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DEPARTMENT OF TRANSPORTATION

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Coast Guard

33 CFR Part 165

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[COTP St. Louis, MO-02-011]

USCG-2002-13968-59

RIN 2115-AA97

Safety Zone; Fourth of July Fireworks, Lake City, MN

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Lake Pepin for the July Fourth fireworks display. This safety zone is necessary to protect spectators and vessels from the hazards associated with the storage, preparation, and launching of fireworks. This safety zone is intended to restrict vessel traffic from a portion of Lake Pepin, Lake City, Minnesota.

DATES: This temporary final rule is effective from 09:45 p.m.

(local) until 11:45 p.m. (local) on July 4, 2002

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ADDRESSES: ~~Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP St. Louis, MO-02-010] and are available for inspection or copying at U.S. Coast Guard Marine Safety Detachment St. Paul, PO Box 65428 St. Paul, MN, 55165 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.~~

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Chief Terrence A. McDermid, Marine Safety Detachment St. Paul, (651)

SEP 18 2002 *Law*

290-3991.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application did not allow sufficient time for publication of an NPRM followed by a temporary final rule effective 30 days after publication. Any delay of the effective date of this rule would be contrary to the public interest by exposing the public to the known dangers associated with fireworks displays and the possible loss of life, injury, and damage to property. Due to known accidents in other Captain of the Port zones, the absence of the safety zone could subject spectators and event organizers to unnecessary risks by being too close to the launch platform. Thus, the Coast Guard believes good cause exists for not delaying the effective date of this rule.

Background and Purpose

This Safety Zone is being established to safeguard the public from the hazards associated with launching of fireworks from the shore of Lake Pepin, Lake City, Minnesota. The size of the zone was determined by using previous experiences with fireworks displays in the Captain of the Port St. Louis zone and local knowledge about wind, waves, and currents in this particular area.

The safety zone will be in effect on July 4, 2002, from 9:45 p.m. (local) until 11:45 p.m.(local). The safety zone will encompass all waters bounded by the following coordinates: mile marker 772.4 - 773.5 Upper Mississippi River extending outwards into the channel 800 ft between these mile markers from the western shoreline.

All persons and vessels shall comply with the instructions of the Captain of the Port St. Louis or his designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port St. Louis or his designated on scene representative. The Captain of the Port St. Louis may be contacted via VHF Channel 16.

#### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. 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.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor within the vicinity of the safety zone from 09:45 p.m. (local) until 11:45 p.m. (local) on July 4, 2002.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only one hour on the day of the event when vessel traffic is minimal. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port St. Louis or his designated on scene representative. Before the effective period, we will issue maritime advisories widely available to users of the Port of St. Louis.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered <sup>KE</sup> to assist small entities in understanding the rule so that they <sup>KE</sup> ~~can~~ <sup>could</sup> better evaluate its effects on them and participate in the rulemaking process. ~~If the rule would affect your small~~ <sup>KE</sup>

~~business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety St. Louis (See ADDRESSES):~~ *KCT*

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).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism *(Not current template) KCT*

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

#### 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 or more in any one year. Though this

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

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

#### Environment - *Should be last Paragraph before "List of Subjects"*

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(g), of Commandant Instruction M16475.1<sup>D</sup>, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

#### Indian Tribal Governments

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.

#### Energy Effects

We have analyzed this ~~proposed~~<sup>rule</sup> rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, and Waterways.

<sup>at one word</sup>

For the reasons discussed in the preamble, the Coast Guard <sup>rule</sup> amends 33 CFR ~~part~~ 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(g), 6.04-1, 6.04-6, <sup>and</sup> 160.5; 49 CFR 1.46.

2. <sup>08-045</sup> A new temporary § 165.~~109-045~~ is added to read as

follows:

<sup>08-045</sup> § 165.~~109-045~~ Safety Zone; 4<sup>th</sup> of July Lake Pepin Fireworks, Lake City, MN.

(a) Location. <sup>The following area is a safety zone: the waters</sup> ~~The safety zone will encompass all waters of the Upper Mississippi River, from extending 800 feet from the shoreline of the right descending bank beginning at Upper Mississippi River extending outwards into the channel 800 ft between these mile markers from the western shoreline.~~ <sup>mile marker 772.4 to 773.5</sup> ~~mile marker 772.4 to 773.5~~ <sup>right descending bank</sup> ~~ft between these mile markers from the western shoreline.~~ KCT

(b) Effective Times and Dates. <sup>section is effective</sup> ~~This temporary final rule~~ <sup>to</sup> ~~is effective from 9:45 p.m. (local) until 11:45 p.m. (local) on July 4, 2002.~~ KCT

(c) Regulations.

~~((1) This safety zone is being established to protect the boating public during a planned fireworks display. In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port St. Louis or his designated on-scene representative, which will be the Patrol Commander. The Patrol Commander may be contacted via VHF Channel 16.~~ KCT

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port St. Louis or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant or petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel

via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) This safety zone should not adversely affect commercial shipping. However, commercial vessels may request permission from the Captain of the Port St. Louis to enter or transit the safety zone. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port St. Louis before transits will be authorized. The Captain of the Port St. Louis or representative may be on Channel 16, VHF-FM. *cat*

DATED: JUL 4 2002

  
E.A. WWASHBURN  
Commander, U.S. Coast Guard  
Captain of the Port St. Louis