

Event name	Location	Latitude	Longitude
City of Mount Vernon Fireworks .....	Edgewater Park .....	48°25.178' N	122°20.424' W

The special requirements listed in 33 CFR 165.1332(b) apply to the activation and enforcement of these safety zones. All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port or their designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to the publication of this document in the **Federal Register**, the Coast Guard will issue advanced notification of enforcement of these safety zones via the Broadcast Notice to Mariners and Local Notice to Mariners.

Dated: April 10, 2023.

**Y. Moon,**

*Captain, U.S. Coast Guard, Acting Captain of the Port Sector Puget Sound.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2023-0207]

RIN 1625-AA87

#### Security Zone; Kokosing ROV Survey Operation, Straits of Mackinac, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone for navigable waters within a 500-yard radius of Tug Valerie B, Tug Nancy Anne, Tug Champion, Tug General and crew boat Timmy V. The security zone is needed to protect the remotely operated vehicle survey operations from other vessels. Entry of vessels into this zone is prohibited unless specifically authorized by the Captain of the Port Sault Ste. Marie.

**DATES:** This rule is effective from May 1, 2023, through May 31, 2023.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0207 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Deaven S. Palenzuela, Sector Sault Ste. Marie Waterways Management Division, U. S. Coast Guard at (906) 635-3223 or email [ssm prevention@uscg.mil](mailto:ssm prevention@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 it is impractical to publish an NPRM by the date operations begin and we must establish a security zone in order to ensure that remotely operated vehicle ("ROV") operations can be conducted safely.

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 respond to the potential safety hazards posed by vessel traffic to Kokosing Industrial's ROV survey operations.

##### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034, 70051, 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; and Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3. The Captain of the Port Sault Ste. Marie (COTP) has determined that potential safety hazards posed by other vessels to ROV survey operations within one nautical mile of charted submerged pipeline or cable in

the Straits of Mackinac RNA starting May 1, 2023, will be a concern and is establishing security zone within a 500-yard radius of Tug Valerie B, Tug Nancy Anne, Tug Champion, Tug General and crew boat Timmy V. This rule is needed to protect the vessels and personnel involved in the ROV survey operations from other vessels transiting the Straits of Mackinac at the same time this project is being conducted.

#### IV. Discussion of the Rule

This rule establishes a security zone from May 1, 2023 through May 31, 2023. The security zone will cover all navigable waters within 500 yards of Tug Valerie B, Tug Nancy Anne, Tug Champion, Tug General and crew boat Timmy V. The duration of the security zone is intended to protect personnel and vessels involved with conducting the ROV survey operations. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP.

#### 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 and location of the security zone. Vessel traffic will be able to safely transit around this security zone which would impact a small designated area of the Straits of Mackinac. Moreover, the Coast Guard will issue a Local Notice to Mariners about the security 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 security 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 (Pub. L. 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 security zone lasting from May 1, 2023 through May 31, 2023 that will prohibit entry within 500 yards of Tug Valerie B, Tug Nancy Anne, Tug Champion, Tug General and crew boat Timmy V conducting ROV survey operations within one nautical mile of charted submerged pipeline or cable in the Straits of Mackinac RNA. 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 Memorandum for Record 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. 00170.1, Revision No. 01.3.

- 2. Add § 165.T09–0207 to read as follows:

#### § 165.T09–0207 Security Zone; Tugs Valerie B, Nancy Anne, Champion, and General and crew boat Timmy V operating in the Straits of Mackinac, MI.

(a) **Location.** The following areas are security zones: All navigable water within 500 yards of the Tugs Valerie B, Nancy Anne, Champion and General and crew boat Timmy V while conducting ROV survey operations within one nautical mile of charted submerged pipeline or cable within the Straits of Mackinac RNA.

(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 Sainte Marie (COTP) in the enforcement of the security zone.

(c) **Regulations.** (1) Under the general security zone regulations in subpart D of this part, you may not enter the security 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 VHF Channel 16 or telephone at (906) 635–3233. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

Dated: April 3, 2023.

**A.R. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2023-0179; FRL-10883-02-R3]

#### West Virginia; Finding of Failure To Submit State Implementation Plan Revision in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final action.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to find that the West Virginia Department of Environmental Protection (WVDEP) failed to timely submit a state implementation plan (SIP) revision required by the Clean Air Act (CAA) to address the deficiencies identified in EPA's 2015 findings of substantial inadequacy and "SIP calls" for provisions applying to excess emissions during periods of startup, shutdown, and malfunction (SSM). EPA is issuing this finding of failure to submit (FFS) without prior public notice and opportunity for comment. This action triggers certain CAA deadlines for EPA to impose sanctions if a state does not submit a complete SIP revision addressing the outstanding requirements and to promulgate a Federal Implementation Plan (FIP) if EPA does not approve the state's submission as a SIP revision. In a separate but related action, published elsewhere in this issue of the **Federal Register**, EPA is also issuing a final disapproval of a SIP revision submitted by West Virginia which allowed sources who could not meet emission limits during startup and shutdown events to apply for alternative emission limits (AELs) (see Docket ID No. EPA-R03-OAR-2022-0956).

**DATES:** This action is effective on May 17, 2023.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2023-0179. All documents in the docket are listed on

the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through [www.regulations.gov](http://www.regulations.gov), or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Serena Nichols, Planning and Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2053. Ms. Nichols can also be reached via electronic mail at [Nichols.Serena@epa.gov](mailto:Nichols.Serena@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Notice and Comment Under the Administrative Procedure Act (APA)

Section 553(b)(3)(B) of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making findings of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions to meet the requirement. As is discussed in further detail later, pursuant to CAA section 110(k)(1)(B), EPA "shall determine" no later than six months after the date by which a state is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established pursuant to CAA section 110(k)(1)(A). EPA exercises no significant judgment in making a determination that a state failed to make a submission and subsequently issuing a finding of failure to submit. Thus, notice and public procedures are unnecessary to take this action. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

#### I. Background

On June 12, 2015, EPA finalized an action (2015 SSM SIP Action), which

clarified, restated, and updated EPA's national policy regarding SSM provisions in SIPs (2015 Policy).<sup>1</sup> The 2015 Policy explained EPA's interpretation of certain CAA requirements, affirming that SSM exemption provisions (e.g., automatic exemptions, discretionary exemptions, and overly broad enforcement discretion provisions) and affirmative defense SIP provisions are generally viewed as inconsistent with CAA requirements. At the same time, pursuant to CAA section 110(k)(5), EPA issued findings of substantial inadequacy for SIP provisions applying to excess emissions during SSM periods for 36 states that were applicable in 45 statewide and local jurisdictions (air agencies).<sup>2</sup> As part of the 2015 SSM SIP Action, EPA also issued a "SIP call" (2015 SIP Call) to each of those 45 air agencies. The 2015 SIP Call required air agencies to adopt and submit revisions to EPA to correct identified SSM-related deficiencies in their SIPs by November 22, 2016. The 2015 SSM SIP Action also responded to a petition for rulemaking alleging specific deficiencies related to SSM provisions in existing SIPs. On July 27, 2015, the 2015 SSM SIP Action was challenged in the United States Court of Appeals for the District of Columbia Circuit.<sup>3</sup>

In 2017, EPA requested that the pending litigation on the final 2015 SSM SIP Action be held in abeyance to allow the new administration time to review the action. In 2020, Regions 4, 6, and 7 took final actions that were inconsistent with the 2015 Policy and EPA withdrew the corresponding SIP calls previously issued to Texas, North Carolina, and Iowa. These state-specific actions are the subject of pending litigation.<sup>4</sup> Moreover, in alignment with the SIP call withdrawals for Texas, North Carolina, and Iowa, EPA issued a Memorandum in October 2020 (2020 Memorandum), which established a new national policy that permitted the

<sup>1</sup> State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, 80 FR 33840 (June 12, 2015).

<sup>2</sup> For convenience, the EPA refers to "air agencies" in this action collectively when meaning to refer in general to states, the District of Columbia, and local air permitting authorities that are currently administering, or may in the future administer, EPA-approved implementation plans.

<sup>3</sup> *Environ. Comm. Fl. Elec. Power v. EPA, et al.*, No. 15-1239 (D.C. Cir.) (and consolidated cases).

<sup>4</sup> *Sierra Club, et al. v. EPA, et al.*, No. 20-1115 (D.C. Cir. Apr. 7, 2020); *Sierra Club, et al. v. EPA, et al.*, No. 20-1229 (D.C. Cir. June 29, 2020); *Sierra Club, et al. v. EPA, et al.*, No. 21-1022 (D.C. Cir. January 2021).