitions apply to this section:

(1) *On-scene representative* means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Duluth to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

(2) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone identified in paragraph (a) of this

section is prohibited unless authorized by the Captain of the Port Duluth or his designated on-scene representative.

(2) The safety zone identified in paragraph (a) of this section 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) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Duluth or his on-scene representative to obtain permission to do so. The Captain of the Port Duluth or his 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 Duluth, or his on-scene representative.

(e) *Exemption.* Public vessels, as defined in paragraph (c) of this section, are exempt from the requirements in this section.

(f) *Waiver.* For any vessel, the Captain of the Port Duluth or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

Dated: May 2, 2024.

Sean V. Murphy,  
Lieutenant, U.S. Coast Guard,  
Acting Captain of the Port Marine Safety Unit Duluth.

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